

Switzerland

Daniel Lucien Bühr and Marc Henzelin

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1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

Switzerland is a signatory to three international anti-corruption conventions.

Switzerland first ratified the 2003 United Nations Convention against Corruption on 24 September 2009, with no reservation.

Switzerland is also part of the 1998 Council of Europe Criminal Law Convention on Corruption and its 2003 Additional Protocol, both ratified on 31 March 2006. However, Switzerland made several reservations regarding this convention. In particular, it reserved its right not to apply section 12 of the convention (trading in influence) – to the extent that this offence is not punishable under Swiss law – as well as its right to apply section 17(1) (b) and (c) (applying to extraterritorial jurisdiction) only where an act is also punishable in the country where it was committed, the offender is in Switzerland and will not be extradited to a foreign state. Switzerland is also a member of the Council of Europe's Group of States against Corruption.

Switzerland is also a party to the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, ratified on 31 May 2000.

In addition to these conventions, on 31 May 2000, Switzerland has also ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime. This Convention allows for the restraining of assets suspected to be the proceeds of crime and provides for the confiscation of those assets and the recognition of foreign judgments ordering confiscation.

Moreover, Switzerland is a party to a number of bilateral treaties in matters of mutual legal assistance that facilitate the seizure, confiscation and repatriation of proceeds of crimes (which include corruption).

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The Swiss Criminal Code (SCC) has five provisions prohibiting acts of bribery.

The SCC first prohibits the active and passive corruption of domestic officials under articles 322-ter and 322-quater, respectively. These provisions prohibit the offering, promising or giving of an undue advantage (respectively soliciting, receiving a promise of or accepting such an advantage) to a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator or a member of the armed forces, for that persons' benefit or for anyone else's benefit, in order to cause him or her to carry out or to fail to carry out an act in connection with his or her official activity, which is contrary to his or her duty or dependent on his or her discretion.

Furthermore, articles 322-quinquies and 322-sexies of the SCC prohibit the granting of an advantage to a public official as well as the acceptance by public officials of an advantage, which is not due to them in order to carry out their official duties (facilitating or 'grease' payments).

Active and passive corruption of foreign public officials are prohibited under article 322-septies of the SCC.

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

Bribery of a foreign public official is prohibited by article 322-septies of the SCC. The application of this provision requires an unlawful payment or an undue advantage (ie, any other measurable improvement of the beneficiary's situation, whether in economic, legal or personal terms) or the offer or promise of such an undue payment or advantage in order to cause that official to act in breach of his or her public duties or to act or take a decision within his or her discretion. The assessment of whether the 'advantage' given represents an 'undue advantage' for the foreign official shall be made based on the terms of the legislation of the country concerned. It is important to specify that a bribe paid to cause a foreign official to act in accordance with his or her public duties (facilitating or 'grease' payments) is not prohibited under this provision.

4 Definition of a foreign public official

How does your law define a foreign public official?

Under Swiss law, the definition of foreign public officials includes, as required by the OECD Convention, the officials of a foreign state or a foreign authority, the officials of international organisations, regardless of their nationality. The definition of a 'public official' under article 322-ter of the SCC also applies for article 322-septies; it therefore includes all foreigners acting as members of a judicial or other authority, public officials, officially appointed experts, translators or interpreters, arbitrators and members of the armed forces. It is important to specify here that private persons performing official duties shall be treated as public officials (article 322-octies of the SCC), including when they act for public companies active in the private sector. The Federal Criminal Court held that a member of an autocratic regime who is not exercising an official function but who has the power to take decisions on behalf of the regime is considered a (de facto) public official.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

Swiss law prohibits offering any 'undue advantage' to a public official, which is any ascertainable enhancement (legal, economical or personal) in the beneficiary situation. It can take any form, in particular: a payment, (more or less hidden, for example an excessive fee for a service), a benefit in kind (for example a gift of a valuable object, including travel), the promise of a promotion, supporting an election, etc. It must, however, be paid or given to induce the foreign official to act in breach of his or her public duties or to exercise his or her discretion in favour of the corrupting party or of a third party.

