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Switzerland

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Introduction

In the 2021 "Corruption Perception Index" of Transparency International, Switzerland ranked seventh out of 180 countries. Nevertheless, even though Switzerland is perceived to be one of the least corrupt countries in the world, it is still affected by corruption. Switzerland's unique political system, which is governed by a militia structure and contains a lot of small decision-making bodies, is vulnerable to nepotism and "trading in influence". A prominent recent example is the resignation of the then Attorney General of Switzerland in mid-2020 after it became known that several unrecorded meetings with the President of the World Football Federation ("FIFA") had taken place during an ongoing investigation. The Federal Administrative Court sanctioned the Attorney General for several breaches of his duty as a public official.

Switzerland is also a preferred base for non-governmental organisations. In particular, about 65 sports organisations have their headquarters in Switzerland, e.g. the International Olympic Committee ("IOC"), FIFA, the Union of European Football Associations ("UEFA"), the International Ski Federation ("FIS") and the International Cycling Union ("UCI"). In connection with awarding big sporting events such as the FIFA World Cup, these organisations are regularly faced with allegations of corruption (see below).

Above all, however, the biggest challenge in the fight against corruption are enterprises based in Switzerland that do business abroad where they are confronted with corruption. The relatively small size of Switzerland, and the accordingly restricted opportunities for doing business within its borders, impel a lot of small- and medium-sized enterprises ("SMEs") to operate abroad. According to a study conducted a few years ago, "40% of Swiss SMEs operating abroad are confronted with bribery of public officials".

But this problem is not limited to SMEs. The attractive Swiss tax regime, as well as its geographical position in the middle of Europe, have encouraged international companies to relocate their headquarters to Switzerland. When those companies operate in foreign countries, they face the same corruption issues as their smaller counterparts (see below the section entitled "Overview of cross-border issues").

These challenges are dealt with by a quite comprehensive anti-corruption law set out in the Swiss Criminal Code ("SCC"). The SCC, in turn, is subject to steady development driven by three multilateral instruments in the fight against corruption of which Switzerland is a part: the Organisation for Economic Co-operation and Development ("OECD") Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the Council of Europe's Criminal Law Convention on Corruption; and the United Nations ("UN") Convention against Corruption.

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These instruments have already led to several substantial reforms of the SCC. In 2000, provisions regarding the active bribery of foreign public officials, and regarding the granting and acceptance of an undue advantage, were introduced. In 2003, corporate criminal liability for bribery offences was introduced and, in 2006, the prohibition of bribery was extended to passive bribery of foreign public officials as well as to passive bribery in the private sector (see below the section entitled "Brief overview of the law and enforcement regime"). Since 1 July 2016, bribery in the private sector (which was previously exclusively regulated in the Federal Act against Unfair Competition and only pursued upon complaint) has also been governed by the SCC and – apart from minor cases – prosecuted *ex officio*.

Brief overview of the law and enforcement regime

Swiss law sanctions both so-called active and passive bribery. In the case of public officials, *active bribery* is an act by which an official is offered, promised, or granted any undue advantage, for his own benefit or for the benefit of any third party, for the commission or omission of an act in relation to his official duties that is contrary to his duties or depends on the exercise of his discretionary powers (Article 322ter SCC). The SCC defines a public official as a "*member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces*" (Article 322ter SCC), including private individuals who carry out a public function (Article 322^{decies} (2) SCC). Persons in this category are "foreign public officials" when they act for a foreign state or an international organisation (Article $322^{septies}$ SCC). Public officials include employees of state-owned or controlled legal entities, if and to the extent they pursue an official activity. Active bribery in the private sector is described similarly as an act by which an employer, company member, agent or any other auxiliary to a third party in the private sector is offered, promised, or granted any undue advantage for that person or a third party for the commission or omission of an act in relation to his official duties that is contrary to his duties or depends on the exercise of his discretionary powers (Article 322^{octies} SCC; Article 4a(1)(a) UCA).

