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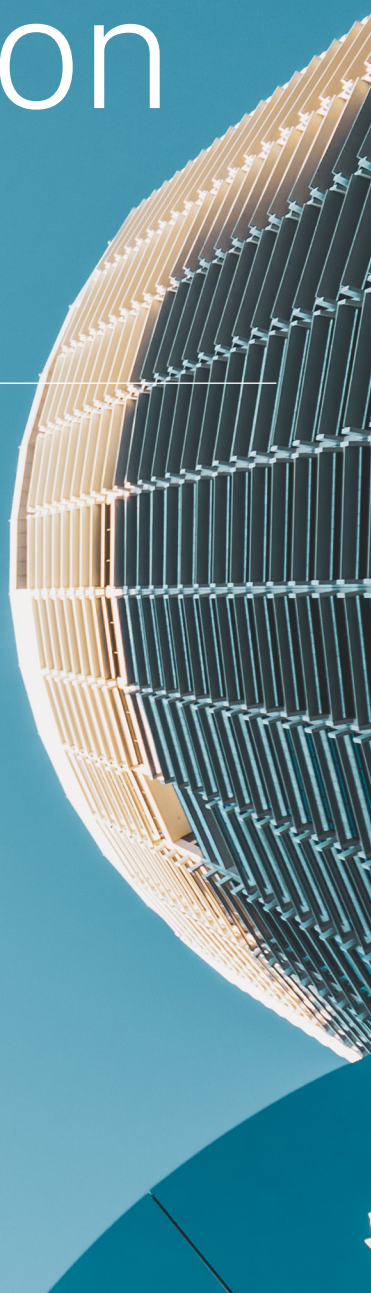

Switzerland: Law and Practice

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SWITZERLAND

Law and Practice

Contributed by:
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Kellerhals Carrard has more than 200 professionals working in offices in Basel, Bern, Lausanne, Lugano, Sion, Zurich, and Geneva, as well as representation offices in Shanghai and Tokyo. The law firm is one of the largest in Switzerland, with a rich tradition going back to 1885. Its continually expanding white-collar crime, investigation, and compliance team has 15 professionals who conduct internal and regulatory investigations – particularly in healthcare, the pharma and life sciences sector, the public sector, and with regards to anti-bribery and AML compliance, as well as supervision in the financial services industry. In 2018, the team led the highly publicised investigation into Postbus. The white-collar crime department has extensive experience in providing advice and court representation for a wide variety of business crime matters. Kellerhals Carrard's compliance specialists have broad experience of advising companies from various industries on proper measures to address any compliance deficiencies, including with regard to anti-bribery and anti-corruption.

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1. Legal Framework

1.1 International Conventions

Switzerland is signed up to the following international conventions relating to anti-bribery and anti-corruption:

- the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997;
- the Council of Europe Criminal Law Convention on Corruption of 27 January 1999, as well as its Additional Protocol of 15 May 2003; and
- the United Nations Convention against Corruption of 31 October 2003.

1.2 National Legislation

The main national legislation in the area of anti-bribery and anti-corruption in Switzerland is the Swiss Criminal Code (SCC). The provisions relating to anti-bribery and anti-corruption are governed by Articles 322ter to 322decies of the SCC, which are divided into four sections:

- bribery of Swiss public officials (Articles 322ter to 322sexies);
- bribery of foreign public officials (Article 322septies);
- bribery of private individuals (Articles 322octies and 322novies); and
- general provisions (Article 322decies).

All types of bribery include active and passive bribery. Bribery of Swiss public officials goes beyond active and passive bribery, which are governed by Articles 322ter and 322quater of the SCC, to the granting to and the accepting by Swiss public officials of an undue advantage (Articles 322quinquies and 322sexies of the SCC). Article 322decies of the SCC sets out the advantages that are not undue, as well as the equality between private individuals (who fulfil official duties) and public officials.

1.3 Guidelines for the Interpretation and Enforcement of National Legislation

The provisions relating to anti-bribery and anti-corruption are interpreted and enforced by the Swiss courts. In addition, legal doctrine contributes to their interpretation.

In 2017, the Swiss State Secretariat for Economic Affairs (SECO) published the third edition of a brochure entitled Preventing Corruption – Information for Swiss Businesses Operating Abroad, which is designed to:

- help Swiss companies operating abroad cope with the pertinent regulations in Swiss criminal law;
- highlight the effects of corruption on their business; and
- provide advice on how to prevent and combat corruption.

1.4 Recent Key Amendments to National Legislation

On 1 January 2023, the Swiss legislator introduced the "Transparency in non-financial matters", "Transparency in row material businesses" and the "Duty of care and transparency with regard to minerals and metals from conflict zones and child labor" chapters (Articles 964 a – 964 l) in the Swiss Code of Obligation (CO). Concerned entities have, for the first time, to present their reports in 2024.

On 1 January 2023, the new amendments to the Anti-Money Laundering Act (AMLA) also entered into force. Notably, new measures targeting financial intermediaries in the areas of beneficial ownership were introduced (Articles 2 (abis), 4 and 7 of the AMLA) and the supervi-

sion and controls of the precious metals sectors were heightened. On 22 May 2024, the Federal Council has adopted a dispatch on the further development of the fight against money laundering. A federal register of beneficial owners and new due diligence and reporting obligations for high-risk activities are intended to strengthen the integrity and competitiveness of Switzerland as a financial and business centre.

From a general policy point of view, a motion (Interpellation on the renewal of the Federal Council's Anti-Corruption Strategy, No 24.3948) was submitted in the Swiss Parliament on 23 September 2024. This motion requests the Federal Council to provide with a statement on how corruption can be prevented with a systematic and strategic approach at the administrative and governmental level.

Whether the anticipated anti-corruption strategy 2025 by the Federal Council will lead to changes in the national legislation remains to be seen.

2. Bribery and Corruption Elements

2.1 Bribery

In Swiss criminal law, no distinction is made between bribery and corruption. As outlined in **1.2 National Legislation**, the relevant provisions in the SCC are divided into the following four sections:

- bribery of Swiss public officials;
- bribery of foreign public officials;
- bribery of private individuals; and
- general provisions.

The provisions governing the bribery of Swiss public officials do not only include the active and passive bribery of Swiss public officials but also the granting to and acceptance by Swiss public officials of an undue advantage.

In accordance with the classification of the SCC, the discussion here will distinguish between these four categories.

Preliminary Remarks

In abstract terms, according to Swiss criminal law (Articles 322ter, 322quater, 322septies, 322octies and 322novies of the SCC), the objective elements of active and passive bribery consist of the following:

- a bribing person;
- a bribed person - either a Swiss public official, a foreign public official or a private individual;
- a bribe - an undue advantage;
- a prohibited act - either active bribery (ie, offering, promising or giving an undue advantage) or passive bribery (ie, demanding, securing the promise of, or accepting an undue advantage); and
- a purpose - the bribing person offers, promises or gives to the bribed person a bribe to cause the latter to carry out (or to fail to carry out) an act in connection with their official activity that is contrary to their duty or dependent on their discretion (ie, the principle of equivalence).

