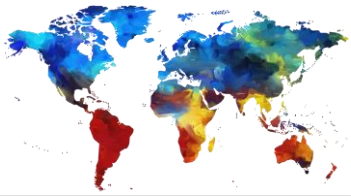
Comparative Guide

Anti-Corruption & Bribery - Switzerland



1. Legal and enforcement framework

1.1 Which legislative and regulatory provisions govern anti-corruption in your jurisdiction, from a regulatory (preventive) and enforcement (criminal) perspective?

The Swiss Criminal Code (SCC) contains seven articles sanctioning bribery offences. Articles 322*ter* and 322*quater* sanction both active corruption (bribing) of Swiss public officials and passive corruption (the acceptance of bribes). Articles 322*quinquies* and 322*sexies* sanction the granting and acceptance of an undue advantage. Article 322*septies* prohibits corruption of foreign public officials. The offences of corruption in the private sector are sanctioned in Articles 322*octies* and 322*novies*, which entered into force on 1 July 2016; corruption in the private sector is prosecuted *ex officio* (except in cases of minor relevance). Finally, Article 102 of the SCC regulates the liability of corporates, in addition to the accountability of individuals.

From a preventive and regulatory perspective, various soft law rules should be considered, such as International Standardisation Organisation Standard 37001, which is a flexible tool to address bribery risks in any country by any organisation or company in the public or private sector, no matter how big or small. Enterprises subject to prudential supervision should implement anti-corruption regulations; otherwise, they risk breaching their licence terms.

1.2 Which bilateral and multilateral instruments on anti-corruption have effect in your jurisdiction?

Switzerland is a signatory to four major international conventions to combat corruption (in chronological order):

- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, ratified by Switzerland on 31 May 2000;
- the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997, ratified by Switzerland on 31 May 2000;
- the Council of Europe Criminal Law Convention on Corruption of 27 January 1999 and its additional protocol of 15 May 2003, ratified by Switzerland on 31 March 2006 with several reservations, such as Section 12 (trading in influence), which is not to be punished under domestic law; and
- the United Nations Convention against Corruption of 31 October 2003, ratified by Switzerland without reservations on 24 September 2009.

Moreover, Switzerland is a party to several bilateral treaties containing anti-corruption provisions and has been a member of the Group of States against Corruption since 2006. Furthermore, Switzerland is a member of various judicial and administrative assistance treaties, supporting the enforcement of anti-corruption measures taken by other member states.

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Switzerland

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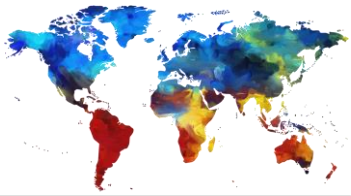


1.3 Are there accessible directives or other guidance from enforcement authorities in your jurisdiction?

The Swiss State Secretariat for Economic Affairs (www.seco.admin.ch/seco/en/home.html) has issued a brochure on the topic of corruption called "Preventing Corruption – Information for Swiss Business Operating Abroad on the Issue of Corruption in International Business Dealings". The Swiss Federal Office of Justice (www.bj.admin.ch/bj/en/home.html), the Swiss Federal Department of Foreign Affairs (www.fdfa.admin.ch/eda/en/home.html) and economiesuisse (www.economiesuisse.ch/en), have also published soft law regulation.

1.4 Which bodies are responsible for enforcing the applicable laws and regulations? What powers do they have?

The federal structure in Switzerland implies a distinction between cantonal and federal enforcement authorities. At the federal level, the Office of the Attorney General (OAG,) enforces:

- offences subject to federal jurisdiction (Articles 23 lit a and j of the Swiss Criminal Procedure Code (SCPC)); and
- cases in which the offences have to a substantial extent been committed abroad or in two or more cantons, with no single canton being the clear centre of gravity of the criminal activity (Article 24, para 1 of the SCPC).

Other investigations are the responsibility of cantonal prosecutors.