Passive bribery occurs when a person solicits, elicits a promise of, or accepts an undue advantage, for his own benefit or for the benefit of a third person, for the commission or omission of an act that is contrary to his duties or depends on the exercise of his discretionary powers (Article 322^{quater} and Article 322^{novies} SCC; Article 4a(1)(b) UCA).

In a narrow sense, bribery is defined as an act whereby a person offers, promises or gives a private individual or a public official an undue advantage in exchange for a specific act. In a broader sense, bribery also includes any acts whereby a person offers, promises or gives a person an undue advantage in exchange for a future behaviour which is not directly linked to a specific act (Article $322^{quinquies}$ to 322^{sexies} SCC) as well as payments made with the intention to speed up the execution of administrative acts to which the payer is legally entitled ("facilitation payments"). The giving and accepting of undue advantages according to Article $322^{quinquies}$ to 322^{sexies} SCC are only punishable when a Swiss public official is concerned. In contrast, facilitation payments may be punishable as bribery (and thus irrespective of whether a Swiss or a foreign official is concerned) if the payment influences the discretion of the public official.

In all cases of corruption, advantages permitted under public employment law or contractually approved by a third party, as well as negligible advantages that are common social practice, are not undue (Article 322^{decies} (1) SCC). This would typically include small Christmas or thank-you gifts, as long as such gifts are not given with the intention of influencing a public official's performance.

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Individuals found guilty of bribing (either Swiss or foreign) public officials are sentenced to prison for a term of up to five years or a monetary penalty of up to CHF 540,000 (Article 322ter and Article 322^{septies} SCC). When determining the amount of the monetary penalty, the court takes into account the culpability of the offender and his or her personal and financial circumstances at the time of conviction (Article 34(1) and (2) SCC). Bribery in the private sector results in imprisonment for up to three years or a monetary penalty (Article 322^{octies} (1) and Article 322^{novies} (1) SCC; Article 23 UCA). In minor cases in the private sector, the offence is only prosecuted upon complaint (Article 322^{octies} (2) and Article 322^{novies} (2) SCC).

Depending on the circumstances, penalties may also include prohibition from practising a certain profession (Article 67 SCC), or expulsion from Switzerland for foreigners as an administrative sanction (Article 62(1)(b) and Article 63(1)(a) of the Federal Act on Foreign Nationals). Further, the court can order the forfeiture of assets deriving from corruption or intended to be used for corruption (Article 70 SCC). Finally, Swiss criminal procedure law provides for the possibility that the person suffering harm from corruption may bring civil claims as a private claimant in the criminal proceedings.

The day that bribery of private individuals was included in the SCC, the Anti-Money Laundering Act was also tightened. Senior officials of international organisations and senior civil servants of international sports bodies in Switzerland now qualify as "politically exposed persons" ("PEPs"), forcing Swiss banks to manage legal risks (e.g. bribery) associated with this group of individuals much more closely. In March 2021, the Federal Parliament passed yet another amendment to the Anti-Money Laundering Act. Among the envisaged measures are, *inter alia*, certain new obligations for persons providing services in connection with companies or trusts, an expressly stated duty to verify the identity of the beneficial owner and a general obligation to update customer data. Further adjustments concern the reporting system for the Money Laundering Reporting Office Switzerland ("MROS") and the Central Office for Precious Metals Control. These amendments are expected to enter into force on 1 January 2023.

Overview of enforcement activity and policy during the last year

In Switzerland, the number of reported corruption cases is rather limited. Statistics show a total of around 20 convictions on average per year, the majority of which are relatively minor domestic cases. In one of the largest corruption cases in the history of the Swiss federal administration, the Federal Criminal Court handed down a verdict in September 2021. An individual who had worked for almost 20 years as a civil servant and mid-level manager at the State Secretariat for Economic Affairs ("SECO") was sentenced to a prison term of four years and four months. Three co-defendants were also convicted of multiple counts of bribery, in two cases to prison sentences of 20 and 22 months, respectively. The case had come to light in 2014. It resulted in a 400-page indictment by the Attorney General of Switzerland ("OAG"), primarily based on active and passive bribery. The indictment included an impressive list of undue benefits with a total value of around CHF 1.7 million. These benefits came from IT entrepreneurs who by these means successfully secured orders from SECO over a period of several years. The OAG identified around 380 of such orders with a total value of almost CHF 100 million.