Subjectively, all types of bribery require that the offender act with intent – ie, the offender must carry out the act in the knowledge of what they are doing and in accordance with their will. Conditional intent (dolus eventualis) is sufficient. Therefore, if the offender regards the realisation of the act – in this case, bribery – as being possible and accepts this, they act with conditional intent.

An undue advantage, within the meaning of the provisions relating to anti-bribery and anti-corruption in Switzerland, may be tangible or intangible. A tangible advantage is any measurable improvement, be it a cash payment, a payment in kind or a legal improvement. Intangible advantages are, for example, social or professional advantages. The advantage is undue if the offender is not authorised to accept it.

As mentioned earlier, active and passive bribery require that the undue advantage be offered, promised or given to cause the bribed person to carry out (or to fail to carry out) an act in connection with their official activity that is contrary to their duty or dependent on their discretion. Therefore, the following conditions are necessary:

- the bribed person's act must be carried out (or fail to be carried out) in connection with their official activity;
- the act must be contrary to the bribed person's duty or dependent on their discretion; and
- the undue advantage must be offered, promised or given in order for the bribed person to carry out (or to fail to carry out) the act that is contrary to their duty.

A connection with the official activity of the bribed person exists where they are acting in their official capacity or violate official duties through the act in question. A breach of duty is established if the bribed person violates a provision under public law (ie, under labour law and their employment contract describing their dutiful conduct). Alternatively, this condition is also met if the bribed person's act is dependent on their discretion. The bribed person's determinable consideration is deemed an undue advantage if there is a sufficient connection between the bribed person's behaviour and the undue advantage granted by the bribing person.

With regards to all types of bribery, the undue advantage does not need to be offered, promised or given to the bribed person – it can also be offered, promised or given to a third party. Additionally, for the offender to be punishable, it is sufficient that the undue advantage is offered, promised or given to the bribed person – regardless of whether the results expected by the involved persons actually occur.

Under Swiss criminal law, the failure to prevent bribery is not an offence. However, a company may also be punished for a bribery offence committed in the company – irrespective of the criminal liability of any natural persons – if the company did not undertake all requisite and reasonable organisational precautions necessary to prevent bribery (Article 102, paragraph 2 of the SCC). In addition, principals can be held liable for having failed to prevent bribery committed by employees under their supervision.

Bribery of Swiss Public Officials

Four offences can be distinguished in relation to the bribery of Swiss public officials:

- active bribery of Swiss public officials (Article 322ter of the SCC);
- passive bribery by Swiss public officials (Article 322quater of the SCC);
- the granting of an undue advantage to Swiss public officials (Article 322quinquies of the SCC); and
- the acceptance of an undue advantage by Swiss public officials (Article 322sexies of the SCC).

With regard to the constituent elements common to all types of bribery, reference should be

made to the preliminary remarks. The following discussion is limited to elements that are specific to the bribery of Swiss public officials.

In addition to public officials, the notion of a Swiss public official encompasses:

- members of a judicial or other authority;
- officially appointed experts, translators or interpreters;
- arbitrators; or
- members of the armed forces.

Article 110, paragraph 3 of the SCC defines public officials as:

- the officials and employees of a public administrative authority or of an authority for the administration of justice;
- persons who hold office temporarily at – or are employed temporarily by - a public administrative authority or an authority for the administration of justice; or
- persons who carry out official functions temporarily.

In Swiss anti-corruption law, the position of a public official is assessed on the basis of the functional notion of a public official. Employees of state-controlled companies are therefore included in such notion.

In contrast to active bribery, passive bribery does not include members of the armed forces. The same is valid for the acceptance by Swiss public officials of an undue advantage. By mirroring the offering, promising or giving, the Swiss public official demands, secures the promise of, or accepts the undue advantage.

Per Articles 322quinquies and 322sexies of the SCC, the granting to – and acceptance by – Swiss public officials of an undue advantage differs from active and passive bribery insofar as the undue advantage must be offered, promised or given in order that the Swiss public official carries out their official duties. Thus, in contrast to active and passive bribery, the offering, promising or giving of an undue advantage is not linked to a concrete – or at least determinable – consideration of the Swiss public official. Nevertheless, the undue advantage granted needs to be suitable (or enough) to influence the carrying out of the Swiss public official's official duties.

In contrast to active and passive bribery pursuant to Articles 322ter and 322quater of the SCC, the granting to - and acceptance by - Swiss public officials of an undue advantage refers only to the future exercise of the public official's official duties.

It is worth noting that the granting to and acceptance by Swiss public officials of an undue advantage (as per Articles 322quinquies and 322sexies of the SCC) only applies to Swiss public officials and does not involve third parties.

Facilitation payments – that is, smaller payments made to secure or expedite the performance of a routine or necessary action to which the payer has legal or other entitlement – could, in principle, fall within the scope of the offences of granting to and acceptance by Swiss public officials of an undue advantage. However, negligible advantages that are common social practice do not constitute undue advantages (Article 322decies, paragraph 1(b) of the SCC).

Bribery of Foreign Public Officials

The active and passive bribery of foreign public officials is a punishable offence pursuant to Article 322septies of the SCC.

With regard to the constituent elements common to all types of bribery, reference should be made to the preliminary remarks.

The active and passive bribery of foreign public officials occurs when an undue advantage is offered, given or promised to - or respectively demanded, accepted or (the promise of which is) secured by – the following where they are acting for a foreign state or international organisation:

- members of a judicial or other authority;
- public officials;
- officially appointed experts, translators or interpreters;
- arbitrators; or
- members of the armed forces.

Bribery of Private Individuals

Not only has the active and passive bribery of Swiss (Articles 322ter and 322quater of the SCC) and foreign public officials (Article 322septies of the SCC) been forbidden since 2016, but the active and passive bribery of private individuals is also forbidden (as per Articles 322octies and 322novies of the SCC).

Pursuant to Article 322octies, paragraph 1 of the SCC, any person is criminally liable if said person offers, promises or gives an employee, partner, agent or any other auxiliary of a third party in the private sector an undue advantage in order that they carry out (or fail to carry out) an act in connection with their official activities that is contrary to their duties or dependent on their discretion.

As the constituent elements correspond with bribery of public officials, reference should be made to the preliminary remarks.

It is nevertheless noteworthy that the requirements for the active and passive bribery of private individuals (as defined in Articles 322octies and 322novies of the SCC) also apply to the bribery of foreign private individuals. Furthermore, in minor cases, active and passive bribery of private individuals is only prosecuted upon complaint. Cases could be considered minor if:

- the sum in tort is not extensive;
- the security and health of third parties are not affected by the offence;
- there is no multiple or repeated commission of the offence by a member of a group; or
- no document fraud has been committed in connection with the bribery.

