

Legal 500

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Switzerland

Bribery & Corruption

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This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in Switzerland.

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Switzerland: Bribery & Corruption

1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

The legal framework prohibiting bribery and corruption is primarily found in the Swiss Criminal Code (SCC).

Moreover, the Federal Act on Medicinal Products and Medical Devices provides for specific criminal provisions on bribery and corruption in the medical sector. Also, there are further provisions in the Swiss Military Criminal Code which are not addressed in this guide.

Bribery is also qualified as an unfair competitive practice. Accordingly, the Federal Act on Unfair Competition prohibits active and passive bribery in the private sector as unfair conduct, exposing offenders to civil liability.

Additionally, administrative law provides for rules relating to hospitality, travel and entertainment expenses of public officials as well as measures against bribery and corruption in the public procurement sector.

Finally, larger companies are obligated to report on their measures taken for combatting corruption (reporting duties in non-financial matters).

2. Which authorities have jurisdiction to investigate and prosecute bribery and corruption in your jurisdiction?

In principle, the competent cantonal public prosecutor's offices prosecute all offences under federal law, including allegations on bribery and corruption.

However, in certain cases the Office of the Attorney General of Switzerland (OAG) will investigate and prosecute allegations of bribery and corruption, especially (i) if committed by employees or public officials of the federal state or against the federal state, (ii) if the offences have to substantial extent been committed abroad (iii) or in two or more cantons with no single canton being the clear focus of the criminal activity.

Finally, prosecutions regarding bribery and corruption under the Federal Act on Medicinal Products and Medical Devices are conducted at the federal level by the Swiss Agency for Therapeutic Products and the Federal Office of Public Health and at the cantonal level by the

competent cantonal law enforcement authorities.

3. How is 'bribery' or 'corruption' (or any equivalent) defined?

Swiss law distinguishes between active and passive bribery, on the one hand, and granting and accepting an undue advantage, on the other hand.

Bribery is the act by which the bribed individual (a public official or a private individual) or a third party is offered, promised or given an undue advantage in order to cause the bribed individual to commit or omit a specific act in connection with his or her official activity which is contrary to his or her duty or dependent on his or her discretion.

The bribing of a public official or private individual is called active bribery, while receiving an undue advantage in order to carry out or omit a specific act is called passive bribery.

The granting or acceptance of an undue advantage is defined as an act by which a public official is promised or given an undue advantage for himself or herself or for a third party in view of the future discharge of official duties. Contrary to bribery, the undue advantage is not given for a specific act to be carried out or omitted.

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Is a distinction made between a public official and a foreign public official? Are there different definitions for bribery of a public official and bribery of a private person?

Swiss law distinguishes between the bribery of Swiss public officials, foreign public officials and private persons.

In the SCC, public officials are defined as (i) the officials and employees of a public administrative authority or of an authority for the administration of justice; or (ii) individuals who hold office temporarily or are temporarily employed by a public administrative authority or by an authority for the administration of justice or who carry

out official functions temporarily. In addition to this general definition, the provisions of the SCC on bribery and corruption define public officials also as members of a judicial or other authority, officially-appointed experts, translators or interpreters, arbitrators, or members of the armed forces. Therefore, the term of public official is broad. The decisive factor is whether the activities serve the fulfilment of a public task.

Foreign public officials differ from Swiss public officials in that they act for a foreign state or an international organisation.

Both bribery of public officials and of private persons cover the same incriminated conduct as defined in no 3 above. On the contrary, the offence of granting or accepting an undue advantage as described in no 3 above is a criminal act only when a Swiss public official is involved or when the medical sector is concerned in connection with persons who prescribe, dispense, use or purchase for this purpose prescription medicinal products.

5. Who may be held liable for bribery? Only individuals, or also corporate entities?

In principle, only individuals can be held criminally liable for active or passive bribery or for granting or accepting an undue advantage. However, a company can be held criminally liable for failing to implement an adequate organisational framework to prevent bribery or the granting of an undue advantage.

6. What are the civil consequences of bribery and corruption offences in your jurisdiction?

Injured parties may claim damages against the offender based on tort or contract law. They may also claim the delivery of undue profits generated by bribes. Furthermore, under the Federal Act on Unfair Competition, the injured parties may seek additional types of relief. For instance, they may request courts to redress existing damages or that the judgment be given to third parties or be published.