According to the general rule set forth in Article 31 of the SCPC, the place where a specific crime was committed determines which cantonal prosecutor's office has jurisdiction. A delegation by the OAG to a cantonal prosecutor's office is also possible.

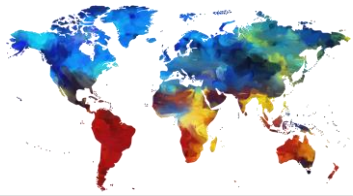
The powers of the Swiss prosecution authorities are set forth in the SCPC. The prosecution authorities may take coercive measures such as detention of suspects or monitoring of bank accounts. If no exception such as the right to remain silent (*nemo tenetur*) or another privilege, such as professional secrecy, applies, the individual or corporation is obliged to cooperate by disclosing documents and/or information. Failure to cooperate triggers Article 292 of the SCC, imposing a fine on the wrongdoer, and may have procedural consequences. Prosecution authorities establish the facts and will bring charges against the suspect.

If financial intermediaries are involved, the Swiss Financial Market Supervisory Authority (FINMA, www.finma.ch/en/) – that is, the Swiss regulator of financial institutions – is in charge of the regulatory aspects. FINMA may investigate wrongdoing independently of investigations conducted by the state prosecutors. Instruments for investigations include audits and internal independent investigations, and administrative sanctions may entail reprimands or even the withdrawal of a financial intermediary's licence.

1.5 What are the statistics regarding past and ongoing anti-corruption procedures in your jurisdiction?

At the moment, Switzerland ranks third out of 180 countries in the Corruption Perception Index of Transparency International, with a score of 85 out of 100. The score indicates the perceived level of public sector corruption (with zero indicating highly corrupt and 100 non-corrupt). Both rankings clearly show that Switzerland is a top-ranked country concerning anti-corruption. Consequently, there are few reported corruption cases in Switzerland – on average about five per year, according to the official statistics. However, a number of high-profile corruption cases abroad have also been prosecuted in Switzerland under anti-money laundering rules (eg, *Odebrecht*).

1.6 What are the shortcomings identified in your jurisdiction's anti-corruption legislation (including recommendations of the Organisation for Economic Co-operation and Development, where applicable)?



The OECD is of the opinion that Switzerland lacks comprehensible, robust legislation for the protection of whistleblowers.

According to the OECD's working group 2018 review report:

Switzerland should do even more to prosecute companies and apply tougher sanctions. Private sector whistleblowers, who are exposed to criminal prosecution as a result of reporting, should also be protected, according to a new OECD report. While court decisions supporting enforcement of foreign bribery were noted, several court decisions have demonstrated a restrictive interpretation of both this offence and corporate liability.

The OECD recommends the adoption of a legal framework to protect private sector whistleblowers. In addition, the OECD recommends that Switzerland:

- ensure that sanctions concerning foreign bribery are effective, proportionate and dissuasive; and
- publish details of concluded foreign bribery cases.

2. Definitions and scope of application

2.1 How is 'public corruption' or 'bribery of a public official' defined in the anti-corruption legislation?

Under Swiss law, these offences occur when the offender (corrupting party) offers, promises or gives an undue advantage to a member of a judicial or other authority, a public official, an officially appointed expert, translator or interpreter, an arbitrator, a member of the armed forces or a third party (corrupted party), with the aim of causing that public official 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.

If an individual completes an action that fulfils all of the above elements of the definition, he or she may be punished under Swiss law by imprisonment not exceeding five years or a monetary penalty (Article 322*ter* of the Swiss Criminal Code (SCC)).

Swiss law furthermore prohibits the receipt of bribes –so-called 'passive corruption' (Article 322*quater* of the SCC); the respective sentencing framework is the same as for active corruption.