General Provisions

The general provisions contained in Article 322decies of the SCC are applicable to every form of bribery in Swiss law. According to Article 322decies, paragraph 1 of the SCC, the following are not undue advantages:

- advantages permitted under public employment law or contractually approved by a third party; and
- negligible advantages that are common social practice.

Advantages that are negligible, but clearly an attempt at bribery, are not covered by Article 322decies, paragraph 1(b) of the SCC. The threshold for negligible advantages that are common social practice lies in their capacity to influence the person accepting the advantage. For federal personnel, the limit for negligible advantages is regulated by law at CHF200.

In addition, pursuant to Article 52 of the SCC, the competent authority shall refrain from prosecuting the offender, bringing them to court, or

punishing them if the level of culpability and consequences of the offence are negligible.

Article 322decies, paragraph 2 of the SCC provides that private individuals who fulfil official duties are subject to the same provisions as public officials.

Money Laundering

Active and passive bribery of Swiss or foreign public officials (as per Articles 322ter, 322quater and 322septies of the SCC) qualify as felonies and are thus predicate offences to money laundering, according to Article 305bis of the SCC.

In contrast, active and passive bribery of private individuals (as per Articles 322octies and 322novies of the SCC) are qualified as misdemeanours and are thus not predicate offences to money laundering. The same is true for the granting to and acceptance by Swiss public officials of an undue advantage (as per Articles 322quinquies and 322sexies of the SCC).

2.2 Influence-Peddling

By trading in influence, a person misuses their influence over a decision-maker (typically a public official) for a third party in return for any undue advantage.

Swiss law does not detail a specific offence with regard to trading in influence. However, if the intermediary is a public official, they could be held liable for passive bribery or accepting an undue advantage if they accept an undue advantage to influence another public official. The third party giving the undue advantage could be held liable for active bribery or granting an undue advantage. However, the undue advantage must be linked to the official activity of the intermediary. It is important to note that, under Swiss law, the granting to and acceptance by public officials of an undue advantage only applies to Swiss public officials.

If the intermediary is a private individual, and the public official whose decision is to be influenced participates in the corruptive scheme and at least implicitly accepts the undue advantage from the intermediary, active and passive bribery could be fulfilled. Depending on the explicit or implicit agreement between the parties, the third party could be held liable for complicity or incitement to active bribery, the intermediary for active bribery (or complicity in active bribery) and the public official for passive bribery.

2.3 Financial Record-Keeping

Under Swiss criminal law, it is a punishable offence if a debtor fails to comply with a statutory obligation to keep and preserve business accounts or draw up a balance sheet – with the result that their financial position is not ascertainable or not fully ascertainable - when bankruptcy proceedings are commenced against them (Article 166 of the SCC). Moreover, as per Article 325 of the SCC, a person is criminally liable if they wilfully (or through negligence) fail to comply with the statutory duty to:

- keep proper accounts; or
- preserve accounts, business correspondence and business telegrams.

Forgery of documents is covered by Article 251 of the SCC, which punishes the production and the use of a false or falsified document. If the offender is a public official or a person acting in an official capacity, Article 317 of the SCC (regarding forgery of a document by a public official) is applicable.

2.4 Public Officials

Under Swiss law, there are several provisions pertaining to the criminally relevant behaviour of public officials.

Pursuant to Article 313 of the SCC, any public official who – for unlawful gain – levies taxes, fees or other charges that are not due (or that exceed the statutory rates) is criminally liable.

Likewise, any member of an authority or public official who damages the public interests that they have a duty to safeguard in the course of a legal transaction - and with a view to obtaining an unlawful advantage for themselves or another - is liable to prosecution for misconduct in public office (Article 314 of the SCC).

Per Article 138 of the SCC, a public official is criminally liable for:

- the appropriation of moveable property belonging to another but entrusted to said public official; and
- the unlawful use of financial assets entrusted to said public official for their own or another's benefit.

Finally, any member of an authority or a public official who abuses their official powers to secure an unlawful advantage for themselves or another – or to cause prejudice to another – is liable to prosecution for abuse of public office (Article 312 of the SCC).

2.5 Intermediaries

As previously mentioned in **2.1 Bribery**, Articles 322ter to 322novies of the SCC explicitly provide that the undue advantage does not need to be offered, promised or given to the public official – it can also be offered, promised or given to a third party. Apart from that, the general provisions concerning complicity, incitement and assistance are applicable, as the case may be.

2.6 Lobbyists

Apart from the bribery offences (mentioned in **2.1 Bribery**), there is no specific legislation in Switzerland to regulate lobbing activities.

However, there are a few regulations that serve the purpose of transparency.

- During the legislative process, affected and interested groups have the opportunity to be heard and to express their point of view.
- In addition, members of parliament are obliged to disclose their private interests in accordance with Article 11 paragraph 1 of the Parliament Act.
- Furthermore, only those with an access pass are allowed into the parliament building. Each council member can provide two persons with an access pass. These persons and their function are entered in a publicly accessible register.

3. Scope of Application

3.1 Limitation Period

Swiss criminal law distinguishes between the limitation of prosecution rights and the limitation period for the execution of a sentence. Whereas the former has the effect of hindering the authorities in prosecuting, the latter prevents a sentence from being executed.

Limitation of prosecution rights depends on the maximum sentence provided for in the respective offence. According to Article 97, paragraph 1(b) of the SCC, the right to prosecute is subject to a time limit of 15 years if the offence carries a custodial sentence of more than three years.

This is the case for active and passive bribery of a Swiss or foreign public official (Articles 322ter, 322quater and 322septies of the SCC).

Article 97, paragraph 1(c) of the SCC provides that the right to prosecute is subject to a time limit of ten years for the offences of:

- granting to and acceptance by Swiss public officials of an undue advantage (pursuant to Articles 322quinquies and 322sexies of the SCC); and
- active and passive bribery of private individuals (pursuant to Articles 322octies and 322novies of the SCC).

If a judgment is issued by a court of first instance before the limitation period expires, the time limit no longer applies (Article 97, paragraph 3 of the SCC).

Depending on the sentence imposed, the right to execute a sentence in connection with a bribery offence is subject to a limitation period of five, 15 or 20 years (Article 99, paragraph 1 of the SCC).

3.2 Geographical Reach of Applicable Legislation

According to Article 3, paragraph 1 of the SCC, any person who commits an offence in Switzerland is subject to the SCC. Article 8, paragraph 1 of the SCC clarifies what is meant by the place of commission by stating that an offence is considered to be committed at:

- the place where the person concerned commits it or unlawfully omits to act; and
- the place where the offence has taken effect.

