

Switzerland

Overview of anti-corruption legal framework

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Overview of Switzerland's domestic legal framework

The Swiss Criminal Code (the 'SCC') has seven provisions prohibiting acts of corruption of public officials and in the private sector, including:

- **prohibition of active and passive corruption with respect to Swiss public officials (Article 322-ter and 322-quater of SCC):** Article 322-ter and 322-quater of the SCC prohibit offering, promising or granting an undue advantage – respectively soliciting, receiving a promise of accepting such an undue advantage – to a member of a judicial or other Swiss authority, a Swiss public official, an officially-appointed expert, translator or interpreter, an arbitrator or a member of the Swiss armed forces, for his or her benefit or for the benefit of a third party, in order for him or her to carry out or 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;
- **prohibition of undue advantages (facilitating or 'grease' payments) with respect to Swiss public officials (Article 322-quinquies and 322-sexies of the SCC):** Article 322-quinquies and 322-sexies SCC further prohibit the granting of an undue advantage to a Swiss public official as well as the acceptance by a Swiss public official of such an undue advantage, for his or her benefit or for the benefit of a third party, in order for him or her to carry out his or her official duties (facilitating or 'grease' payments). In this case, contrary to Article 322-ter and 322-quater of the SCC, the Swiss public official has a legal obligation to carry out the act in connection with his or her official activity and has no discretion in the decision to make. This is typically the case of an undue advantage granted to a Swiss public official in order to accelerate the issuance of a building permit;
- **prohibition of active and passive corruption with respect to foreign public officials (Article 322-septies of the SCC):** Article 322-septies of the SCC prohibits the same conduct as Article 322-ter and 322-quater of the SCC, but with respect to officials of a foreign state or of an international organization, regardless of their nationality. Determining whether the advantage in question represents an 'undue' advantage will depend on the laws of the country of the foreign public official concerned. It shall be noted that contrary to what prevails with Swiss public officials, facilitating or 'grease' payments to foreign public officials are not prohibited under Swiss law; and
- **prohibition of active and passive corruption in the Swiss private sector (Article 322-octies and 322-novies of the SCC):** Article 322-octies and 322-novies of the SCC prohibit the same conduct as Article 322-ter, 322-quater of the SCC and 322-septies of the SCC, but with respect to an employee, a partner, a proxy or an auxiliary working in the Swiss private sector who carries out or fails to carry out an act in connection with his or her professional or commercial activity, which is contrary to his or her duty or dependent on his or her discretion. Facilitating or 'grease' payments are however not prohibited under this provision.

Companies can also be held liable for corruption offences under Swiss law. Article 102 of the SCC (corporate criminal liability) provides for a dual regime in this respect, namely:

- **a secondary liability:** under Article 102(1) of the SCC, if the offence of corruption is committed in a company in the exercise of its commercial activities in accordance with its objectives and if it is not possible to attribute this act to any individual due to the inadequate organization of the company, then the corruption offence shall be attributed to the company; and
- **a primary liability:** pursuant to Article 102(2) of the SCC, a company can be convicted irrespective of the criminal conviction of an employee in the presence of a criminal offence of active corruption of a foreign or Swiss public official (Article 322-ter, 322-quinquies or 322-septies (1) of the SCC) or in the private sector (Article 322-octies of the SCC), if the company is responsible for failing to take all the reasonable and necessary organisational measures required to prevent the offence from occurring.

In both cases, the company can be sentenced to a fine of up to CHF 5m (Article 102(1) SCC).

It results from the above that the SCC has an extra-territorial effect, as it applies to corruption of foreign public officials but also to foreign companies if the matter is sufficiently related to Switzerland to establish Swiss jurisdiction. A foreign parent company may for instance be sanctioned under the corporate offence set forth at Article 102 of the SCC if an employee of one of its Swiss subsidiaries commits an act of corruption provided that the foreign parent company was ultimately responsible for compliance with Swiss law by its Swiss subsidiary and has not taken all adequate and necessary measures to prevent the act of corruption.

Apart from the legal provisions of the SCC, private commercial bribery within the context of competition distortion may also be covered by Article 4a of the Swiss Federal Cartel Act.

The Swiss Federal Act on Foreign Illicit Assets (FIAA) further covers the freezing, confiscation, and restitution of assets unlawfully obtained and deposited in Switzerland by foreign potentates who have been or are about to be ousted.

Inform the main regulators and a brief description of the jurisdiction of the regulator

In Switzerland, the Office of the Attorney General (OAG) generally has jurisdiction to investigate acts of corruption mainly committed abroad or in several Swiss cantons with none being clearly predominant (Article 24(1) of the Swiss Criminal Procedure Code (SCPC)). Otherwise, the case falls within the jurisdiction of the cantonal public prosecutors.

Swiss criminal authorities may further prosecute a corruption offence committed abroad provided that the offence would also be liable to prosecution in the concerned foreign State or provided that the foreign State where the offence was committed does not have jurisdiction, and the individual is in Switzerland and was not extradited to the foreign State (Article 7(1) of the SCC).

All cases of suspected acts of corruption may be reported to the OAG or the cantonal prosecution authorities, via formal criminal complaints or informal denunciations.