2.2 How is a 'public official' defined in the anti-corruption legislation? How is a 'foreign public official' defined?

The term 'public official' can also refer to functional or formal public officials. A functional public official is an individual who is a member of an organisation performing official duties (regardless of whether the organisation is a public authority). Therefore, it is possible that an employee of a state-owned or state-controlled company is also a public official. A formal public official is an individual who is a member of a state organisation.

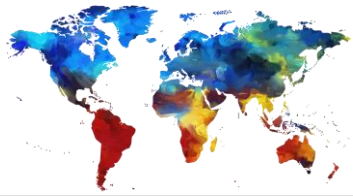
Private individuals may qualify as public officials if they pursue (at least de facto) an official activity (Article 322decies, para 2 of the SCC). They are subject to the same provisions as public officials if they fulfil official duties. Such persons act instead of the state or at least have direct influence on decisions taken by the state.

'Foreign public officials' under Article 322septies of the SCC are persons who conform to the same definition as a Swiss 'public official' and perform such functions for a foreign state, authority or organisation.

2.3 How is 'private corruption' or 'bribery in the private sector' defined in the anti-corruption legislation?

In case of private corruption, the offender offers, promises or gives an undue advantage to an employee, partner, agent or any other auxiliary of a third party in the private sector in order to cause that person to carry out or to fail to carry out an act in connection with his or her activities in the private company which is contrary to his or her duty or dependent on his or her discretion.

Private corruption is punishable under Article 322*octies* (active private bribery) and Article 322*novies* (passive private bribery) of the SCC.



2.4 How is 'bribe' defined in the anti-corruption legislation?

A 'bribe' is defined as an 'undue advantage' with the purpose of causing the corrupted party to carry out or to fail to carry out an act in connection with his or her official activities which is contrary to his or her duty or dependent on his or her discretion. With regard to gifts, it is sometimes difficult to distinguish between acts of gratitude or the offering of an undue advantage (ie, a bribe). In general, advantages of a negligible value which are seen as common social practice are not deemed to be undue (Article 322*decies*, para 1 lit b of the SCC). Therefore, under certain circumstances a minor benefit can also qualify as a bribe if it is not a common social practice to offer it. As long as an advantage is intended to influence the recipient's behaviour relating to his or her official duties, it is considered to be undue.

However, Swiss law lacks a clear benchmark of negligibility. Case law and legal authors have concluded that a bottle of 'inexpensive' wine may be accepted as a Christmas present, but that a number of lunch invitations worth over CHF 5,000 constituted an undue advantage. For example, legal doctrine holds that a bouquet of flowers is not an undue advantage. Thus, in summary, a specific benefit granted to an individual must be assessed on a case-by-case basis to analyse whether it is acceptable under the law of corruption. Most major corporates in Switzerland have implemented guidelines, rules and directives as to what they deem acceptable for employees and what they consider excessive and therefore undue. A threshold is often set at a value of CHF 100.

Advantages which are contractually approved by a third party cannot be bribes (Article 322*decies*, para 1 lit a of the SCC).

2.5 What other criminal offences are identified and defined in the anti-corruption legislation?

In certain cases corruption can also be punishable as criminal mismanagement (Article 158 of the SCC). A person is liable to imprisonment or to a monetary fine if he or she causes or permits another person to sustain financial loss. The infringer must be entrusted with the management of the property of another or with the supervision of such management. The entrustment may be by law, by official order, by a legal transaction or by grant of authorisation. Financial loss is created in the course of and in breach of his or her duties. The same sanctions apply to persons who in fact are acting on behalf of a business, even if without a specific mandate.

In addition, there are provisions in the SCC on infringement of accounting and bookkeeping rules. For example, Article 166 of the SCC sanctions failure to keep proper accounts if bankruptcy proceedings are commenced against the offender or if a certificate of unsatisfied claims has been issued with regard to him or her. If a company fails to account properly, this is to be considered a failure to take proper organisational measures. Even if no bankruptcy or default is declared, Article 325 of the SCC stipulates liability for failure to comply with accounting rules and sanctions the offender with fines. Moreover, the Swiss Code of Obligations imposes civil liability if, for example, accounting duties are not complied with. Therefore, it is fair to say that civil liability goes hand in hand with criminal liability, in particular when falsification of accounting documents is involved. Article 251 of the SCC sanctions the production and use of forged documents with a view to causing financial loss or damage or in order to obtain an unlawful advantage.