If the offence is only partly committed in Switzerland, this is sufficient for the Swiss authorities to assert jurisdiction. With regard to bribery, Swiss jurisdiction can arguably be established if the bribe money has been transferred to or from a bank account in Switzerland – regardless of whether the bribing or the bribed person has been to Switzerland.

Notwithstanding the foregoing, Swiss legislation has extraterritorial reach under certain conditions. Pursuant to Article 6, paragraph 1 of the SCC, a person is subject to the SCC if they commit an offence abroad that Switzerland is obliged to prosecute in terms of an international convention, provided that:

- 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 remains in Switzerland and is not extradited to the foreign country.

Furthermore, Article 7, paragraph 1 of the SCC provides that a person who commits an offence abroad – where the requirements of, in particular, Article 6 of the SCC are not fulfilled – is subject to the SCC if:

- the offence is also liable to prosecution at the place of commission or the place of commission is not subject to criminal law jurisdiction;
- the person concerned is in Switzerland or is extradited to Switzerland owing to the offence; and
- under Swiss law, extradition is permitted for the offence, but the person concerned is not being extradited.

If the person concerned is not Swiss and if the offence was not committed against a Swiss person, Article 7, paragraph 1 of the SCC applies only if the request for extradition was refused for

a reason unrelated to the nature of the offence (as per Article 7, paragraph 2(a) of the SCC).

3.3 Corporate Liability

As explained in **2.1 Bribery**, under Swiss criminal law (Article 102, paragraph 2 of the SCC), a company will be penalised for an offence committed by an individual within the company - irrespective of the criminal liability of any natural persons – if the company failed to take all the reasonable organisational measures necessary to prevent such an offence.

In corporate groups, criminal liability can only be attributed to the group company in which the offence was committed. As such, the mother company is – in principle – not responsible for the offences committed in the subsidiary company unless it had operative control over the latter and is therefore deemed responsible for the lack of organisational measures in the subsidiary.

4. Defences and Exceptions

4.1 Defences

Generally speaking, a person or corporation accused of bribery can raise defences that pertain to the objective and subjective requirements of the relevant provision (see **2. Bribery and Corruption Elements**). In particular, it can be argued that:

- a minor gift does not qualify as an undue advantage in the sense of Article 322ter of the SCC;
- whoever was offered or demanded the undue advantage does not have the status of a foreign public official (as per Article 322septies of the SCC);
- the undue advantage was not offered "in order to cause" the public official to act contrary to their duties (lack of "equivalence link");
- the public official who was offered or demanded the undue advantage did not have any influence on the carrying out of the relevant official act;
- the offender did not act with intent – or at least not with conditional intent (dolus eventualis) – in relation to all objective requirements of the offence;
- in the case of corporate liability, the corporation took all reasonable organisational measures required to prevent the offence; or
- in the case of insufficient organisational measures, the lack of such measures did not lead to the commission of the offence.

4.2 Exceptions

There are no exceptions to the defences mentioned under **4.1 Defences**.

4.3 De Minimis Exceptions

As outlined in **2. Bribery and Corruption Elements**, Article 322decies, paragraphs 1(b) and 52 of the SCC set out certain de minimis exceptions.

4.4 Exempt Sectors/Industries

There are no sectors or industries that are exempt from the offences discussed in this chapter.

4.5 Safe Harbour or Amnesty Programme

Swiss law does not contain specific provisions that reward spontaneous reports of irregularities by natural persons or corporations. However, self-reporting followed by co-operation during proceedings may be taken into account by the criminal authorities when determining a sentence (Article 102, paragraphs 3, 47 and 48 of the SCC).

According to Article 53 of the SCC, if an offender has made reparation for the loss, damage or injury (or made every reasonable effort to right the wrong that they have caused), the competent authority shall refrain from prosecuting them, bringing them to court, or punishing them if:

- the requirements for a suspended sentence are fulfilled; and
- the interests of the general public and of the persons harmed in the case are negligible.

Alternatively, if the aforementioned requirements are not met, but the facts are acknowledged in a spontaneous report or during the subsequent investigation, the offender may apply for a so-called accelerated proceeding and thus avoid a long trial. Typically, the sanctions imposed in such accelerated proceedings are not as severe. Switzerland does not have the legal basis, similar to a deferred prosecution agreement (DPA), to defer criminal prosecution against companies and to subsequently discontinue criminal investigations if the company has successfully passed the probation period. The Office of the Attorney General of Switzerland's (the OAG) proposal was not adopted in the Federal Council's draft bill (2022) for a revision of the Swiss Criminal Procedure Code (SCP).

5. Penalties for Violations

5.1 Penalties on Conviction

The maximum penalty for an individual convicted of the active or passive bribing of (either Swiss or foreign) public officials is five years' imprisonment or a monetary penalty. The maximum penalty for granting or accepting an undue advantage is three years' imprisonment or a monetary penalty. Bribery in the private sector carries a sentence of up to three years of imprisonment or a monetary penalty. The maximum monetary penalty is CHF540,000. Depending on the circumstances of the case, penalties may also include a ban on exercising professional activities or a revocation of a residence permit for foreigners. A legal entity may be sanctioned with a fine of up to CHF5 million.

As a further significant sanction, the court may order the forfeiture of illegal profits obtained through corrupt acts or assets intended to commission or reward the offender (Article 70 of the SCC). If the assets subject to forfeiture are no longer available, the court may uphold a claim for compensation by the state in respect of a sum of equivalent value (Article 71 of the SCC). There is no cap on the amount of money for such forfeiture or compensation claims.

Often bribery will include concomitant violations of accounting or bookkeeping obligations, or falsification of accounting documents, and sometimes tax offences. Such violations may lead to the same or similar criminal sanctions as bribery (ie, imprisonment or monetary sanctions), as well as administrative sanctions in certain regulated sectors. Lastly, Swiss criminal procedure law provides that any individual who has suffered harm from bribery or corruption may file a civil claim as a private claimant in the criminal proceedings.

5.2 Guidelines Applicable to the Assessment of Penalties

Swiss criminal law does not provide general guidelines on the assessment of appropriate penalties. Rather, based on the SCC, the authorities have broad discretion when determining the appropriate sanction. Factors to be considered include the degree of fault, previous convictions, the personal circumstances of the offender, and

the impact of the sanction on their life (Article 47 of the SCC).

In order to determine the amount of the monetary penalty for an individual, the court specifically takes into account the offender's personal and financial circumstances at the time of conviction (Article 34 of the SCC). In order to determine the amount of the fine in the case of a conviction of a corporation, the court takes into account the seriousness of the offence, the degree of the organisational inadequacies, the damage caused, and the economic capability of the company (Article 102, paragraph 3 of the SCC).

Repeated offences will lead to an increase of the sentence by up to 50% based on the most serious offence (Article 49, paragraph 1 of the SCC). Although Swiss law generally does not contain provisions to reward spontaneous reports of irregularities, self-reporting followed by co-operation during criminal proceedings may be taken into account when the sentence is determined (see **7.4 Discretion for Mitigation and Aggravation**).