Cases dealing with transnational corruption (other than in the context of a foreign request for international mutual assistance) are still relatively rare. Nevertheless, there has been a considerable rise in ongoing investigations in recent years, and there are some investigations and decisions that are noteworthy and might be regarded as a sign that foreign and transnational corruption are increasingly under scrutiny by Swiss enforcement authorities.

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A first leading case in this regard is the "Alstom" decision (see below the section entitled "Overview of cross-border issues"). Another interesting case is the "Ben Aissa" case relating to bribery payments to Saadi Gaddafi, the son of the former Libyan dictator Muammar Gaddafi.

In October 2014, Mr. Riadh Ben Aissa, the former head of global construction at the Canadian engineering and construction firm SNC-Lavalin, was sentenced to three years in prison on charges of bribery of a foreign public official (Article 322^{septies} SCC), criminal mismanagement (Article 158 SCC) and money laundering (Article 305bis SCC). The Swiss Federal Criminal Court held that Mr. Ben Aissa paid bribes to Saadi Gaddafi in order to secure a construction project and other benefits for SNC-Lavalin.

A particularly interesting aspect of this case is that the Federal Criminal Court characterised Saadi Gaddafi as a *de facto* public official and applied Article 322^{septies} SCC by stating that, even though Saadi Gaddafi did not hold any office or official function in the relevant field, he was a member of the ruling family and had the *de facto* power to grant SNC-Lavalin the requested benefits. This decision is of fundamental importance with regard to dictatorial regimes, where *de facto* power is often not congruent with official power. The unlawful payments were made from bank accounts in Switzerland. This was the (only) nexus to Switzerland, but was sufficient to give rise to the OAG's investigation (see below the section entitled "Overview of cross-border issues").

In August 2015, the OAG instigated an investigation in the context of the financial scandal to which the Malaysian sovereign fund 1MDB is supposed to have fallen victim. It was opened on the suspicion of fraud, bribery and money laundering and is directed against Malaysian officials and officials of the United Arab Emirates, who each held several bank accounts in Switzerland to which funds from a criminal origin allegedly flowed. The investigation is still ongoing.

In December 2015, banknote press manufacturer KBA-NotaSys reported itself to the OAG after it uncovered evidence that bribery had taken place in Nigeria. This was the first case of self-reporting with regard to corruption and resulted in a settlement with a symbolic fine of CHF 1 and the disgorgement of profits of CHF 35 million.

In May 2016, the OAG opened criminal proceedings against BSI SA bank and in October 2016 against Falcon Private Bank Ltd for corporate criminal liability within the meaning of Article 102(2) SCC. The OAG decided to open proceedings, *inter alia*, because of information disclosed in the criminal proceedings in the 1MDB case. The OAG suspects that both banks failed to prevent, *inter alia*, bribery by their respective employees and thus violated Article 102(2) SCC. While the investigation against BSI SA is still ongoing, Falcon Private Bank Ltd, which is now in liquidation, has – as the first Swiss bank ever – been convicted by the Federal Criminal Court for violation of Article 102 SCC (for more information on corporate liability and recent cases, see below the section entitled Corporate liability for bribery and corruption offences").

Concerning the Petrobras–Odebrecht affair, the OAG concluded its investigation and filed charges with the Federal Criminal Court in October 2019 against a Swiss-Brazilian dual citizen who was involved in the case. He is accused of bribery of foreign public officials and money laundering. The case is currently pending before the Federal Criminal Court.

In the proceedings in connection with the German Football Association ("DFB") on suspicion of criminal mismanagement (Article 158 SCC) and money laundering against four officials, the OAG filed an indictment with the Federal Criminal Court at the beginning of August 2019 after around three-and-a-half years of investigations. The Federal Criminal

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Court opened the trial in March 2020. However, in the wake of the COVID-19 pandemic, the trial had to be interrupted – which resulted in the proceedings having become time-barred in April 2020.