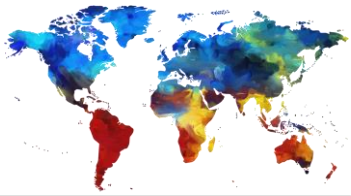
2.6 Can both individuals and companies be prosecuted under the anti-corruption legislation?

As a rule, companies are not subject to criminal liability. However, there is criminal liability of companies in two cases.

First, Article 102 of the SCC stipulates the liability of legal entities if:

- the offence is committed by an individual in the company in the exercise of his or her commercial activities; and
- it is impossible to attribute the misconduct to any specific individual due to the inadequate organisation of the company.

In this case, the criminal act is attributed to the company, which is liable to a fine not exceeding CHF 5 million (Article 102, para 1 of the SCC). To determine the actual fine, the judge will consider:



- the seriousness of the offence;
- the extent of the organisational failures;
- the loss or damage caused by the offence; and
- the economic ability of the failing company.

Second, in cases where Article 322*ter*, 322*quinquies*, 322*septies*, para 1 or 322*octies* of the SCC applies, the failing legal entity is liable irrespective of the criminal liability of any individual, provided that the company has failed to take all reasonable organisational measures that are required in order to prevent the respective offence. The company may in such cases be held liable because it did not take all necessary measures to prevent an offence from being committed by an employee (Article 102, para 2 of the SCC).

2.7 Can foreign companies be prosecuted under the anti-corruption legislation?

Article 102, paras 1 and 2 of the SCC are applicable to any legal entity, with the exception of public authorities (because Swiss law uses the term 'undertaking' as a generic term). Therefore, foreign companies are also liable if they fail to take all necessary and reasonable compliance measures to prevent bribery of both Swiss and foreign public officials by their employees.

However, in such cross-border cases, foreign companies are subject to Swiss law only if the offence was committed in Switzerland or if the failure to take all reasonable organisational measures took place in Switzerland. The company's headquarters need not necessarily be in Switzerland. Another possible nexus to Switzerland that could lead to Swiss jurisdiction is where bribery payments are transferred through Swiss bank accounts.

If a crime is committed in Switzerland, the SCC is applicable, but the principle 'ne bis in idem' must be respected if the company has already been prosecuted in another country for the same facts (Article 3 of the SCC). It is prohibited to sanction a company several times for the same conduct. The same is true for individuals.

2.8 Does the anti-corruption legislation have extraterritorial reach?

As a rule, Swiss anti-corruption legislation has no special extraterritorial effects. However, the general rules on the applicability of the Swiss SCC apply – in particular, Articles 6 and 7.

According to Article 6, the SCC applies if the following criteria are cumulatively met:

- Switzerland is obliged to prosecute the felony or misdemeanour under an international convention;
- The act is also liable to prosecution at the place of commission or no criminal law jurisdiction applies at the place of commission; and
- The person concerned is in Switzerland and will not be extradited to the foreign country.

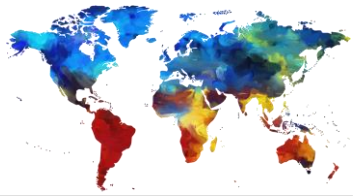
According to Article 7 of the SCC, an individual is subject to the SCC if:

- the offence is also liable to prosecution at the place of commission or no criminal law jurisdiction applies at the place of commission;
- the person concerned resides in Switzerland or is being extradited to Switzerland due to the offence; and
- extradition is permitted under Swiss law for the offence, but the person concerned is not being extradited.