However, advantages are not undue if permitted by staff regulations or if they are of minor value in conformity with social customs (article 322-octies 2 SCC).

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

Switzerland does not prohibit facilitating or 'grease' payments to foreign public officials. Swiss criminal law distinguishes between prohibited corruption, which induces public officials to breach their duty, and, on the other hand, the permitted granting of advantages, which induces public officials to perform a lawful act that does not depend on their discretionary power. However, granting of advantages to Swiss public officials (as well as receipt of payment by these officials) constitutes a criminal offence under Swiss law.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

Swiss criminal law prohibits indirect corrupt payments through intermediaries under the following conditions: the person offering, promising or giving an undue advantage via an intermediary must, under the circumstances, recognise the risk of an indirect corrupt payment and accept or turn a blind eye on the likelihood of a corrupt advantage.

8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

Both individuals and companies can be held liable for bribery of a foreign official. Indeed, in accordance with article 102(2) SCC, the company can be convicted for organisational weakness, irrespective of the criminal liability of natural persons, provided the company is responsible for failing to take all the reasonable and necessary organisational measures that were required in order to prevent the individual offence.

9 Successor liability

Can a successor entity be held liable for bribery of foreign officials by the target entity that occurred prior to the merger or acquisition?

Article 102 SCC does not make any reference to such a situation. However, as article 102(4) construes the term 'undertaking' as a legal (and not an economic) term, Swiss courts are likely to deny the liability of a successor entity after a merger or acquisition if employees of the target undertaking (or business unit) had committed bribery of foreign officials prior to the merger. The main reason for the preponderant view within the legal doctrine is that according to the concept of a legal entity, such entity can only be held liable for a criminal offence that took place within and by employees of that specific legal entity.

10 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

According to criminal law, Switzerland does not enforce foreign bribery laws but it can accept the delegation of prosecution by foreign states (article 85 Law on Mutual Legal Assistance). Swiss law pursues anyone who committed a corruption offence abroad if the act is also liable to prosecution at the place of performance or no criminal law jurisdiction applies at the place of performance; and if the person concerned remains in Switzerland and is not extradited to the foreign country (article 7(1) SCC). Furthermore, the Federal Act on International Mutual Assistance in Criminal Matters provides that a state may obtain urgent interim relief prior to the transmission to Switzerland of a formal request for mutual assistance, provided that it announces its intent to forward such a request (article 18 IMAC).

According to civil law, a foreign judgment will be recognised and enforced if the conditions of the Swiss Private International Law Act are fulfilled (article 25 et seq PILA). Additionally, the PILA provides that the law of the market where the effects of the unfair act occurred determines the law applicable to the claims (article 136 PILA).

11 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

In matters of international cooperation, the central authority appointed in Switzerland, in accordance with article 29 of the Council of Europe Corruption Treaty, is the Federal Office of Justice (FOJ), an agency of the Federal Department of Justice and Police. The FOJ is the central authority that cooperates with national and international authorities in matters involving legal assistance and extradition.

With regard to domestic criminal investigations, bribery and money laundering cases generally fall within the jurisdiction of the Swiss Confederation and are conducted by the Office of the (federal) Attorney General if the offence has been committed mainly in a foreign country or in several cantons with none of them being clearly predominant (article 24(1) of the Swiss Criminal Procedure Code (SCPC)). The relevant cantonal law enforcement authorities handle all other investigations into bribery and money-laundering cases.

12 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

The Office of the Attorney General, in a public statement made at a conference on 21 October 2015 in Zurich, confirmed that it welcomes self-reporting by companies of suspected corruption. Companies that self-report may benefit from an application of article 53 SCC (closing of an investigation based on the making good of the harm caused). Companies may seek guidance in an informal, no-name basis preparatory discussion with the Office of the Attorney General. However, the 'window of opportunity' is limited in time. The Office of the Attorney General is receiving more and more suspicious activity reports from banks and from the public corruption whistle-blowing hotline of the Swiss Federal Police. At the very latest by the time of self-reporting to the tax authorities, the criminal report must be filed with the Office of the Attorney General in order to take advantage of beneficial treatment, in particular the possible application of article 53 SCC.