Another noteworthy aspect is that since June 2017, Swiss law enforcement has had a new instrument to help combat corruption. The web-based platform http://www.whistleblowing.admin.ch enables anyone with information on possible acts of corruption in the Federal Administration and related organisations to report their suspicions anonymously to the Swiss Federal Audit Office ("SFAO").

Law and policy relating to issues such as facilitation payments and hospitality

The giving and accepting of undue advantages are currently only punishable when a Swiss public official is concerned (see above the section entitled "Brief overview of the law and enforcement regime"). Over the last decade, Swiss courts have sentenced individuals for giving or accepting undue advantages in approximately 25 cases altogether. In September 2015, the Federal Criminal Court held that a public official who accepts 40 lunch invitations from long-standing suppliers is culpable for accepting undue advantages.

With regard to hospitality, the SCC expressly states that advantages permitted under public employment law, or contractually approved by a third party, as well as negligible advantages that are common social practice, are not undue (see above the section entitled "Brief overview of the law and enforcement regime"). While there is no statutory definition of what negligible means, one would assume that gifts of up to around CHF 150 are common social practice.

In general, however, there has been a growing public awareness of corruption and of hospitality, in particular. As an example, Twint, a subsidiary of various Swiss banks, has been criticised publicly because it gave journalists at a press conference credit of CHF 100 to test a newly launched payment application for smartphones. In response to increased public pressure, the signatory companies of the Pharma Cooperation Code have committed to publicly disclose each year on their websites the pecuniary benefits they have granted in the previous year to professionals (primarily physicians and pharmacists) as well as healthcare organisations (in particular, hospitals and research institutes). Recently, the focus of attention in the context of hospitality has been on a cantonal politician who is suspected of having accepted undue advantages for himself and his family after having travelled to Abu Dhabi with his family as a public official at somebody else's expense, and having also received payments for his political campaign and birthday party. After the affair became public, he resigned from office. In February 2021, the politician and three other persons involved in this case were sentenced by the first instance to a suspended monetary penalty for accepting undue advantages (Article 322^{sexies} SCC). However, subsequent appeal proceedings resulted in an acquittal of the accused politician in January 2022. The judges of the second instance also held that the politician's trip constituted an undue advantage as its value of CHF 5,000, paid for by Crown Prince Zayed Al Nahyan, went far beyond what a cantonal politician is allowed to accept as a gift. However, the court believed the politician's statements that the royal family did not want to buy his goodwill, but that he and his family had been treated the same as other guests.

Key issues relating to investigation, decision-making and enforcement procedures

Bribery is subject to federal jurisdiction insofar as the offences are committed by a member of an authority or an employee of the Swiss Confederation or against the Swiss Confederation

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(Article 23(1)(j) Swiss Criminal Procedure Code ("CPC")), or if the offences have to a substantial extent been committed abroad, or in two or more cantons with no single canton being the clear focus of the criminal activity (Article 24(1) CPC).

Criminal investigations regarding bribery cases subject to federal jurisdiction are conducted by the OAG. All other investigations into bribery cases are handled by the competent cantonal law enforcement authorities; generally, the cantonal public prosecutor's office. According to Article 29 of the Council of Europe Corruption Treaty, the Federal Office of Justice ("FOJ") is the central authority in matters of international cooperation, e.g. in questions of mutual legal assistance and extradition.

Swiss anti-corruption law does not provide for credit or leniency during an investigation. However, cooperative behaviour of the accused person or entity may be taken into account when determining the sentence.

Further, there is no general mechanism to resolve corruption cases through plea agreements, settlement agreements or similar means without trial. However, in all cases of corruption (bribery as well as the giving or accepting of advantages according to Articles 322ter through 322novies SCC), criminal prosecution, judicial proceedings or the imposition of a penalty can be waived in *de minimis* cases (Article 52 SCC). Further, the competent authority shall refrain from prosecuting or punishing an offender if the latter "*has made reparation for the loss, damage or injury or made every reasonable effort to right the wrong that he has caused*" and the interests of the general public and of the persons harmed in prosecution are negligible (Article 53 SCC). In addition, under certain circumstances, there is no need for fully fledged criminal proceedings, and they may be substituted by accelerated or summary judgment proceedings.