3. Corruption and bribery

3.1 How are gifts, hospitality and expenses treated in your jurisdiction?

See question 2.4



3.2 How are facilitation payments treated in your jurisdiction?

Anybody who offers, promises or gives an undue advantage to a member of a Swiss judicial or other authority, a public official, an officially appointed expert, translator or interpreter, an arbitrator or a member of the armed forces in order that the person carries out his or her official duties is liable to a fine or imprisonment for up to three years under Article 322*quinquies* of the Swiss Criminal Code (SCC). Article 322*sexies* of the SCC sanctions the person accepting such a facilitation payment. Therefore, granting or accepting an advantage is punishable under Swiss law. Such undue behaviour is also called a 'grease payment' in colloquial language.

Facilitation payments offered to foreign public officials are not sanctioned under Swiss law, as they do not fall within the scope of the SCC.

3.3 How is bribery through intermediaries and other third parties treated in your jurisdiction? Can those third parties be held liable?

The abovementioned articles of the SCC concerning bribery also address a third party as a possible beneficiary of the undue advantage, as long as the aim is to influence an individual to act in the way the offender wants. Hence, third parties can be held liable under criminal law, either directly or under the titles of incitement or complicity, as forms of participation in a crime.

3.4 Can a company be held liable for bribery committed by management or other employees?

Yes, if the company has failed to take all reasonable organisational measures to prevent such crime or in case of inadequate organisation. See question 2.6.

3.5 Can a company be held liable for bribery committed by domestic or foreign subsidiaries?

As a rule, only the individual who commits bribery is liable under criminal law; the criminal law liability of a company is an exception. Liability for bribery committed by a subsidiary is therefore unlikely, unless the prosecutors can prove that the parent entity was acting as a factual corporate body of the subsidiary, influencing its corporate decisions. Furthermore, action is ongoing to bring to vote a popular initiative in Switzerland called the Responsible Business Initiative. The initiators are demanding the introduction of an amendment to the Swiss Federal Constitution requiring that companies acting abroad observe human rights and environmental compliance. Should the initiative be accepted by Swiss voters, certain companies domiciled in Switzerland will be liable for damages caused by a subsidiary abroad, unless the respective company can evidence that it has taken all necessary measures to prevent the damage. This initiative is highly disputed among Swiss experts and it remains to be seen whether it will succeed.

3.6 Post-merger or acquisition, can a successor company be held liable for bribery committed by legacy companies?

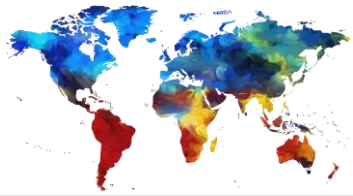
Article 102 of the SCC does not explicitly address this situation. As a rule, a company may be held liable only for a violation of the law within such company and by employees of that specific company. Hence, it is unlikely that, following an acquisition, the new parent will be held liable for the prior bribery offences of a new subsidiary.

In case of absorption, civil law liabilities are transferred by operation of law to the newly merged company, so it inherits civil liability. It is questionable, however, whether this would extend to criminal law liability and no precedents are known.

4. Compliance

4.1 Is implementing an anti-corruption compliance programme a regulatory requirement in your jurisdiction?

There is no general regulatory requirement to introduce an anti-corruption compliance programme. However, certain prudentially supervised entities (eg, banks) are under a regulatory obligation to introduce such a programme.



4.2 What compliance best practices should a company implement to mitigate the risk of anti-corruption violations?

Companies may, for example, implement International Standardisation Organisation (ISO) Standard 37001on anti-bribery management systems to treat active and passive bribery risks. The implementation of this tool requires a series of measures. Furthermore, ISO 37001 as a specific 'technical' standard can easily be combined with ISO 19600 as a basic framework. Other soft law regulation should also be considered. Such guidance is publicly available – for example, the Swiss Code of Best Practice for Corporate Governance (www.economiesuisse.ch/sites/default/files/publications/economiesuisse_swisscode_e_web_2.pdf). Soft law regulation should be incorporated in a respective company's internal directives and guidelines, and the company must ensure that employees observe such internal regulation.