6. Disclosure Processes

6.1 Disclosure Obligations

As a general rule, a person or entity is not obliged to report crimes in Switzerland. Only the criminal authorities, or other authorities pursuant to specific legal provisions, have an obligation to report crimes they have become aware of (Article 302 of the SCP). In these cases, the wilful failure to report may in itself constitute a crime (Article 305 of the SCP).

Regarding corruption, concerned companies must prepare an annual report regarding non-financial matters under the CO (see **1.4 Recent Key Amendments to National Legislation**).

While criminal law provides for corresponding sanctions in the event of a breach of reporting (Article 964a et seq. of the CO / Article 325bis and Article 325ter of the SCP), the Code of Obligations does not provide for an explicit basis for (civil) liability in the event of insufficient due diligence related to reporting duties.

6.2 Voluntary Disclosure Incentives

A confession may lead to a reduced penalty if the perpetrator proves genuine remorse, compensates for the financial damage caused and thereby facilitates the criminal prosecution (Article 48 lit. d of the SCC).

Furthermore, a perpetrator can apply for accelerated proceedings if he or she is prepared to admit the relevant facts. In this case, it is not relevant whether the admission is made at a relatively late stage of the proceedings and without remorse only under the pressure of the criminal proceeding. Typically, the penalty negotiated and imposed in accelerated proceedings will be of a lesser severity.

In case of criminal organisations, the court has the discretion to mitigate the penalty imposed if the perpetrator makes an effort to foil the criminal activities of the organisation by co-operating with the criminal authorities (Article 260ter (4) of the SCC).

Apart from this, Swiss law does not contain specific provisions to reward voluntary reports of irregularities or co-operation by natural persons or corporations. However, in practice self-reporting or co-operation during proceedings is generally taken into account by the criminal authorities when determining a sentence. Since voluntary

co-operation usually leads to a facilitation of prosecution, the procedural costs imposed on the perpetrator may be lower.

6.3 Self-Disclosure Procedures

See **6.2 Voluntary Disclosure Incentives**.

6.4 Protections Afforded to Whistle-Blowers

Currently, there is no specific Swiss law granting protection to whistle-blowers in the private sector.

The competent courts decide on a case-by-case basis whether the reporting of irregularities is legitimate. Swiss courts apply a balancing of interests test to assess whether the employee's notification of an irregularity to the employer, the authorities or the media was lawful and examine the facts of each individual case (primarily in relation to the employee's duty of loyalty).

However, it is regarded as best practice to have reporting mechanisms in place that adequately protect the whistle-blower from negative consequences. The termination of an employee solely on the grounds of lodging a complaint may constitute an unfair dismissal under Swiss law. In the public sector, under the relevant cantonal or federal Personnel Acts, Swiss officials may be required to report crimes and offences to their supervisors or directly to the criminal authorities.

The EU Whistleblowing Directive

The Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (commonly known as the "EU Whistleblowing Directive") entered into force in December 2019, and EU member states were required to implement the requirements resulting from the EU Whistleblowing Directive into national law by December 2021. As Switzerland is not an EU member state, there is no obligation to implement the EU Whistleblowing Directive into national law. Nevertheless, Swiss companies with business branches in the EU, which have at least 50 employees, may fall within the scope of the EU Whistleblowing Directive. Compliance with the requirements of the EU Whistleblowing Directive can therefore also be of great importance to Swiss companies.

6.5 Incentives Provided to Whistle-Blowers

There are no specific incentives for whistle-blowers to report bribery or corruption in Switzerland.

In practice, many corporations have established mechanisms for employees to report suspected or actual misconduct to an independent person, and corporations sometimes encourage or oblige employees to report suspicions of bribery to the compliance department, an external lawyer or a specific whistle-blower portal. Upon such reporting, an employer may choose to waive its right to take civil action against the reporter, even if said reporter is involved in the bribery or corruption. An employer's waiver, however, does not protect the employee from prosecution by the criminal authorities.

For the public sector, the Swiss Federal Audit Office (SFAO) maintains a whistle-blowing website where private individuals and federal employees can report suspected irregularities and acts of corruption within the administrative units of the Federal Administration.

7. Enforcement Trends

7.1 Enforcement

Anti-bribery and anti-corruption laws are, in principle, enforced by criminal authorities and - to a certain extent and less directly – by administrative bodies such as the Swiss Financial Market Supervisory Authority (FINMA) and the MROS (see **7.2 Enforcement Bodies**).

Furthermore, an individual who has suffered harm from bribery or corruption may file a civil claim for compensation of damages or surrender of profits based on the Federal Law on Unfair Competition. They can file the civil claim in separate civil proceedings or as a private claimant in the criminal proceedings (see **5.1 Penalties on Conviction**).

7.2 Enforcement Bodies

The enforcement of anti-bribery and anti-corruption offences lies principally with the prosecutor's office at the cantonal or federal level. The OAG will lead the investigation if the offence has been committed to a substantial extent abroad or in more than one canton (where no single canton is the clear focus of the criminal activity). An agreement is in place between the cantonal prosecution authorities and the OAG, which governs the question of jurisdiction. Remaining conflicts of competence are decided by the Swiss Federal Criminal Court.

In relation to banks and other financial intermediaries, the FINMA is authorised to enforce its supervisory powers independently from any criminal investigation led by the prosecution authorities. In a landmark case, the FINMA ordered a bank to terminate its activities in view of the bank's involvement in corruption. In other cases, the procedures led to sanctions such as:

- the confiscation of illegal proceeds;
- naming and shaming;
- restriction or termination of activities; or
- a ban on practising for several years for certain individuals.

The FINMA and the competent prosecution authorities have broad competences to cooperate and exchange the information that they require in the context of their collaboration.

The MROS also plays an important role in the enforcement process. It receives suspicious activity reports from financial intermediaries and, after analysis, forwards them to the criminal authorities for follow-up action. Such suspicious activity reports may relate to corruption as a predicate offence for money laundering, in particular (see **6.2 Voluntary Disclosure Incentives**). In 2023, 8% of the predicate offences that led to reports to the MROS concerned the bribery of Swiss or Foreign Public officials.

7.3 Jurisdictional Reach of Enforcement Bodies

According to Article 3 of the SCC, the Swiss criminal authorities have the authority to prosecute corruption committed in Switzerland. According to Article 8 of the SCC, a bribery offence is considered to be committed both at the place where the person concerned acts or unlawfully omits to act and at the place where the offence has taken effect (see **3.2 Geographical Reach of Applicable Legislation**).

The place of commission is broadly construed. Arguably, corruptive payments to or from a Swiss bank account are enough to create Swiss jurisdiction, even if all persons involved act outside Switzerland.