Companies and individuals can alternatively (in an already opened investigation) ask for the application of a simplified procedure, which allows the defendant to negotiate a plea bargain with the prosecutor. The prerequisite is that the defendant agrees on facts, offences and the fine with the prosecutor and recognises (where applicable) civil claims (article 358 et seq SCPC). Subsequently, the plea bargain has to be approved by a court in a summary trial.

If no settlement agreement can be reached with the prosecutor or if the court refuses to approve the settlement, all evidence provided by the company or the individual within this special procedure is put aside and cannot be used within an ordinary criminal procedure by a newly appointed prosecutor.

In a normal criminal proceeding, the company's conduct in the course of the proceedings can be taken into account by the court when determining the appropriate sanction.

13 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

See question 12.

Bribery cases may also be resolved:

- by exemption from punishment or abandonment of proceedings if the case is of minor relevance within the meaning of article 52 SCC;
- by exemption from punishment or abandonment of proceedings if the offender has made good for the loss, damage or injury or made every reasonable effort to right the wrong that he or she has caused, provided that the interests of the public and, where applicable, of the persons harmed in the prosecution, are negligible (article 53 SCC);
- by way of summary penalty order, which is a procedure without a trial proceeding. This procedure is applicable only if the defendant accepts liability for the offence or if his or her responsibility has otherwise

been satisfactorily established (article 352 et seq SCPC) and if the sentence is either a monetary fine, a limited monetary penalty of 540,000 Swiss francs maximum, community service of no more than 720 hours or a custodial sentence of no more than six months.

14 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

Switzerland substantially contributed to the drafting of the OECD Convention of 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions. Between 2000 and 2006, Switzerland extended and further tightened its anti-bribery rules.

For many years, Switzerland was active in freezing and spontaneously returning to states the assets belonging to former heads of states or politicians, in particular after the Arab Spring.

Switzerland was also particularly active in fighting money laundering in its territory, including in seizing and confiscating the proceeds of bribery. For this purpose, Switzerland is using a system of suspicious activity reports by banks and spontaneous assistance by prosecutors to foreign states, once money obtained illegally or by improper means is discovered in Switzerland.

With effect as of 1 January 2016, the Swiss parliament toughened its rules against money laundering, sending an important signal also to companies that in Switzerland all proceeds of crimes, including corrupt payments, must be reported to the Federal Money Laundering Reporting Office (MROS).

15 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

Under Swiss criminal law, it is an offence if a company does not take all necessary and reasonable organisational (compliance) measures required to prevent (among other offences) bribery of (foreign) officials by its employees. Foreign companies are subject to Swiss jurisdiction to the extent that they are ultimately responsible for compliance with the law at a prosecuted Swiss company.

16 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

Any person who offers a bribe to a foreign public official to obtain an advantage which is not due to him or her is liable to a custodial sentence not exceeding five years or to a monetary penalty up to 1 million Swiss francs, or both. The sanction may include prohibition from practising a profession (article 67 SCC), publication of the judgment (article 68 SCC), and expulsion from Switzerland for foreigners as an administrative sanction (article 62(b) and article 63(1)(a) of the Federal Act on Foreign Nationals). The court shall order the forfeiture of those assets that have been acquired through the commission of an offence (article 70 SCC).

A company that has not taken all the reasonable and necessary precautions to prevent bribery within its internal organisation is penalised irrespective of the criminal liability of any natural persons and is liable to a fine not exceeding 5 million Swiss (article 102 SCC).

17 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

In 2015, dozens of corruption cases were running in relation to foreign corruption, in particular several important cases related to Russia, Greece, Kenya, Kazakhstan and Ukraine. In 2014 and in the course of 2015, the Office of the Attorney General of Switzerland opened a number of criminal investigations into money laundering in the context of the corruption scandal concerning the Brazilian oil company Petrobras. A request for mutual assistance has been sent to Brazil. The investigations are still ongoing.