Overview of cross-border issues

According to Article 3 SCC, anyone who *commits* an offence in Switzerland is subject to Swiss criminal law. Article 8 SCC further specifies that an 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. Even attempts to commit or omit are sufficient. However, mere preparatory acts are not deemed sufficient to trigger jurisdiction in Switzerland. As an example, the opening of a bank account in Switzerland with the intention to use it to pay or to receive bribes in the future does not yet give jurisdiction to Swiss authorities.

The place of commission is broadly construed. For instance, as the Ben Aissa case mentioned above confirmed, it may suffice to establish Swiss jurisdiction if the only connection to Switzerland is the existence of a Swiss bank account from which − or to which − the bribe was paid, even though all persons involved were acting outside Switzerland, and all negotiations took place outside Switzerland.

Of particular interest are cross-border issues in the context of corporate criminal liability. In these cases, Swiss authorities may claim a wide jurisdiction.

A corporation can be held liable under the SCC if specific prerequisites are met (see below the section entitled "Corporate liability for bribery and corruption offences"). According to Article 102(2) SCC, a company is penalised irrespective of the criminal liability of any natural persons and with a fine of up to CHF 5 million if:

- the offence committed is, *inter alia*, an active bribery offence; and
- the company is responsible for failing to take all the reasonable organisational measures that were required in order to prevent such an offence.

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In cross-border cases, Swiss corporate criminal liability is deemed to be applicable not only when the bribery offence was committed in Switzerland, but also if the only place where the company failed to take all the reasonable organisational measures is within Switzerland. This may be the case if the lack of organisation occurred (at least partially) in Switzerland. It is not necessary that the company is headquartered in Switzerland. Instead, it may be sufficient if only a branch of an international company group is located in Switzerland.

Corporate criminal liability in combination with the offence of bribery of a foreign official may lead to a very broad jurisdiction of Swiss authorities and even allow for extraterritorial jurisdiction, with the only connection to Switzerland being the lack of organisation.

Such circumstances were at the core of the case of the French-based Alstom Group ("Alstom"). Alstom has its headquarters in France. In order to receive construction contracts in foreign countries, in particular in Asia and Africa, Alstom hired so-called "consultants". These consultants acted as intermediaries and were responsible for building up relationships with foreign governments and companies. For their services, the consultants received a "success fee" that was calculated as a percentage of the mediated contracts.

Alstom was aware of the fact that consultants may be exposed to corruption and, therefore, implemented specific anti-corruption measures. In this context, Alstom Network Switzerland Ltd ("Alstom Switzerland"), which has its registered office in Switzerland, was established. Its purpose was to act as an intra-group compliance service provider, i.e. to ensure that the consultants conformed to the internal compliance rules, and to transfer payments to these consultants via Alstom Switzerland's Swiss bank accounts. However, these anti-corruption measures did not work properly. In at least three cases, the consultants used part of their salaries, which were paid by Alstom Switzerland, to bribe foreign officials to win contracts and, in some cases, to avoid claims against Alstom for breaching contracts.

In November 2011, after three years of investigation, Alstom Switzerland was held criminally liable as a company and was convicted for bribery of foreign officials, fined CHF 2.5 million, and a compensatory claim of CHF 36.4 million was imposed. According to the relevant decision, Alstom Switzerland's overall anti-corruption measures were sufficient in theory. However, these measures were not well implemented or enforced in practice.

Even though only the Swiss-based company Alstom Switzerland was fined, the authority also conducted its investigation against Alstom in France, irrespective of the fact that the parent company has its registered office outside of Switzerland and all bribes were paid outside of Switzerland. The Swiss authority claimed extraterritorial jurisdiction, as the lack of organisational measures at least partially occurred in Switzerland.

Criminal liability of companies and the extraterritorial jurisdiction as applied in Switzerland are comparable to the respective provisions in the UK. According to the UK Bribery Act, a company is criminally liable if part of a business of the company is carried out in the UK and the company does not have in place adequate procedures designed to prevent bribery of foreign officials (Section 7 of the Bribery Act 2010). Thus, the Swiss and the UK provisions are strikingly similar in this regard.