While the application of these standards does not create a safe harbour and does not guarantee protection from criminal liability, it is certainly an effective precautionary tool to support other measures and to strengthen a company's protection against anti-corruption sanctions.

4.3 Which books and records requirements have relevance in the anti-corruption context?

Accounting legislation is mainly to be found in Articles 957 and following of the Code of Obligations. Legally accepted standards for books and records are International Financial Reporting Standards (IFRS), IFRS for small and medium-sized enterprises, Swiss generally accepted accounting principles (GAAP), US GAAP and the International Public Sector Accounting Standard for public sector entities. In regulated sectors such as the financial sector, a variety of additional special rules must be observed.

All legal entities as well as sole proprietorships and partnerships with revenues of at least CHF 500,000 in their last financial year must keep accounts and file financial reports according to Articles 957 and following of the Code of Obligations.

The board of directors of limited stock companies must organise and oversee the accounting, the financial controls and the financial planning systems as required for the management of the company (Article 716a, para 1 of the Code of Obligations).

In addition, according to Articles 727 and following of the Code of Obligations, with certain exceptions, Swiss limited stock companies are obliged to nominate external auditors.

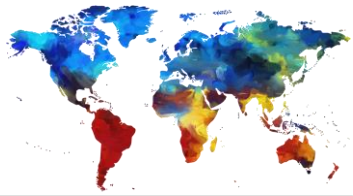
4.4 Are companies obliged to report financial irregularities or actual or potential anti-corruption violations?

There is no specific reporting obligation concerning violations of anti-corruption and bribery laws or other financial irregularities; there are only general reporting duties in regulated sectors such as financial services. These duties exist with regard to compliance and reputational or operational risks. For example, financial services providers supervised by FINMA are under notification obligations in case of regulatory breaches. The same is true with regard to the SIX Swiss Exchange under so-called '*ad hoc*' notification.

Furthermore, potential offences of the Swiss anti-money laundering regime must be reported to the Federal Money Laundering Reporting Office (MROS,). MROS acts as an intermediary and conduit between financial intermediaries and law enforcement authorities. It receives and examines information about potentially illegal activities in connection with money laundering and relays them to the enforcement authorities. The legal basis is found in the Federal Act on Combating Money Laundering in the Financial Sector, especially Article 9 (reporting obligations of financial intermediaries) and Article 23 (money laundering reporting), and in Article 305*ter* of the Swiss Criminal Code (SCC).

4.5 Does failure to implement an adequate anti-corruption programme constitute a regulatory and/or criminal violation in your jurisdiction?

As previously indicated, companies may face criminal liability under Article 102 of the SCC if a crime is committed in the exercise of an employee's functions and the company failed to implement an adequate anti-corruption programme



to prevent such offences. However, anti-corruption provisions must have been infringed in order to sanction the failure to implement an adequate anti-corruption programme – the mere failure of compliance in itself is not sanctioned under Swiss law (ie, the mere failure to implement compliance measures is not liable to prosecution).

However, failure to implement an adequate anti-corruption programme may constitute a regulatory violation in the case of prudentially supervised entities such as banks.

5. Enforcement

5.1 Can companies that voluntarily report anti-corruption violations or cooperate with investigations benefit from leniency in your jurisdiction?

Swiss law has no special mechanism providing leniency for self-reporting. However, a company is strongly recommended to voluntarily report and closely cooperate with the authorities should it become aware of anti-corruption violations in its organisation. From experience, we believe that the company is likely to benefit from cooperative and honest conduct. Moreover, it may benefit from Article 53 of the SCC, which allows a competent court to reduce monetary sanctions by considering the company's cooperation. If the company has made reparation for the loss, damage or injury, or has made every reasonable effort to right the wrong that it has caused, the competent authority may refrain from prosecuting or sanctioning it if the requirements for a suspended sentence are met and the interests of the general public and the persons harmed in prosecution are negligible. In such cases, the company commonly pays a reasonable amount of money to a charity project as a reparation.