With regard to Greece, more than 40 proceedings for mutual legal assistance regarding suspected money laundering and corruption regarding defence projects are currently pending.

In 2015, Parliament tightened the rules relating to criminal liability for commercial bribery. The amendment to the Criminal Code will likely enter into force on 1 July 2016 and applies to all undue payments promised, offered or paid to private sector employees (including individuals employed by international sports organisations, many of which have their headquarters in Switzerland). The new ex-officio crime of commercial bribery is regulated in two new articles of the SCC (see also the answer to question 29). In this context it is important to note that the (Anti-)Money Laundering Act has been tightened as well, with effect as of 1 January 2016. Under the new provisions, senior officials of international organisations and senior civil servants of international sports bodies in Switzerland qualify as 'politically exposed persons' (PEPs). This new regulation forces Swiss banks to manage legal risks associated with this group of individuals much more closely.

In a judgement of 16 May 2014, the Federal Supreme Court held that Swiss authorities could forward information outside of a formal mutual assistance procedure, even though they did not open a criminal investigation themselves. In fact, before this decision, a part of the legal doctrine considered that the spontaneous provision of information necessarily implies that an investigation has previously been opened in Switzerland. Thus, this doctrine views the new case law as going too far. However, it has to be specified that the spontaneous exchange of information with foreign countries is limited to information that is not covered by a legally protected secret, such as bank secrecy. This new decision of the Federal Court may accelerate the exchange of information in cases of international corruption, where the formal procedure of mutual assistance is generally too long to be effective.

A judgement of the Federal Criminal Court of 1 October 2014 held that the son of former Libyan leader Gaddafi, while not holding any official or institutional function, has to be considered a member of his clan given that he could take decisions on behalf of the regime. This is the first time that a Swiss court has recognised the status of de facto public official based on the effective power of the person and not on his or her governmental title.

The Swiss Supreme Court is likely to decide in 2016 whether UBS laundered money of a Malaysian political leader, violating (national and international) norms of customer due diligence for PEPs when opening the banking relationship.

In 2015, the Federal Criminal Court authorised the continuation of the investigations of the Office of the Attorney General against a member of the Royal Family of Bahrain and minister of state, for having allegedly accepted a bribe to facilitate the supply of materials of a subsidiary of Alcoa to a Bahraini aluminium conglomerate.

In December 2015, the Federal Criminal Court heard a case of active and passive bribery of foreign public officials involving four international companies (Siemens, Gazprom, ABB and Alstom) and managers of the two companies. In connection with a USD 170 million contract for the supply of turbines for compressor stations along the Gazprom Yamal-Pipeline, an ABB subsidiary in Sweden (which was later sold to Alstom and then to Siemens) allegedly paid bribes to two Gazprom managers who allegedly rigged the award of tenders in ABB's favour. ABB – and later the new owners of the Swedish company – allegedly paid bribes amounting to US\$7.3 million, covered as consultancy fees, to a shell company in Cyprus. The Cyprus-based company allegedly forwarded part of the fees to the Gazprom managers and part of the fees to ABB managers.

Financial record keeping

18 Laws and regulations

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

All legal entities and all sole proprietorships and partnerships that have achieved sales revenues of at least 500,000 Swiss francs in the past financial year are obliged to keep accounts and file financial reports in accordance with the provisions of articles 957 et seq of the Code of Obligations. The accounting principles and requirements are complete, truthful and systematic recording of transactions and circumstances, documentary proof for individual accounting procedures, clarity, fitness for purpose given the form and size of the undertaking and verifiability of the financial information.

The accepted accounting standards are IFRS, IFRS for SMEs, Swiss GAAP FER, US GAAP and IPSAS (the latter for public sector entities). In regulated sectors such as financial services, special rules apply.