7. What are the criminal consequences of bribery and corruption offences in your jurisdiction?

Active and passive bribery of Swiss or foreign officials are punishable with a custodial sentence of up to five years or a monetary penalty of up to CHF 540,000. Perpetrators of active and passive bribery in the private sector face a

custodial sentence of three years or a monetary penalty of up to CHF 540,000. The granting of an undue advantage to or the acceptance of such an advantage by a Swiss public official, as well as the granting or acceptance of an undue advantage in the medical sector, is punishable by a custodial sentence of up to three years or a monetary penalty of up to CHF 540,000. Companies may face a fine of up to CHF 5 million.

Furthermore, any advantage acquired through bribery and corruption is subject to forfeiture. The seized assets may be passed to the injured party to compensate their incurred damage. In the public procurement sector, corruption may lead to the exclusion of a tenderer from an award procedure or the revocation of a contract.

8. Does the law place any restrictions on hospitality, travel and/or entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials? Are there specific monetary limits for such expenses?

The SCC stipulates that advantages permitted under public employment law or contractually approved by a third party are not undue advantages. While the SCC does not set specific limits on courtesy gifts, for the public sector such limitations are to be found in administrative law. The legitimate amount for courtesy gifts varies in most cantons between CHF 100 and 200. For employees of the federal government, the law limits courtesy gifts to the amount of CHF 200. For employees working in sensitive areas, the acceptance of courtesy gifts may be completely prohibited.

In the medical sector, the law provides for distinct criteria defining which advantages are lawful. For instance, advantages which are of relevance to medical or pharmaceutical practice and whose value does not exceed CHF 300 are not undue.

Regarding foreign public officials, there are no specific regulations. However, in case of the bribery of a foreign public official, the regulations in the relevant foreign state are seen as decisive.

9. Are political contributions regulated? If so, please provide details.

Since October 2022, political parties represented in the Federal Parliament are obliged to disclose their funding. In particular, all monetary and non-monetary donations to the political parties represented in the Federal

Parliament exceeding the value of CHF 15,000 per donor and year must be disclosed. The same rule is applicable to independent deputies. Furthermore, individuals, legal entities and partnerships that run a campaign related to an election to the Federal Parliament or a federal vote must disclose the funding thereof if they spend more than CHF 50,000. However, there is no restriction on the amount of political contributions. On the cantonal level, only a handful of Cantons (Geneva, Neuchâtel, Fribourg, Schwyz, and Ticino) have legislated on political contributions.

10. Are facilitation payments prohibited or regulated? If not, what is the general approach to such payments?

Facilitation payments, understood as small payments made to secure or expedite routine or necessary official acts to which the payer is entitled, are not specifically regulated under Swiss law. However, depending on the case they may be qualified as granting or accepting an undue advantage if a Swiss public official is involved or if the facilitation payment takes place in the health sector. In such cases, they are punishable by law.

11. Are there any defences available to the bribery and corruption offences in your jurisdiction?

Advantages are not deemed undue if they are either permitted under public employment law (public sector), contractually approved by the employer/principal (private sector), or of minor value in accordance with social custom. Furthermore, there are specific defences in the medical sector (see also no. 8 above).

Companies can furthermore demonstrate that they took all the reasonable organisational measures that are required in order to prevent bribery and corruption.

12. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery and corruption offences in your jurisdiction?

Yes, see no. 5 above and no. 13 below.

13. Has the government published any guidance advising how to comply with anti-bribery and corruption laws in your jurisdiction?

The State Secretariat for Economics Affairs (SECO)

published a guide for Swiss businesses on corruption in international business transactions in 2017. The guide describes what bribery and corruption mean under the SCC, presents short case studies and formulates recommendations. However, it does not give a detailed analysis on compliance issues related to corruption. Furthermore, SECO together with Transparency International published a guide on the management of whistle-blower cases in 2021.

Companies should be aware of these guides as Swiss law enforcement authorities take them into account – together with the guidance from the ICC or the OECD – when assessing if a company has applied all the reasonable organisational measures that are required in order to prevent bribery and corruption.

14. Are mechanisms such as Deferred Prosecution Agreements (DPAs) or Non-Prosecution Agreements (NPAs) available for bribery and corruption offences in your jurisdiction?

Switzerland does not have a procedure similar to DPAs under its current legal framework.

On the other hand, NPAs are possible, but only under strict conditions. In particular, the offender must have made reparation for the damage and admitted the offence, the interest in prosecution of the general public and of the persons harmed must be negligible and only offences for which a relatively lenient penalty is appropriate are eligible. Furthermore, in 2017 the OAG decided that it would in principle not accept NPA agreements regarding transnational companies any more due to the higher interest of the general public in prosecution of such cases.