Corporate liability for bribery and corruption offences

In cases of corruption, it is primarily the *individual* ("natural person") who is liable to punishment and is prosecuted.

However, in addition to the liability of the acting individuals, Article 102 SCC establishes corporate criminal liability. Generally speaking, corporate criminal liability exists if,

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due to inadequate organisation of the company, it is not possible to attribute a felony or misdemeanour (including bribery) that was committed in the exercise of commercial activities to any specific individual (Article 102(1) SCC). Furthermore, a company may also be punished irrespective of the criminal liability of any natural persons if the enterprise did not undertake all requisite and reasonable organisational precautions required to prevent the bribery of Swiss or foreign public officials or persons in the private sector (Article 102(2) SCC).

In both cases, the company is subject to criminal prosecution and a fine of up to CHF 5 million. The amount of the fine is determined taking into account the seriousness of the offence, the degree of the organisational inadequacies, the loss or damage caused, and the economic ability of the company to pay the fine.

The exact scope of the organisational measures required under Article 102(2) SCC is not defined by law. Clearly, it is insufficient to merely stipulate compliance rules (e.g. in a code of conduct). Rather, a company is required to show that its employees were made aware of, trained in and monitored regarding such rules. In general, Swiss prosecuting authorities take international good practice standards into account when determining the required compliance measures.

A prominent recent example regarding corporate liability was the OAG's criminal investigation, ongoing since summer 2015, into the Odebrecht conglomerate based in Brazil. Odebrecht, which decided to cooperate with the law enforcement agencies, was found guilty in Switzerland under Article 102 SCC and fined CHF 4.5 million. By sequestration and determination of a corresponding compensation claim, Odebrecht was further obligated in Switzerland to refund proceeds from crimes in the amount of CHF 200 million (in addition to the amount of USD 1.8 billion to be repaid on the basis of corresponding arrangements with the competent authorities in Brazil and the US).

In another recent case concerning insufficient organisational measures, the OAG in October 2019 ordered Gunvor to pay an amount of almost CHF 94 million, including a fine of CHF 4 million. The Geneva commodities trader was convicted of failing to take all the organisational measures that were reasonable and necessary to prevent its employees and agents from bribing public officials in order to secure access to the petroleum markets in the Republic of Congo and Ivory Coast.

In December 2021, the Federal Criminal Court acquitted the ex-CEO of Falcon Private Bank of charges of qualified money laundering. He had been accused of transferring assets in the amount of EUR 133 million to domestic and foreign business partners between January 2012 and February 2016 and of making payments in the amount of EUR 61 million to acquire luxury vehicles and foreign real estate from the separately accused Arab businessman Khadem al-Qubaisi. The latter was at the same time the chairman of the board of directors and client of Falcon Private Bank. The bank itself as a legal entity was sentenced to a fine of CHF 3.5 million and a claim for compensation in the amount of CHF 7.2 million. This verdict is indeed precedent-setting, as it is the first time ever that a financial institution has been found guilty under Article 102 SCC. The court concluded that organisational deficiencies and poor implementation through internal directives at Falcon Bank were causal to the failures to detect transactions relevant to money laundering.

The Falcon decision was followed by a verdict in yet another high-profile case. In June 2022, Credit Suisse and a former relationship manager of the bank were found guilty by the Federal Criminal Court. The employee was convicted of qualified money laundering and received a conditional prison sentence of 20 months and a conditional fine. The court

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found that she had carried out transactions on behalf of Bulgarian clients between July 2007 and December 2008, although there had been clear indications of the criminal origin of the money. The criminals were able to evade the state's grasp by transferring more than CHF 19 million, most of which went abroad. Credit Suisse itself was found guilty of numerous organisational deficiencies, which made the employee's money laundering possible in the first place. The bank was therefore sentenced to a fine of CHF 2 million for violating Article 102 (2) SCC and a substitute payment of CHF 19 million. This is only the second time (after the Falcon case, see above) that a bank has been convicted under Article 102 SCC, although this possibility of prosecuting companies has existed for 20 years. It remains to be seen whether this is coincidence or the beginning of a new trend.