Effective internal controls are explicitly and implicitly required by a number of statutes. The most important is article 716a of the Code of Obligations which states that the Board of Directors of a Swiss stock corporation bears (among others) responsibility for the organisation of the accounting, for financial control and financial planning systems as required for the management of the company and must supervise the persons entrusted with managing the company, in particular with regard to compliance with the law and internal directives.

Articles 727 et seq of the Code of Obligations on external auditors apply to all enterprises regardless of their legal organisation and state a general duty to appoint external auditors. However, the scope of the external audit depends on the type (publicly traded versus private) and size of the enterprise. The auditors must examine whether:

- the annual (consolidated) accounts comply with the statutory provisions, the articles of association and the chosen set of financial reporting standards;
- the motion made by the board of directors to the general meeting on the allocation of the balance sheet profit complies with the statutory provisions and the articles of association; and
- there is an internal control system.

19 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

A statutory reporting duty regarding violations of anti-bribery laws and related accounting irregularities does not exist under Swiss law. General reporting duties regarding legal or compliance, reputational and operational risks do, however exist in regulated sectors, such as the financial services sector. In addition, under the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector, financial intermediaries must notify the authorities if they suspect money-laundering activities.

Should the external auditors find that there have been infringements of the law, they must give notice to the board of directors in writing and inform of any material infringements at the general shareholders' meeting.

20 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

The violation of bookkeeping laws is a criminal offence (article 251 of the SCC - falsification of documents) and a violation of ancillary provisions aimed at ensuring proper bookkeeping. The violation of bookkeeping duties may trigger administrative sanctions in regulated industries, such as financial services.

21 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

The falsification of documents in the sense of article 251 of the SCC may result in imprisonment for up to five years or a fine of up to 1 million Swiss francs, or both.

22 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

Switzerland's federal and cantonal tax laws explicitly exclude tax deductibility of bribes paid to domestic or foreign public officials. With the entry into force of the new articles of the SCC relating to commercial bribery, bribes paid to commercial persons (which - de lege lata - are tax-deductible) will not be tax deductible any longer.

Domestic bribery

23 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

Articles 322-ter et seq of the SCC prohibit bribery of domestic public officials. The elements of (active) bribery of domestic public officials are:

- (i) *a person offers, promises or gives an undue advantage*
- (ii) *to a member of a judicial or other authority, a public official, an officially appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces or to a third party,*
- (iii) *in order to cause that public official to carry out or to fail to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion.*

Minor advantages that are common social practice do not qualify as undue advantages.

According to article 322-quinquies of the SCC, the elements of the (lesser) offence of granting an undue ('facilitating') advantage to a domestic public official are:

- (i) *a person offers, promises or gives*
- (ii) *to a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator or a member of the armed forces*
- (iii) *an advantage which is not due to him in order that he carries out his official duties.*

All criminal offences, including the offence of bribery of a Swiss public official, require mens rea, namely, either intent or wilful blindness (dolus eventualis).

24 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Both active and passive bribery and granting of undue advantages to domestic public officials are prohibited by the SCC and are subject to the same level of fines. The same will apply in the near future with regard to commercial bribery.

25 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

The law defines public officials as members of an authority who pursue an official activity. Employees of state-owned or state-controlled companies may qualify as public officials, if and to the extent they pursue an official activity. The Federal Supreme Court recently confirmed this view in a case regarding the manager of the public servants' pension fund of the Canton of Zurich.

26 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

Yes, to the extent that the participation is financial only and does not create a conflict of interest. No, or within narrow limits, if the participation in commercial activities involves employment of labour.

Update and trends

In 2015, the Swiss government and courts significantly accelerated their enforcement of anti-bribery laws, both in cases regarding domestic public officials as well as in cases regarding foreign public officials. The Office of the Attorney General took dauntless action in a number of mutual legal assistance and extradition cases (FIFA, Petrobras), and Swiss courts made clear that corruption is punished rigorously.