In addition, the Swiss Criminal Procedure Code contains two further proceedings which allow to some extent agreements regarding the subject matter of the criminal proceedings and their legal consequences. Firstly, the public prosecutor may issue a summary penalty order if the offender has admitted the offence or if his or her responsibility has otherwise been satisfactorily established. The summary penalty order proceedings allow for a certain degree negotiations between the parties. It is, however, only applicable if a rather minor sanction is deemed sufficient. Secondly, accelerated proceedings require the offender to admit the charges and the civil claims. In this case, the public prosecutor and the accused can negotiate the indictment to some extent. If an agreement is found, the public prosecutor

files the negotiated indictment to the court. In the following court proceedings no evidence is taken.

15. Does the law in your jurisdiction provide protection to whistle-blowers? Do the authorities in your jurisdiction offer any incentives or rewards to whistle-blowers?

Under Swiss law, the legal framework for whistle-blowing has remained rudimentary. In the private sector, the rules regarding whistle-blowing are still mostly defined by case law. Accordingly, an employee must first attempt to report wrongdoings within the company. Only if this is unsuccessful or appears to be futile an external report to the competent supervisory or law enforcement authority is justified. A disclosure to the public is only permissible as a last resort and very risky due to the lack of a clear legal framework. In particular, whistle-blowers must be careful not to violate the banking secrecy or commercial secrecy. In addition, legitimate whistle-blowing does not protect from an unlawful termination of the employment contract. However, the employee may claim for compensation of up to six monthly salaries in case of an abusive termination.

The OECD has repeatedly recommended to set up an appropriate regulatory framework for whistle-blowing in the private sector. Yet, several attempts to pass legislation, the last in 2024, have been unsuccessful. Nevertheless, companies are obligated to implement effective whistle-blowing regulations, including whistle-blower protection, otherwise they may be held criminally liable for organizational deficiencies in case of bribery and corruption.

In the public sector, federal employees are obliged to report any crimes or offenses subject to ex officio prosecution. Federal employees who, in good faith, file a report, or who testify as witnesses, may not be disadvantaged in their professional position as a result. In addition, the federal government and many cantons have introduced whistle-blowing platforms where irregularities and wrongdoings in the public sector can anonymously be reported.

Lastly to the meagre protection of whistleblowers, it should be noted that Swiss law provides neither incentives nor rewards for whistle-blowing.

16. Does the law in your jurisdiction enable individual wrongdoers to reach agreement with

prosecutors to provide evidence/information to assist an investigation or prosecution, in return for e.g. immunity or a reduced sentence?

Under Swiss criminal law, there is, in principle, no leniency programme enabling an offender to obtain immunity or a lower sentence by providing information or evidence to the law enforcement agencies (crown witnesses). However, if an offender is part of a criminal or terrorist organisation, the court has the discretion to mitigate the penalty imposed if the offender makes an effort to foil the activities of the organisation.

Furthermore, as explained in no. 14 above, NPAs, the accelerated proceedings and the summary penalty proceedings require the admission of wrongdoings and, hence, to some extent the offender's cooperation in the investigation. In return, the offender will, in case of a NPA, not be convicted, or may be sentenced to a more lenient sanction in the accelerated proceedings or the summary penalty proceedings. Moreover, cooperation with the law enforcement agencies may be in all proceedings considered as genuine remorse which may lead to a reduction of the sentence.

17. How common are government authority investigations into allegations of bribery? How effective are they in leading to prosecutions of individuals and corporates?

Bribery is considered a rather minor issue in Switzerland compared with other offences such as fraud or embezzlement. However, the reality is more complex. For instance, there have been some important procedures against individuals and companies regarding bribery in the last few years. Most of them had an international context, such as proceedings related to FIFA, Gunvor SA, the Petrobras – Odebrecht affair, SICPA SA, Glencore International AG or TRAFIGURA BEHEER BV.

Nevertheless, the prosecution level is still considered to be rather low. According to a study of the University of Applied Sciences of the Canton of Grisons and Transparency International Switzerland in 2024, from the 539 surveyed Swiss companies operating abroad 52 percent have been confronted with demands for informal payments in other countries. Of the affected companies, 63 percent complied with such demands. According to Transparency International, such surveys show that still too few cases are prosecuted. It is therefore quite possible that the law enforcement authorities are not as effective as they need to be in combating corruption.