In the case of corporate liability (Article 102, paragraph 2 of the SCC), the bribery offence itself need not have been committed by a Swiss corporation in Switzerland. It is sufficient that a lack of organisation occurred (at least partially) in Switzerland, which may be the case if a subsidiary, affiliate or branch located in Switzerland is responsible for the compliance of the group of companies.

The FINMA is authorised to issue administrative orders relating to corruption against persons and entities that are required to be licensed, recognised or registered by the FINMA.

7.4 Discretion for Mitigation and Aggravation

The enforcing bodies act ex officio and are thus obliged to investigate and sanction bribery without exception. Swiss law does not provide for plea agreements, deferred prosecution agreements and non-prosecution agreements exactly equivalent to such instruments in other jurisdictions. However, Swiss law provides for the following mechanisms to achieve similar results.

According to Article 53 of the SCC, the competent authority shall refrain from prosecuting or punishing an individual or corporation if:

- the offender "admits the facts" and "has made reparation for the loss, damage or injury or made every reasonable effort to right the wrong";
- the interests of the general public and of the person harmed are negligible; and
- the requirements for a suspended sentence of not more than one year are fulfilled.

In such cases, the reparation requested can be discussed ex ante between the prosecution and the defence, and could, for example, consist of a payment to a charitable organisation.

- Articles 352 et seq of the SCP provide that, if the offender admits the facts brought against them or if the facts are "otherwise sufficiently established", the prosecution authorities may issue a summary penalty order. This can be appealed to the court and is therefore, so to speak, a plea agreement offer by the prosecution authorities. The offer may be the result of discussions between the prosecutor and the defence.
- Articles 358 et seq of the SCP provide that an offender who admits the relevant facts brought against him or her and accepts civil claims raised by damaged parties may apply for so-called accelerated proceedings, which may involve "sentence bargaining" between the prosecutor and the defence. The sentence is reduced and a long trial avoided in return for the offender admitting the relevant facts.
- Article 48(d) of the SCC provides for mitigation of a sanction if the offender has shown sincere remorse for their actions and, in particular, has made reparation for the damage (insofar as this may be expected of them). This provision can be applied, for example, in the case of self-reporting and/or improvement of the company's compliance and governance practice.

As regards FINMA investigations, the FINMA has a wide discretion to mitigate sanctions in light of the financial intermediary's co-operation during the investigation (including efforts for reparation).

7.5 Recent Landmark Investigations or Decisions

The following selection of landmark investigations and decisions involve bribery or corruption in Switzerland.

Alstom Case

In November 2011, after three years of investigation, the OAG issued a summary punishment order against Alstom Network Schweiz AG for breach of Article 102, paragraph 2 of the SCC in conjunction with Article 322septies of the SCC. The OAG fined the company CHF2.5 million and imposed a compensatory claim of CHF36.4 million. Alstom Network Schweiz AG - the company responsible for the compliance of the group but not otherwise involved in the bribe payments – was convicted of not having taken all necessary and reasonable organisational precautions to prevent bribery of foreign public officials in Latvia, Tunisia and Malaysia. The investigation into the parent company, Alstom SA, was closed without punishment (based on Article 53 of the SCC) in return for a reparation payment.

SIT Case

In November 2013, the OAG concluded a criminal investigation into the Swedish company Siemens Industrial Turbomachinery (SIT). The case concerned illegal payments to senior executives at Gazprom in relation to a contract for gas turbines for the pipeline linking Russia's Yamal peninsula to Western Europe. The investigation was closed, based on Article 53 of the SCC, after SIT admitted inadequate enforcement of compliance regulations in relation to Yamal pipeline projects and paid reparations of CHF125,000 in the form of a donation to the International Committee of the Red Cross. SIT also paid compensation of USD10.6 million for unlawfully obtained profits.

As for the individuals involved, two years later the Federal Criminal Court (FCC) issued an acquittal on the grounds that the Gazprom senior executives who received the commissions were not public officials in the sense of Article 322septies of the SCC.

Fertiliser Case

By a summary punishment order of 31 May 2016, the OAG convicted the Swiss subsidiary of the Swiss agro-business multinational enterprise Ameropa of failure to take reasonable and necessary organisational measures to prevent corrupt payments to foreign public officials and ordered it to pay a fine of CHF750,000 for the corrupt payment of USD1.5 million to a senior Libyan official (ie, the Minister for Oil) in exchange for the right to build a fertiliser plant in Libya.

Construction 1 Case

The Construction 1 case concerns charges of bribing foreign public officials against a former senior executive of a Canadian construction company. Inducements were given to the son of the late Libyan dictator Muammar Gaddafi in order to secure contracts that were valued at more than USD21 million and generated assets worth more than EUR70 million. The former executive was the beneficial owner of companies that allegedly made illicit profits of more than EUR30 million.

After launching a criminal investigation on 11 May 2011 against the former executive, the OAG filed a simplified-procedure indictment against the Canadian group and its former executive on 18 July 2014. On 1 October 2014, the FCC upheld the judgment recommended by the OAG. With regard to another aspect of the procedure (ie, retrocessions to the senior executive), the Canadian company was acknowledged as the injured party in this case. The FCC held that the

former executive's breach of his duty of due diligence had caused damage to the company.

The former executive was sentenced to three years' custody. Some of his assets were confiscated and he was ordered to pay damages amounting to CHF12 million plus interest to the Canadian company, which passed this amount on to Switzerland.

Construction 2 Case

A businessman belonging to an eminent North African family had acted as intermediary in a corruption case in Libya involving a Canadian engineering group (see Construction 1 Case). He was convicted by the OAG of complicity in the bribery of foreign public officials in a summary punishment order dated 22 March 2016 and given a suspended pecuniary day-fine of 150 days at CHF2,500 (ie, a total of CHF375,000). Assets in the amount of CHF425,264 were confiscated.

Port Infrastructure Case

In four summary punishment orders of 1 May 2017, the OAG convicted a Belgian company and its subsidiary, who were specialists in port infrastructure development, for failure to take reasonable and necessary organisational measures to prevent bribes to foreign public officials (Article 102, paragraph 2 of the SCC). The investigation revealed a financial set-up whereby the Belgian subsidiary and two individuals paid funds to public officials in Nigeria – in part through companies whose beneficiaries were politically exposed persons (PEPs). These payments were moved through three letterbox companies domiciled in the British Virgin Islands. More than CHF20 million was allegedly paid in bribes between 2005 and 2013. The subsidiary was fined CHF1 million and had to make a compensation payment of CHF36.7 million. The parent company was fined CHF1.

Odebrecht/CNO Case

In a summary punishment order of 21 December 2016, the OAG convicted the Brazilian company Odebrecht SA and its subsidiary Construtora Norberto Odebrecht SA (CNO) for not having taken all reasonable and necessary organisational measures to prevent bribery and money laundering in connection with the Petrobras affair. The conviction, which took the form of a summary punishment order, is part of a co-ordinated conclusion of the proceedings that was initiated by Switzerland but also involved Brazil and the USA.