As a result of the significant increase of corruption-related suspicious activity reports filed by Swiss banks (which, if deemed relevant by the Federal Police, are forwarded to the Office of the Attorney General) and as a result of whistle-blowing reports (the Federal Police introduced a public anti-bribery whistle-blowing site: <https://fedpol.integrityplatform.org/>), corruption-related investigations by

the Office of the Attorney General are much more likely than in the past. Also, the Office of the Attorney General now publicly invites and expects companies to self-report if they suspect that corrupt payments to officials may have occurred in the past.

In summary, effective and systematic corporate risk and compliance management have become even more important in Switzerland. Boards and executive committees, general counsel and compliance officers should assure themselves that their risk and compliance management systems are state of the art and effective. In the event of concerns regarding past conduct, the option of self-reporting should be closely assessed.

27 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

According to article 322-octies of the SCC, minor and commonly accepted social advantages and which are authorised by administrative regulations are licit. Under the Ordinance on Federal Employees and the guidance of the Federal Office of Personnel regarding prevention of corruption, staff members of the Federal Administration may not accept gifts in the course of their work, unless they are small in nature (valued no more than 200 Swiss francs) and are socially or traditionally motivated. During procurement or decision-making processes, even small and socially or traditionally motivated benefits are not permitted.

28 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

Yes (see answer above). Giving a chocolate box worth 50 Swiss francs or US\$50 to a public official for his or her speech at a public seminar would be a commonly accepted social practice. However, meals at expensive restaurants or any kind of entertainment are not commonly accepted social practice and may qualify as bribery or the granting of an undue advantage (ie, the illicit granting of a facilitation payment). The Federal Criminal Court held in autumn 2015 that a public official who accepts 40 lunch invitations from long-standing suppliers is culpable for accepting undue advantages.

29 Private commercial bribery

Does your country also prohibit private commercial bribery?

Under article 4a of the Unfair Competition Act (introduced on 1 July 2006), active and passive bribery in the private sector (private bribery) constitute a criminal offence. The elements of (active) private bribery are the following:

- (i) *a person offers, promises or gives*
- (ii) *to a private sector employee, a shareholder, an agent or to a third party,*
- (iii) *an undue advantage in order to cause that private sector person to carry out or to fail to carry out an act in connection with his employment or business activity which is contrary to his or her duty or dependent on his or her discretion.*

Private bribery within the meaning of the Unfair Competition Act is prosecuted upon demand of a competitor.

Active and passive bribery in the private area became an offence under article 4a of the Unfair Competition Act, but it is considered as a misdemeanour, having as a consequence that Switzerland cannot prosecute acts of money laundering in Switzerland of the proceeds of private corruption committed abroad, as money laundering in Switzerland can only be prosecuted for the proceeds of a crime (maximum sentence of three years at least).

On 30 April 2014, the Swiss Federal Council submitted its legislative project regarding an intensification of the fight against private commercial bribery to Parliament. Subsequently, on 25 September 2015, Parliament passed the new articles of the SCC on private corruption, namely article 322-octies and article 322-novies SCC, dealing with active and passive corruption, respectively, and both are prosecuted ex officio. The rationale behind these changes is that Switzerland is host to a substantial number of international sports associations and a platform for major economic and financial interests and that to date, as a result of the requirement of a criminal complaint by a competitor, no single conviction has occurred.

Article 322-octies prohibits the offering, promising or giving of an undue advantage to an employee, a partner, a proxy or an auxiliary working in the private sector, for that persons' benefit or for anyone else's benefit, in order to cause him or her to carry out or to fail to carry out an act in connection with his or her professional or commercial activity, which is contrary to his or her duty or depend on his or her discretion. Article 322-novies covers the passive side, that is, if the aforementioned persons working in the private sector request, elicit the promise of or accept such undue advantage.

According to both articles, in non-serious cases (some few thousand Swiss francs maximum), the offence can be prosecuted only if a complaint is filed.

The Swiss Federal Council will likely put the revision into effect on 1 July 2016.

