Switzerland

Antonia Mottironi
Silvia Palomba

Ardentĕr Law

Brief overview of the law and enforcement regime

Introduction

Switzerland ranks among the top 10 countries as the least corrupted, according to the 2023 Corruption Perceptions Index from Transparency International.[1]

However, the quality of its institutions, the way the *res publica* is managed and its vibrant private sector could mislead an inattentive observer. Private businesses and public administrations are inherently exposed to corruption and the *Confédération Helvetique* makes no exception.

In February 2024, Transparency International published a study revealing that one-third of Swiss undertakings admit paying bribes abroad, with more than 50% of them facing demands for "informal" payments in their foreign business, and this is even more common than 10 years ago.[2] Furthermore, Transparency International's study reveals that 70% of the Swiss companies operating abroad expect requests for bribes from the private sector, compared to 60% in the public sector.

Reflecting a constant concern for improvement,[3] the Federal Council fixed the corruption objectives of the Confederation in a 2021–2024 Strategy document which is directly addressed to the federal administration but hopes to have a snowball effect on any other interested sector.

Although the perception of domestic corruption is biased by its institutional stability, the main challenges facing Switzerland in the area remain those of international corruption and the laundering of its proceeds. The federal law enforcement authorities were particularly active in 2024 in the area, with judgment rendered against individuals in the 1MDB case and several indictments of companies for corruption.

Terminology and applicable law

Within the Swiss legal system, corruption is usually considered under the angle of criminal law. The word "*Corruption*" is used to point both to active corruption (Bribery) and passive corruption (Corruption). Corruption, in Switzerland, is criminally relevant both in the public and private sectors.

Norms punishing such kind of behaviours are grouped within Title 19 of the Swiss Criminal Code (SCC) at Articles 322 *ter* – 322 *decies*, as well as at Article 4a(1)(b) of the Unfair Competition Act (UCA).

Though civil courts are not bound by the criminal notion of corruption, they rely on it in practice as well.

Switzerland also ratified the OECD Anti-Bribery Convention in 2000, the Criminal Law Convention on Corruption of the Council of Europe in 2006 and the UN Convention against corruption in 2009. On the contrary, it did not ratify the Civil Law Convention on Corruption of the Council of Europe.

Criminal remedies

The notion of *corruption within the public sector*. In Switzerland, corruption is defined as the offering, promising or giving of an undue advantage to a public official, in exchange of the execution or the omission of an act which relates to the activities of the public official, is contrary to the duties of the latter, or it depends on the exercise of their discretionary powers, at his/her own or a third person's advantage (Articles 322 *ter* and *quater* SCC). Offers, promises or gifts of an undue advantage are also criminally relevant if they are made with the goal of having the public official executing his/her duties, but that are not linked to a specific act (Article 322 *quinquies* and 322 *sexies* SCC).

Articles 322 *septies* SCC extends the criminal responsibility to acts of corruption which relate to foreign officials.

Corruption is punished from both the passive – the act of soliciting, having another promising and receiving – and the active standpoints – the offering, promising or giving.

The notion of *public official*. Members of the Judiciary or of another authority, public officials, officially appointed experts, translators or interpreters, arbitrators, members of the army (Article 322 *ter* SCC), including private individuals who carry out public functions (Article 322 *decies* (2) SCC) are considered public officials, thus subjected to corruption. If these kinds of persons act for a foreign state or an international organisation they are considered "foreign public officials" as well (Article 322 *septies* SCC).

The notion of *corruption within the private* sector. Similarly to the above, corruption is described as the act by which an employer, a company member, an agent or any other auxiliary to a third party is offered, promised or granted undue advantages for themselves or third parties for the commission or omission of an act in relation to their official duties that is contrary to their duties or depend on the exercise of his discretionary powers (Article 322octies SCC; Article 4a(1)(a) UCA).

The notion of *undue advantage*. The giving and accepting of "undue advantages" are only punishable when Swiss public officials are concerned (Articles 322 *quinquies* and 322 *sexies* SCC).

Payments made with the goal to accelerate the execution of administrative acts to which the corruptor is legally entitled (so called facilitation payments) are punishable no matter if a Swiss or a foreign official is concerned, but only if the payment influences the discretion of the public official.

They are exempted from criminal sanctions advantages that are permitted under public employment law or contractually approved by a third party, as well as advantages that are common social practice (Article 322 *decies* (1) SCC). This would typically include small Christmas or thank-you gifts, as long as they are not intended to influence the public official concerned.

Criminal sanctions. Active and passive corruption within the public sector is punished with a prison sentence which can go up to five years or a fine of up to CHF 540,000 (Article 322 *ter* and Article 322 *septies* SCC). Corruption within the private sector may result in imprisonment for up to three years or a fine (Article 322 *octies* (1) and Article 322 *novies* (1) SCC; Article 23 UCA). The offence is prosecuted only upon denunciation for minor cases, in both active and passive private corruption.