Self-reporting is possible only for as long as the Office of the Attorney General does not suspect or know of illegal conduct of a company. The obvious reason for this is that it would be incomprehensible if a company could shield itself from criminal proceedings after getting caught merely by admitting what is already clear or at least assumed.

5.2 Can the existence of an anti-corruption compliance programme constitute a defence to charges of anti-corruption violations?

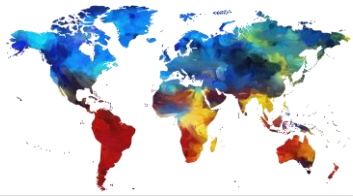
As companies can be held liable if they do not take all reasonable organisational measures that are required in order to prevent an offence of bribery under the Swiss Criminal Code (SCC), it is recommended that companies incorporate and enforce compliance measures as a precautionary defence to corporate liability and to mitigate the risk of criminal liability as far as possible. The court is not obliged to take such measures into account, in particular if it finds that compliance measures were not properly implemented. But if the measures were suitable and properly implemented, it is possible that the company may not incur criminal liability. Common measures in this regard include internal guidelines and codes of conduct, training of employees and the establishment of whistleblowing hotlines. economiesuisse has published the Swiss Code of Best Practice for Corporate Governance to provide recommendations and guidance for corporations.

5.3 What other defences are available to companies charged with anti-corruption violations?

A company can prove that all organisational measures were implemented and enforced, as and when necessary, in order to prevent violations of the law, even though this may obviously not have worked in the case at hand (Article 102, para 2 of the SCC).

5.4 Can companies negotiate a pre-trial settlement through plea bargaining, settlement agreements or similar?

According to Articles 358 and following of the Swiss Criminal Procedure Code (SCPC), both individuals and companies can ask the prosecutor to conduct accelerated proceedings. In return, the accused must admit the matters essential to the legal appraisal of the case and recognise – if only in principle and where applicable – the civil claims. The plea bargain finally needs approval by a court in a summary trial. By so acting, the accused can avoid lengthy trial proceedings. In such case the court will issue a judgment that sets out the offences, sanctions and civil claims



contained in the indictment to which the parties have consented. Such consent is irrevocable. If the settlement agreement fails for any reason (eg, the court does not approve it), all evidence must be discarded and a new ordinary criminal procedure must be opened involving a new prosecutor.

Another possibility is the so-called summary penalty order procedure. According to Articles 352 and following of the SCPC, no court trial is involved. The requirements are rather strict. The accused must accept liability for the offence, or his or her responsibility must otherwise be sufficiently established. The sentence must not exceed a fine of CHF 540,000 (Article 34, para 2 of the SCC) or imprisonment for more than six months.

5.5 What penalties can be imposed for violations of the anti-corruption legislation? Can non-exhaustive penalties be imposed for such violations (eg, exclusion from public procurement, exclusion from entitlement to public benefits or aid, disqualification from the practice of certain commercial activities, judicial winding up)?

Active and passive bribery of Swiss or foreign public officials can be sanctioned by imprisonment for up to five years or a monetary penalty. Bribery in the private sector (both active and passive) and granting or accepting an advantage are sanctioned by imprisonment for up to three years or a monetary fine. In minor cases of bribery of private individuals, the offence is prosecuted only on complaint, and thus not *ex officio*.

Under Article 102 of the SCC, companies may be fined up to CHF 5 million if they fail to take all necessary precautions to prevent bribery in their organisation.