30 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

As regards corruption of public officials, bribery sanctions for individuals are imprisonment for up to five years or a monetary fine of up to 1.08 million Swiss francs, or both. Other criminal and administrative law measures are: prohibition from practising a profession, forfeiture of assets that have been acquired through the commission of an offence and expulsion from Switzerland for foreigners. According to the aforementioned newly passed laws described under answer 29, once entered into force, commercial corruption can be punished by a maximum of a three-year jail sentence.

Under article 102 of the Criminal Code, companies are responsible for failing to take all reasonable organisational measures required in order to prevent bribery (and certain other criminal offences) by their directors and employees. Companies can be fined up to 5 million Swiss francs. As a rule, illicit profits are forfeited.

31 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

Yes. In about a dozen instances, courts have sentenced individuals for granting or accepting undue advantages. In a recent case involving the Federal Administration, the Office of the Attorney General on 16 April 2014 opened an investigation against a public official for accepting bribes and undue advantages, and the Federal Criminal Court held in 2015 that a public official who accepts 40 lunch invitations from long-standing suppliers is culpable for accepting undue advantages.

32 Recent decisions and investigations**Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.**

On 16 September 2015, the Federal Criminal Court sentenced a Swiss public official responsible for IT procurement at the Federal Government for the offence of acceptance of undue advantages by accepting 40 invitations to lunch from a supplier.

On 27 August 2014, the Supreme Court of the Canton of Zurich confirmed a six-year prison sentence for passive bribery against the former head of asset management of the public servants' pension fund of the Canton of Zurich as well as sentences for active bribery against financial advisers. The case relates to the 20 billion Swiss francs pension fund of the public servants of the Canton of Zurich, formerly managed by a public official of the Canton of Zurich, who, according to the Supreme Court of the Canton of Zurich, accepted bribes and undue advantages in an amount of around 1 million Swiss francs. On 19 August 2015, the Federal Supreme Court upheld the judgment of the Supreme Court of the Canton of Zurich as well as the qualification of the public servants' pension fund asset manager as public official.

On 1 September 2014, the Office of the Attorney General confirmed its intention to indict a current as well as a former senior manager of a state-owned energy company for passive bribery and two individuals, managers of an international industrial group, for active bribery. The case concerns

the construction of the Yamal gas pipeline from Siberia to Germany and the procurement of turbines for compressor stations. Allegedly, bribes were paid via shell companies in Cyprus from the Swiss bank accounts of the industrial group. In December 2015 the Federal Criminal Court heard this case that involving three international industrial groups (which subsequently owned the relative Swedish business unit and allegedly made corrupt payments) and two foreign public officials (managers of a state-owned energy company) who allegedly rigged the awards of tenders for the turbines. For further details, please see the answer to question 17.

On 18 November 2014, the International Federation of Football Associations (FIFA), filed a criminal complaint with the Office of the Attorney General, submitting to the Office the report of the investigatory chamber of the FIFA Ethics Committee together with a criminal (bribery) complaint. The Office of the Attorney General expressed its intention to inform the public in due time about further steps. In May 2015, the Office of the Attorney General opened criminal proceedings against unknown persons based on the suspicion of criminal mismanagement and money laundering in connection with the assignments of the 2018 and 2022 Football World Championships. In the course of these proceedings, electronic data and documents were seized at FIFA's headquarters in Zurich.

On 28 May 2015, the Office of the Attorney General brought charges against an advisor of Parmalat SpA, Italy, for money laundering, falsification of documents and bribery of an employee of the state-owned Cantonal Bank of Graubünden.

LALIVE

Daniel Lucien Bühr
dbuhr@lalive.ch

Marc Henzelin
mhenzelin@lalive.ch

Stampfenbachplatz 4
PO Box 212
8042 Zurich
Switzerland
Tel: +41 58 105 2100
Fax: +41 58 105 2160

Rue de la Mairie 35
PO Box 6569
1211 Geneva 6
Switzerland
Tel: +41 58 105 2000
Fax: +41 58 105 2060

www.lalive.ch