Odebrecht and CNO were held jointly and severally liable by the OAG to pay CHF117 million to Switzerland in an equivalent claim; the subsidiary was sentenced to a fine of CHF4.5 million and the parent company Odebrecht SA to a fine of CHF0. The reason for imposing a penalty of zero francs on the parent company in this case was that the company had already been fined USD1 billion for bribery in the USA. This prompted the OAG to waive punishment on the basis of Article 49, paragraph 2 of the SCC.

The company Braskem SA had also paid bribes via the same channels as Odebrecht SA and CNO. Proceedings in Switzerland against Braskem SA have been abandoned, as the company is being held accountable in the USA. However, the Swiss decision to abandon the proceedings involved the company paying compensation of CHF94.5 million in Switzerland. Altogether, the claims against the companies - which were based in Brazil on civil proceedings, in the USA on a guilty plea and in Switzerland on the summary penalty order - amounted to around USD2 billion.

Banknotes Case

Company DD, a subsidiary of company D (a world leader in manufacturing machinery for the printing of banknotes), self-reported a possible breach of Article 102, paragraph 2 in conjunction with Article 322septies of the SCC in connection with a deal in Nigeria to the OAG on 19 November 2015. This spontaneous initiative was followed in April 2016 by the reporting of further suspicions concerning other deals in Morocco, Brazil and Kazakhstan. The value of the contracts secured by the company in these four countries was CHF626 million and the total paid in bribes was CHF24.6 million. In a summary punishment order of 23 March 2017, company DD was convicted and fined CHF1. It was also required to make a compensation payment of CHF35 million, of which CHF5 million was paid into a fund for the improvement of compliance standards in the banknotes industry.

Gunvor Case 1

In a summary penalty order from October 2019, the OAG convicted the Geneva commodities trader Gunvor of failing to take all the organisational measures that were reasonable and necessary to prevent its employees and agents from bribing public officials (Article 102, paragraph 2 in conjunction with Article 322septies of the SCC). The investigation revealed that Gunvor's employees and agents bribed public officials in the Republic of Congo and Ivory Coast to gain access to their petroleum markets. The company failed to prevent these acts of corruption owing to serious deficiencies in its internal organisation. Gunvor was fined CHF4 million, which took into account the efforts that had been made since 2012 to improve their compliance and governance practice. In addition, Gunvor must pay compensation of almost CHF90 million, which corresponds to the total profit that Gunvor made from the business in question in the Republic of Congo and Ivory Coast.

Gunvor Case 2

By decision of 1 March 2024 the OAG ordered the company GUNVOR SA to pay a fine of around CHF86.7 million, of which CHF4.3 million is a penalty. The Geneva-based commodity trading company is therefore criminally liable for bribery of foreign public officials (Article 322septies paragraph 1 of the SCC in conjunction with Article 102 paragraph 2 of the SCC).

As a result of the OAG's investigations, it was possible to prove that at least between February 2013 and February 2017, bribes amounting to around USD7.5 million were paid to an Ecuadorian public official in a leading position at the state-owned oil company. The bribes were paid with the help of a former employee of the GUNVOR Group and two intermediaries acting through an offshore company. These three individuals have pleaded guilty in the United States of America. According to the OAG's summary penalty order, the corrupt transactions in question, some of which were carried out via the Swiss financial centre, provided the GUNVOR Group with direct advantages, as Petroecuador subsequently concluded oil trading contracts with two companies with which the GUNVOR Group had back-to-back agreements.

The OAG concluded that the risk analysis in force at GUNVOR from February 2013 to February 2017, as well as the measures and processes to combat corruption and their effective implementation, were obviously not sufficient to prevent the company from actually taking advantage of the existing opportunities for corrupt practices in the course of its business relationship with an Ecuadorian state-owned oil company. Therefore GUNVOR SA is ordered to pay a fine of CHF4.3

million and a claim for restitution in the amount of approximately CHF82.3 million (corresponds to a portion of the profit that the GUNVOR group was able to generate thanks to the corrupt contracts).

SECO Case

In September 2021, the FCC in Bellinzona sentenced a former SECO employee to four years and four months' imprisonment. The criminal division found the former SECO employee guilty of multiple forgeries of official documents and multiple taking of bribes. The bribery affair came to light in 2014 and is regarded as one of the biggest cases of corruption within the federal administration. The then-head of department at SECO had awarded overpriced IT contracts from 2004 to 2014 and received money, VIP football tickets and travel invitations in return. IT contracts worth almost CHF100 million were involved. In return, the former civil servant allegedly received benefits totalling more than CHF1.7 million. Three co-accused entrepreneurs, whose companies had profited from the contracts, received conditional prison sentences of up to 22 months and fines.

Relevant Federal Supreme Court Decision Regarding Sealing and Attorney–Client Confidentiality (7B_153/2023 From 6 August 2024)

The Public Prosecutor of the Canton of Zurich conducted a criminal proceeding against persons unknown on suspicion of violating the Federal Act against Unfair Competition (UWG). In order to secure evidence, the public prosecutor's office issued an order requiring the company involved to hand over an investigation report and other relevant documents connected to an internal investigation. The company complied with the order, but submitted the documents with a request for them to be sealed. A key point of contention was whether fact-finding was considered a typical legal activity which is covered by the attorney–client privilege. The Federal Supreme Court affirmed that the attorney–client privilege ensures the protection of client confidentiality and is not limited to representation in court, but also extends to all typical legal activities such as legal advice and the preparation of legal documents.

The lower court ruled that the documents that were the subject of the appeal were created in the course of legal work and were therefore protected by attorney–client confidentiality. The OAG argued that these documents did not constitute typical legal work, but the Federal Supreme Court rejected this and affirmed the protection of attorney–client confidentiality in the case at hand. Another point of contention was whether evidence that already existed before the legal advice was given lost its protection by being included in the attorney–client correspondence. The Federal Supreme Court ruled that as long as the information arose in the confidential relationship between client and attorney, it remains protected by the attorney–client privilege, even if it had previously existed in other contexts. Finally, the question was also discussed as to whether the disclosure of information to third parties (in this case, FINMA) affects the confidential nature of the attorney–client correspondence. The Federal Supreme Court clarified that information voluntarily disclosed to third parties is not automatically considered to be generally known and that the client's intention of confidentiality remains. Overall, the Federal Supreme Court ruled that the public prosecutor's appeal was unfounded and that the lower court had acted lawfully in its decision not to unseal the documents.