Reports of bribery cases may also result from third parties (whistleblowers) through different reporting platforms set up by other Swiss federal authorities, namely:

- the Swiss Federal Police (the 'fedpol'): since 2015, fedpol operates a web-based reporting platform available here: <https://fedpol.integrityplatform.org/index.php>;

- the Swiss Federal Audit Office: online reporting platform available here: www.bkms-system.ch/bkwebanon/report/clientInfo?cin=5efk11&c=-1&language=ger_CH; and
- the Compliance Office of the Swiss Federal Department of Foreign Affairs (FDFA): written reports may be filed with the same at a designated address: www.eda.admin.ch/eda/en/fdfa/fdfa/organisation-fdfa/general-secretariat/korruption-veruntreuung-und-missbrauch-melden-das-compliance.html.

Suspected cases of corruption may also be reported by Swiss financial intermediaries (including Swiss banks) to the Swiss Federal Money Laundering Reporting Office (MROS) via suspicious activity reports. The concerned cases may then be handed over to the Swiss criminal prosecution authorities, be it at a federal or cantonal level.

In matters of international cooperation, the Swiss central authority appointed as per Article 29 of the 1999 Council of Europe Criminal Law Convention on Corruption (see below) 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.

There is otherwise, under Swiss law, no obligation for companies to self-report suspected acts of corruption and no statutory framework for the same.

Statutory duties to self-report legal risks may however apply in specific cases (which have not yet been tested in court):

- members of the board of directors and the executive committee of a company shall conduct an internal investigation in cases of suspected or actual (material) misconduct (such as bribery of foreign officials), as part of their duty of care and loyalty (eg, Article 717 of the Swiss Code of Obligations (SCO)); and
- based on the Financial Market Supervision Act (FINMASA), supervised persons and entities (such as financial intermediaries and traders) as well as their auditors shall disclose to the Swiss Financial Market Supervisory Authority (FINMA) any incident that is of material importance for supervisory purposes, such as the suspicion of money laundering involving significant assets or any that may have an impact on the institution's or the financial market's reputation.

Whilst there is no formal duty, companies that self-report to the authorities, fully cooperate with the same, remedy all wrongdoings and disgorge illicit profits, may be released from penalty under Article 53 of the SCC and/or benefit from reduced monetary sanctions, as well as from benefit expedited procedures.

In the same vein, the Swiss Federal Cartel Act specifically outlines self-reporting and the leniency an applicant may receive in return, including full immunity from fines. Applications are typically filed with the Swiss Competition Commission (COMCO)'s Secretariat within the first hours of an investigation.

Key provisions of the law

- [Swiss Criminal Code](#) of 21 December 1937 as amended (SCC), Book Two: Specific Provisions, Title 19 – Bribery, Article 322-ter *et seq*, SCC
- [Swiss Criminal Code](#) of 21 December 1937 as amended (SCC), Book One, Title Seven – Corporate Criminal Liability, Art. 102 SCC

Overview of Switzerland's international anti-corruption legal framework

Besides the national provisions mentioned above, Switzerland is a party to three international anti-corruption conventions:

1. Switzerland first ratified the 2003 United Nations Convention against Corruption on 24 September 2009, with no reservation;
2. Switzerland is also a party to the 1999 Council of Europe Criminal Law Convention on Corruption and its 2003 Additional Protocol, both ratified on 31 March 2006. 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; and
3. Switzerland is finally a party to the 1997 Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, ratified on 31 May 2000. Switzerland did not make any reservation regarding this Convention.

The parties to these conventions mutually monitor the implementation of the conventions. Switzerland participates in the review mechanisms, and accordingly undergoes regular reviews by two other states and, in turn, reviews other States. Switzerland's reports are available on the below websites of the international lead organisations.

- [Reports under the 2003 United Nations Convention against Corruption](#)
- [Reports under the 1999 Council of Europe Criminal Law Convention on Corruption and its 2003 Additional Protocol](#)
- [Reports under the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#)

In order to supervise and coordinate the implementation of these treaty obligations, the response to the recommendations and, in general, Switzerland's fight against corruption, the Swiss Federal Council set up an Interdepartmental Working Group on Combating Corruption on 19 December 2008. The working group includes representatives from the Swiss federal administration and the OAG. Switzerland's Federal Department of Foreign Affairs chairs and acts as the secretariat of the Interdepartmental Working Group on Combating Corruption.

Switzerland is further part of the Group of States against Corruption (GRECO). Established in 1999 by the Council of Europe, GRECO's purpose is to improve the capacity of its members to fight corruption by monitoring their compliance with the Council of Europe anti-corruption standards through mutual evaluation and peer pressure. It notably aims at identifying deficiencies in anti-corruption policies, prompting the required reforms. It also provides a forum for States to share best practices.

In addition to these conventions, on 31 May 2000, Switzerland ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (with several reservations, accessible by activating the following [link](#)). On 26 November 2006, Switzerland added to its international legal framework, the 2000 United Nations Convention against Transnational Organized Crime (with no reservation). This

convention notably requires States to criminalize corruption and adopt effective legislative, administrative or other measures to promote integrity and prevent, detect and punish the corruption of public officials.

For the rest, 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).

Key Instruments

- [2003 United Nations Convention against Corruption](#)
- [1999 Council of Europe Criminal Law Convention on Corruption](#) and its [2003 Additional Protocol](#)
- [Organisation for Economic Co-operation and Development \(OECD\) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#)
- [1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime](#)
- [2000 United Nations Convention against Transnational Organized Crime](#)