The general sentencing guidelines concerning, for example, the culpability of the offender, or his/her personal and financial circumstances at the time of conviction will guide the judge in deciding the amount of the sentence (Article 34(1) and (2) SCC).

The Swiss criminal code also provides for additional administrative sanctions such as the prohibition of practising certain professions (Article 67 SCC) and the seizing of assets linked to corruption that is received or intended to be used for corruption (Article 70 SCC).

Swiss criminal procedure provides for the possibility that the person suffering harm from corruption brings civil claims as a private claimant in the criminal proceedings.

Civil remedies

The main civil remedy available for corruption claims is the liability in tort provided for in Article 41 of the Swiss Code of Obligations (SCO). The liability is given when the claimant proves that the defendant committed an unlawful act. In addition to deceit (Article 28 SCO) and infringement of absolute rights such as property, tort liability will be given in cases of criminal offences when the goal of these offences is to protect assets or interests that were harmed. Where there is a contractual relationship between the briber and the victim, liability for breach or performance of contract may concur pursuant to Articles 97ff. SCO.

Contrary to several foreign jurisdictions, agreements influenced by corruption are not null *per se*, only corruptive pacts are (Article 20(1) SCO). Most recent case law, however, specifies that: (1) foreign decisions (including arbitral awards) awarding claims for damages deriving from contracts obtained by corruption may not be enforced in Switzerland as they may be deemed contrary to Swiss public policy; and (2) the corrupted perpetrators of acts of corruption cannot bring recourse claims against each other based on the ordinary rule of several liability of co-debtors (Art. 50 (1)(2) SCO)).[4]

Alternatively, or in addition to liability for damages, the victim of corruption may have a claim for restitution of undue proceeds pursuant to Article 423 SCO, the briber acting deceitfully for its principal, the victim. The victim is therefore entitled to the restitution of any remuneration earned by the briber and may obtain preliminary disclosure of activity and accounts before civil courts (Article 400(1) SCO).

Overview of enforcement activity and policy during the last year

Enforcement activity

The Money Laundering Reporting Office Switzerland (MROS) reports that, apart from terrorist financing and organised crime, 8% of the possible predicate offences underlying money laundering cases referred to them in 2023 were instances of public and private corruption.[5] This means that, in 2023, among the 11,876 Suspicious Activity Reports (SARs) received by the MROS,[6] 33 denunciations mentioned corruption as the basis of suspicious money laundering activity.

Official statistics show that, in 2023, within the whole of Switzerland, 25 cases of corruption passed the thresholds of the indictment and led to criminal convictions.[7]

At the federal level, between 2011–2021, the Office of the Attorney General of Switzerland (AOG) concluded a total of eight criminal proceedings against legal entities by means of a sentence order, which correspond to 36% of the cases submitted to its authority.[8]

Policy/legislation

Since 2003, the Swiss Criminal Code provides for a specific criminal responsibility of legal entities which, when concerning corruption is independent from the criminal responsibility of the person who is responsible for the infraction, if the organisation did not put in place all the reasonable and necessary measures to avoid the commission of these offences (Article 102 (2) SCC). An analysis of the practices of the federal and cantonal law enforcement authorities is difficult as convictions are often rendered without trial, through "sentence orders", which are not, generally, made public.

On 1 January 2023, the Swiss legislator took another step forward in strengthening transparency and avoiding corruption by introducing the "Transparency in non-financial matters", "Transparency in raw 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) within the Swiss Code of Obligation (CO).

While environmental and social issues coupled with respect for human rights and the fight against

corruption are hot topics, not much has been done to make these new provisions known by the public. As per what concerns corruption, in fact, every year, concerned enterprises must prepare a report on payments made to state bodies. Concerned companies are companies listed on the stock exchange, companies required to draw up consolidated accounts, and companies which, as an annual average over two successive financial years, exceed two of the following thresholds: (1) 250 full-time employees, (2) a balance sheet of CHF 20,000,000; and/or (3) sales of CHF 40,000,000; companies that are (directly or through a controlled entity) involved in mineral production. Finally, companies that have made, during a given financial year, payments of at least CHF 100,000 to public bodies in connection with commercial transactions related to extractive activities (art. 964f (2) CO).

Concerned entities must now have their reports ready for 2024; this makes Swiss legislation one of the most advanced in Europe in terms of Corporate Social Responsibility.

On 1 January 2023, the new amendments to the Anti-Money Laundering (AML) Act entered into force. Notably, new measures targeting financial intermediaries in the areas of beneficial ownership were introduced (Articles 2 (a *bis*), 4, 7 AML Act) and the supervision and controls of the precious metals sectors was heightened.