7.6 Level of Sanctions Imposed

Based on the SCC, the authorities have broad discretion when determining the appropriate sanction. Factors to be considered include the degree of fault, previous convictions, the offender's personal circumstances, and the impact of the sanction on their life (Article 47 of the SCC). By way of an example, in the Port Infrastructure case - which was discussed in **7.5 Recent Landmark Investigations or Decisions** and featured a bribe of more than USD20 million - the accused individuals were convicted to suspended day-fines of between CHF8,500 and CHF360,000. In addition, the OAG confiscated from the accused individuals an amount equivalent to their bonuses.

As for the sanctions imposed on legal entities, reference should be made to the cases discussed in **7.5 Recent Landmark Investigations or Decisions**. Although the maximum fine for companies is limited to CHF5 million, a significant sanction may come in the form of an order by the court to forfeit illegal profits obtained through corrupt acts or assets intended to induce or reward the offender (Article 70 of the SCC). If the assets subject to forfeiture are no longer available, the court may uphold a claim for compensation by the state in respect of a sum of equivalent value (Article 71 of the SCC). There is no cap on the amount of money for such forfeiture or compensation claims.

8. Compliance Expectations

8.1 Compliance Obligations

In Switzerland, while there is no explicit legal obligation for companies to implement a compliance programme specifically for preventing corruption, various regulations and guidelines encourage businesses to adopt preventive measures against corruption.

1. Companies are encouraged to adopt a code of conduct that outlines ethical standards and expectations regarding anti-corruption measures. This serves as a foundational document guiding employee behaviour.

2. Organisations are advised to establish internal reporting mechanisms, allowing employees to report suspected misconduct or unethical behaviour confidentially and without fear of retaliation.

3. Companies should conduct regular risk assessments to identify areas vulnerable to corruption. This involves mapping out potential risks associated with different business activities and geographies.

4. Training sessions for employees at all levels are recommended to raise awareness about corruption risks and the importance of compliance. This includes educating staff on recognising and avoiding bribery.

The failure to prevent bribery by a company is not directly classified as a criminal offence for the company itself. However, if an employee commits acts of bribery on behalf of the company, the organisation can be held liable under certain conditions, particularly if it can be shown that the company lacked adequate compliance measures (Article 102 al. 2 of the SCC; see **3.3 Corporate Liability**).

8.2 Compliance Guidelines and Best Practices

SECO has published a brochure on the issue of corruption in international business transactions. The publication highlights the impact of corrup-

tion on companies and points out instruments that can be used to prevent and actively combat corrupt behaviour.

In addition, Transparency International has recently developed a series of documents and guides for companies. All those documents can be found on the Website of SECO.

Furthermore, there are various international requirements that companies in Switzerland must take into account as guidelines, eg, the Good Practice Guidance on Internal Controls, Ethics and Compliance or the OECD Anti-Bribery Recommendation as well as the ICC Rules on Combating Corruption 2023.

8.3 Compliance Monitorships

Swiss criminal law does not provide a legal basis for the appointment of a monitor. However, the financial market authority (FINMA) has the possibility of appointing auditors or investigators in the event of a violation of financial market laws (in particular related to possible infraction to the AML obligations).

9. Assessment

9.1 Assessment of the Applicable Enforced Legislation

In 2000, Switzerland signed up to the OECD Convention on Combating Bribery of Foreign Public Officials and in 2006 to the Council of Europe's Criminal Law Convention on Corruption (see **1. Legal Framework**). Against this backdrop, Switzerland has revised the criminal provisions that relate to the bribing of foreign and domestic officials, as well as to bribery in the private sector.

In September 2017, Switzerland was assessed by the OECD Working Group (referred to as Phase 4 country monitoring). The OECD Working Group detailed the specific achievements and challenges of Switzerland regarding bribery in international business transactions. As an example of positive progress, it outlined the rise in the number of prosecutions and the significant level of enforcement by the OAG.

The OECD Working Group expressed its appreciation of the work of the MROS for its role in detecting cases of foreign bribery in connection with money laundering and the proactive policy on seizure and confiscation. The active involvement of Switzerland in mutual legal assistance and the measures taken to improve co-operation (eg, proactive mutual legal assistance) also received a positive mention.

Nevertheless, they expect Switzerland to improve its enforcement with regard to the bribery of foreign public officials. Furthermore, the OECD Working Group regrets that the AMLA does not apply to lawyers, notaries, accountants and auditors. This last point is to be remedied with the project on the transparency of legal entities, which is currently undergoing consultation. Specific amendments to the Lawyers Act and the AMLA are envisaged, whereby lawyers, fiduciaries and other advisers would also have to comply to a certain extent with the due diligence obligations based on the AMLA, even if they do not engage in classic financial intermediary activities.

The OECD Working Group made various recommendations. In February 2021, the OECD Working Group published its Phase 4 two-year follow-up report on Switzerland, concluding that Switzerland has:

- fully implemented 11 recommendations;
- partially implemented 18 recommendations; and
- not implemented 17 recommendations.

The OECD Working Group was very pleased with some of the progress made but regrets that Switzerland has not deployed sufficient efforts to implement the recommendations of Phase 4 – in particular, those that also concern whistleblower protection.

In the meantime, Switzerland has adopted an Anti-Corruption Strategy for 2021–2024, structured around the three pillars "prevention", "detection and law enforcement", and "international cooperation". The anti-corruption activities are co-ordinated by the Interdepartmental Working Group (IDWG) on Combating Corruption.

Based on the OECD standards for quality and effectiveness of the strategic framework for combating corruption, Switzerland meets 53% of the criteria for regulation and 17% for implementation, compared to the OECD average of 45% and 36% respectively.

There is room for improvement in the following areas.

- Switzerland does not fulfil any criteria on regulations and practice to mitigate corruption risks related to lobbying.
- Related to conflict of interest, Switzerland fulfils 33% of criteria on regulation and does not fulfil any criteria on implementation, compared to the OECD average of 76% and 40%, respectively.
- Switzerland fulfils 60% of criteria on regulation and 29% of criteria on implementation, compared to the OECD average of 73% and 58%, respectively regarding political finance.

9.2 Likely Changes to the Applicable Legislation of the Enforcement Body

The Federal Assembly agreed in spring 2021 on new rules aiming to establish transparency regulations for parties' election and voting committees.

Individual donations to parties and committees must be disclosed if they exceed CHF15,000. Campaign funds must also be declared if the voting or election campaign has a budget of more than CHF50,000. In addition, monetary donations from abroad and anonymous donations are prohibited. These new rules have been applied for the first time during the National Council elections in autumn 2023.

In 2020, the Federal Council adopted a strategy against corruption for the period 2021–24. The strategy is aimed primarily at the federal administration and defines objectives and measures in the areas of prevention, prosecution and international co-operation. It was developed by the Interdepartmental Working Group on Combating Corruption, a federal administration The working group co-ordinates the fight against corruption in Switzerland with the cantons, civil society and the private sector. The strategy will be reviewed and updated in 2024.

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