Other sanctions include:

- prohibition from practising a profession (Article 67 of the SCC);
- publication of the judgment (Article 68 of the SCC);
- expulsion from Switzerland for foreigners (see Article 62, para 1 lit b and Article 63, para 1 lit a of the Federal Act on Foreign Nationals and Integration); and
- forfeiture of assets or illegal profits which have been acquired through a specific violation (see Article 70 of the SCC).

If the assets subject to forfeiture are no longer available, a compensation claim will be imposed by the state and the accused must pay a sum of equivalent value (Article 71 of the SCC). The value of the assets which can be subject to forfeiture is not capped. It is also possible to cancel subsidies as an administrational consequence or to revoke a licence.

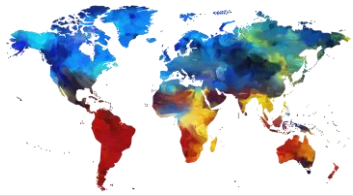
5.6 What is the statute of limitations to prosecute anti-corruption violations in your jurisdiction?

The statute of limitations depends on the term of the sentence of a given offence. Article 97, para 1 lit b of the SCC provides that the right to prosecute expires after 15 years in the case of active and passive corruption of Swiss or foreign public officials (Articles 322ter, 322quater and 322septies of the SCC). The right to prosecute facilitation payments (Articles 322quinquies and sexies of the SCC) and bribery in the private sector (Article 322octies of the SCC) is subject to a time bar of 10 years according to Article 97, para 1 lit c of the SCC. These limits apply only to the court of first instance.

Furthermore, Article 99, para 1 of the SCC specifies a time limit of five, 15 or 20 years to execute a sentence, depending on the offender's actual punishment.

6. Trends and predictions

6.1 How would you describe the current anti-corruption enforcement landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?



The Swiss Parliament is discussing whether to add protection for whistleblowers to the Swiss labour and criminal laws. The new legislation would give employees the opportunity to report suspicious irregularities without the risk of breaching their duties to the company, resulting in civil and criminal penalties. This legislative project should be closely monitored.

The Office of the Attorney General has also proposed the introduction of a deferred prosecution agreement similar to instruments used in the United States, under which it would be possible to settle proceedings out of court where the accused cooperates fully with the authorities. The prosecution authority would temporarily forgo an indictment if the accused agrees to comply, improve compliance standards and, for example, agrees on the appointment of independent monitors.

Another development concerns the prosecution of companies by the Office of the Attorney General, which has announced that it will investigate and prosecute routinely the criminal liability of companies.

Meanwhile, if the Responsible Business Initiative is accepted by voters, a new Article 101a will be added to the Swiss Federal Constitution which would impose additional legal obligations on companies with their registered office, central administration or principal place of business in Switzerland in relation to human rights and environmental affairs (see question 3.5). A vote is expected in 2020.

7. Tips and traps

7.1 What are your top tips for the smooth implementation of a robust anti-corruption compliance programme and what potential sticking points would you highlight?

A robust compliance programme should be drafted, designed specifically for the designated company. Standard programmes often do not adequately reflect the business practices and structures of the enterprise and become a mere box-ticking exercise, doing more harm than good. The compliance programme should further be endorsed by senior management, with a clear 'zero tolerance' message sent from the top. It should further be based on a risk assessment of the company's business activities. To draft such a programme, the relevant managers should be involved, which should also increase acceptance of the programme. Prior to its enforcement, management and other employees should be schooled in the programme, with practical examples of business situations they may encounter. Once the programme has been introduced, the unit in charge of monitoring its implementation (eg, compliance) should keep track of developments and update the programme on a regular basis. Targeted audits should be conducted and all new employees should be schooled in the programme. Existing employees should receive updates at regular intervals.

The main sticking points typically arise where a compliance programme is forced upon unwilling staff, in particular sales teams, by outsiders without the participation of the relevant managers. This leads on the one hand to a lack of acceptance and on the other to rules and thresholds which are unsuitable for the business. Furthermore, regular updates, monitoring and training are often neglected.