18. What are the recent and emerging trends in investigations and enforcement in your jurisdiction?

As Switzerland's economy is export-orientated, cases of bribery and corruption often have an international character. Also, due to Switzerland's important financial sector procedures regarding bribery and corruption are frequently related to international money laundering. Therefore, international mutual legal assistance and cooperation with law enforcement authorities of other countries are becoming growingly important.

Furthermore, the demand for more efficient procedural mechanisms such as the DPA will increase so that proceedings can be adjudicated more efficiently. However, such mechanisms must not come at the expense of the rights of the parties or the rule of law.

19. Is there a process of judicial review for challenging government authority action and decisions? If so, please describe the key features of this process and remedy.

There are different possible remedies to challenge decisions:

Firstly, parties may file a complaint against procedural decisions, such as acts of the police and the public prosecutor, procedural acts of courts of first instance, and decisions of the compulsory measures court to a cantonal lower appeals chamber and, in case of federal jurisdiction, to the Lower Appeals Chamber of the Federal Criminal Court.

Secondly, judgements of courts of first instance that conclude the proceedings in their entirety or in part may be challenged by an appeal to the cantonal appeals chamber and, in case of federal jurisdiction, to the Higher Appeals Chamber of the Federal Criminal Court.

Thirdly, in some circumstances, parties may seek the review of a legally binding final judgment or summary penalty order, if, in particular, new facts that arose before the decision or new evidence have come to light.

Finally, parties may file an appeal with the Federal Supreme Court as last instance. However, the parties may only invoke an infringement of the law, but in principle not a wrongful establishment of the facts. Furthermore, in general an appeal to the Federal Supreme Court is only admissible against judgements that conclude the proceedings in their entirety or in part.

20. Have there been any significant developments or reforms in this area in your jurisdiction over the past 12 months?

No.

21. Are there any planned or potential developments or reforms of bribery and anti-corruption laws in your jurisdiction?

The Federal Council launched a consultation process in 2024 on stricter provisions regarding corporate reporting obligations. These reporting obligations also cover the reporting on combatting corruption. According to the predraft of the Federal Council, more companies will be required to report – analogous to the regulations in EU member states – on the risks associated with their business activities in the areas of environment, human rights, and corruption, as well as on measures taken to address these risks. However, it is currently unclear if and when these stricter provisions will enter into force.

Regarding money laundering, which is often linked to bribery, the Federal Parliament is discussing a legislative proposal to strengthen the anti-money laundering framework. The project includes the introduction of a transparency register, in which companies and other legal entities will have to disclose information on their beneficial owners, and the application of the anti-money laundering due diligence rules to high risk activities in the legal profession. The new law is expected to enter into force no sooner than 2026.

22. To which international anti-corruption conventions is your country party?

Switzerland is party to several anti-corruption conventions. The most important are (in chronological order):

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997); in force for Switzerland since 30 July 2000;
- Council of Europe's Criminal Law Convention on Corruption (1999); in force for Switzerland since 1 July 2006. Hence, Switzerland is also a member of the Group of States against Corruption (GRECO);
- UN Convention Against Transnational Organized Crime (2000); in force for Switzerland since 26 November 2006;
- UN Convention Against Corruption (2003); in force for Switzerland since 24 October 2009.

23. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection. Does it cover internal investigations carried out by in-house counsel?

Under Swiss law, legal privilege covers all activities considered as typical professional tasks of a lawyer. Included are in particular legal advice and drafting of legal documents, investigation and assessment of facts in connection with already existing and potential legal disputes, as well as selection and analysis of material in connection with a legal assessment.

Accordingly, if a lawyer-led investigation involves tasks considered typical professional activities such as described above, the products of such tasks are protected by legal privilege.

However, it is still unclear whether complex internal investigations (particularly those involving extensive interviews with a company's employees) that may be limited to simply establishing the facts can generally be qualified as typical professional activities of a lawyer and therefore be protected by legal privilege. Rather, the assessment must be made on a case-by-case basis.

Furthermore, there is no extension of the legal privilege to documents that were voluntarily and deliberately (which means without coercive measures) provided to a third party. As these documents have left the sphere of the attorney and its client, the third party must produce them to the law enforcement authorities if requested. Also, legal privilege does not preclude a third party's obligation to testify.

Finally, legal privilege does not cover internal investigations carried out by in-house counsels. Hence, law enforcement authorities may request that documents produced in an internal investigation led by in-house counsels be handed over. Only in civil proceedings, legal entities registered in the Commercial Register whose legal director is a qualified lawyer (i.e. who passed the bar exam) may refuse to produce documents covered by legal privilege as described above. The same applies to the employees of its legal department.

24. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an

international scale?

As Switzerland's economy is export-orientated, the Swiss government puts a strong focus on combatting foreign bribery and corruption. For instance, the Swiss Federal Council adopted an Anti-Corruption Strategy for the period 2021-2024. Currently, a new Anti-Corruption Strategy for the years 2025-2028 is being deliberated in the Federal Parliament.

However, the OECD and GRECO have been voicing criticism towards Switzerland, due to the continued existence of identified shortcomings in the Swiss anti-corruption framework and the lack of effective efforts to address them. Namely, Switzerland has been criticized for not implementing a legal framework regarding whistle-blowing (see no. 15 above) or for its relatively low sanctions regarding the criminal liability of companies.

25. Generally, how serious are corporate organisations in your country about preventing bribery and corruption?

Most Swiss corporate organisations take their obligations to prevent bribery and corruption seriously, as a lack of organisation in this regard may lead to their criminal liability. Also, many companies have to apply international compliance standards in order to maintain access to foreign markets. However, as mentioned in no. 17 above, a study of the University of Applied Sciences of the Canton of Grisons and Transparency International Switzerland in 2024 shows that a large number of companies are confronted with demands for informal payments in other countries and that many of them appear to comply with these demands. Hence, while Swiss corporate organisation have made significant efforts to prevent bribery and corruption, evidence suggests that the measures taken are not uniformly effective.

26. What are the biggest challenges businesses face when investigating bribery and corruption issues?

The first challenge businesses face is to become aware of a potential case of corruption early enough and to gather the relevant facts efficiently. Secondly, companies face the risk that an internal investigation may reveal not only the criminal liability of individual employees but also the criminal liability of the company itself, if it is found to have failed to take all reasonable organisational measures to prevent corruption. Thirdly, as a result of the potential risk to be itself an accused, a company will need

to be clear about the strategy it wants to follow, especially if it wants to mandate external lawyers to conduct an investigation whose results are in principle covered by legal privilege and whether and to what extent it wants to cooperate with the law enforcement authorities.

27. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction? How have they sought to tackle these challenges? What do you consider will be their areas of focus/priority in the next 18 months?

Since corruption cases often have an international dimension, Swiss law enforcement authorities have to rely on cooperation with authorities in other countries to conduct the investigations. As a result, proceedings can extend over a considerable period of time and need substantial coordination. Also, they might not get access to relevant evidence if mutual legal assistance is denied or not carried out. Moreover, offences may become time-barred before the investigation can lead to significant results. Regarding bribery and corruption, one of the priorities of the law enforcement authorities in the next 18 months will therefore remain the improvement of international cooperation.

28. How have authorities in your jurisdiction sought to address the challenges presented by the significant increase of electronic data in either investigations or prosecutions into bribery and corruption offences?

The increase in the amount of electronic data seized by law enforcement authorities has complicated and significantly lengthened proceedings. Therefore, with effect as of 1 January 2024, the Federal Parliament amended the Criminal Procedure Code and especially its requirements of the sealing of documents and the procedure regarding the removal of seals. The legislative amendment has had an adverse impact on the situation of the accused as the reasons to seek the sealing of

documents were restricted. In addition, the right to respond to the prosecution's request for the lifting of seals was made more difficult. However, these stricter procedural provisions to the detriment of the accused are unlikely to significantly accelerate the unsealing procedure. For the issue lies in the limited resources of the competent courts which have to decide on the prosecution's request for the lifting of seals.

29. What do you consider will be the most significant bribery and corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

Many Swiss businesses have to comply with both domestic and foreign regulatory frameworks. The most significant challenge for businesses remains therefore the implementation of the applicable national and international laws and the creation or maintenance of an effective internal organisation to prevent corruption. Furthermore, the global introduction of higher tariffs might increase the risk of bribery and corruption for international companies.

30. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

In principle, the legal framework for preventing bribery and corruption is satisfactory. However, one reform proposal by the OECD that should be implemented is the introduction of a legal framework for whistle-blowers.

Furthermore, access to case law regarding corporate liability should be improved. Numerous decisions on this subject are passed by the prosecution offices through a summary penalty order or – in case of a NPA – through a ruling abandoning the proceedings. These decisions are usually not published, which leads to a lack of predictability in the application of the law.

Finally, to improve efficiency, the establishment of specialised inter-cantonal public prosecutor's offices that handle economic crime and corruption should also be considered.

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