Proposed reforms / The year ahead

As mentioned above, the SCC has been amended with effect as of 1 July 2016 to target bribery in the private sector.

The formerly applicable regime regarding private sector bribery was regularly discussed and criticised in Switzerland. This topic received special media attention in the context of the selection process for the FIFA World Cup in Russia (2018) and Qatar (2022), as there have been allegations of bribery. Indeed, in March 2015 the OAG opened criminal proceedings against persons unknown in connection with the allocation of the 2018 and 2022 Football World Cups after a criminal complaint was filed by FIFA in late 2014. The opening of the OAG's investigation was based on information contained in a report commissioned by FIFA, as well as on information taken from a mutual legal assistance request from the US Department of Justice ("DOJ"). Based on the latter, several football officials and suspected bribers were arrested in Zurich by order of the Swiss FOJ in May 2015, and were placed in detention pending extradition as part of the criminal investigations carried out by the US Attorney's Office for the Eastern District of New York. In 2016, the proceedings in connection with FIFA saw a phase of the investigation results being consolidated. Over the year, Swiss authorities carried out various compulsory measures to secure and collect evidence.

However, even though the awarding body, FIFA, has its headquarters in Switzerland, the Swiss private bribery provisions were deemed inapplicable and the investigations by the OAG were initiated on the grounds of suspicion of criminal mismanagement and money laundering, but not of private bribery. As a matter of fact, there was a lack of application of the former provisions – there had not been any convictions for bribery in the private sector at all.

The reason for this was twofold. First, the provisions were, as mentioned above, only contained in the Unfair Competition Act and, thus, only applicable when private bribery has an effect on a competitive relationship. Therefore, for instance, bribery in a tender process for an international sporting event, such as the FIFA World Cup, did not fall within the scope of the provision. Second, the prosecution of such offences required a formal complaint from a person who suffered harm due to the Bribery Act. This requirement of "no plaintiff, no judge" had the effect that certain forms of corruption were typically not punished.

Those weaknesses were the driving force behind the newly enacted provisions in the SCC targeting bribery in the private sector (Article 322^{octies} and Article 322^{novies} SCC). By this amendment, private bribery has become an *ex officio* crime, i.e. an offence which must be prosecuted by the authorities, whether reported or not. The only exemption is "minor cases" – the definition of which has yet to be established by jurisprudence. Furthermore, as the offence of private bribery was included in the SCC, all cases of private bribery,

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notwithstanding their effect on a competitive relationship, are now covered. As a consequence, bribery in the tender process of a sporting event would be within the scope of the new provisions. However, irrespective of the introduction of the private bribery offence into the SCC, the offence remains a misdemeanour with a maximum penalty of three years' imprisonment (while bribery of a public official and bribery of a foreign public official have a maximum penalty of five years' imprisonment). This may lead to a situation where private sector bribery will still not qualify as a predicate offence for money laundering, as money laundering is only punishable under Swiss criminal law if the assets that are "laundered" originate from a felony (for instance, bribery of a public official and bribery of a foreign public official).

In addition to the reform of private sector bribery, there was an amendment to the offences of granting or accepting an undue advantage (Article 322^{quinquies} and Article 322^{sexies} SCC). Since 1 July 2016, those offences also cover cases in which the undue advantage is given in favour of a *third party*. The coming years will show the first effects, if any, of the reform of private sector bribery.

Recently, a legislative amendment proposed by the Swiss Federal Council was discussed in the Federal Parliament regarding better protection of whistleblowers, so that they can report incidents without fear of repercussions from their employers. According to the proposed amendment, whistleblowers would have been entitled to report misconduct to the authorities without breaching civil and criminal law obligations, as long as they report the matter internally first. In March 2020, the Federal Parliament rejected the proposed amendment. Transparency International criticised Switzerland for this decision.

Apart from that, in its last report on Switzerland's implementation of the OECD Anti-Bribery Convention, the OECD particularly called for stricter penalties for companies in the context of foreign bribery convictions. However, to date, there is no legislative amendment planned in this respect.

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