From a more general policy point of view, in 2020 the Federal Council (the Swiss government) published its Anti-corruption Strategy 2021–2024 which presents several goals and measures to achieve them. Though focusing primarily on the public sector, but also recognising that corruption "occurs at the boundary between public and private interests and cannot be prevented or tackled by the state alone", the Federal Council therefore calls on the private sector and civil society to join with it in the fight against corruption.[9] It also outlines a lack of protection of whistleblowers, which makes difficult the detection of domestic cases of corruption.

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

Article 322 *decies* SCC states that which does not constitute *undue advantages* leading to corruption those advantages that are permitted under public employment law, that are contractually approved or that whose value is both negligible and are accepted as common social practices (such as the Christmas gifts to the Postman, which is a very common social practice in Switzerland).

The Swiss criminal code does not provide for a definition of "facilitation payments" or "negligible advantages", nor it gives indications concerning the "hospitality" matter. For the personnel of the Swiss Confederation, on the contrary, the Law on the Personnel and the related decree[10] though reaffirming the general rule that employees must not accept, solicit or be promised gifts or other benefits for themselves or others in the performance of activities arising from the employment contract, or exempts gifts in kind with a market value not exceeding CHF 200 (art. 21 para. 3 LPers and art. 93 para. 1 OPers).

In addition, employees are required to decline all invitations likely to restrict their independence or freedom of action and to refuse invitations to foreign countries, unless authorised in writing by their superior (art. 93a al. 1 OPers). For employees involved in a purchasing or decision-making process, even the acceptance of modest customary gifts or invitations is prohibited, as long as a link with this process cannot be ruled out (art. 93 al. 2 and 93a al. 2 OPers).

Gifts that cannot be refused for reasons of politeness must be handed over to the hierarchic superior of the employee concerned, as their acceptance is intended to serve the general interests of the Confederation (art. 93 al. 3 OPers).

Additional and/or different regulations and restrictions implementing the federal legislation may also apply at the cantonal level. For example, in the Canton of Geneva, the solicitation or acceptance of a cash benefit leads to immediate dismissal, without prejudice to criminal sanctions. The same sanction applies to employees who accept an invitation to an evening, weekend or travel event, or who receives a non-standard gift, unless expressly authorised by the hierarchical superior on an exceptional basis.

Lunches, aperitifs, etc. during working hours and days require the authorisation of the hierarchical superior. Finally, customary gifts such as chocolate and wine are permitted but they must be shared with the entire department. In exceptional cases, and with the authorisation of the immediate superior, the employee may keep them for himself or herself.[11]

A recent decision of the Federal Court,[12] the highest Swiss criminal court, has contributed to the definition of all these concepts. The decision concerns a cantonal politician who, charged with having accepted undue advantages for himself and his family after having travelled to Abu Dhabi with his family as a public official, was first sentenced to a suspended fine for accepting undue advantages by the first instance judge, then acquitted by the Court of appeal and finally, following the appeal of the Public prosecutor, was found guilty of Article 322 *sexies* SCC by the Federal Tribunal.

The latter, also following highly respected doctrine on this matter affirmed that the specificity of art. 322*quinquies* CP and 322*sexies* CP, compared to art. 322*ter* CP (active corruption) and 322*quater* (passive corruption), lies in the fact that no exchange relationship between the advantage and an act or omission of the public official is required.

The public official receives the advantage "in order for him to perform the duties of his office", which therefore excludes gifts given or received in a private context. Art. 322*sexies* SCC thus applies to the gifts received by a public official who takes advantage of his or her position to obtain undue benefits, without allowing himself or herself to be corrupted within the meaning of art. 322*quater* SCC.

In practical terms, art. 322*quinquies* and 322*sexies* of the Criminal Code, the Federal Court said, are likely to come into play in two different situations. The first relates to cases of "facilitation/grease payments", where a public official receives an advantage for performing an act that he/she is obliged to perform or would perform anyway, in the absence of discretionary power, and where the advantage is ultimately intended only to guarantee or accelerate the obtaining of a service to which the briber is entitled after all. The difference with art. 322*ter* and 322*quater* CP is that the public official here will not violate the duties of his office, nor abuse a power of appreciation which he does not have.

The second situation concerns manoeuvres involving "progressive feeding" or "payment of goodwill", that is the delivery of undue advantages with a view to winning the goodwill of a public official and influencing him or her favourably in a general way, without aiming at any definite or even determinable counter-performance, but solely in the hope that the opportunity for a "return of the favor" will one day present itself. Hence, the act is not criminally relevant if the advantage is granted without any connection with the official activity, in a purely private context, such as family or friendship.

The lower limit of unlawfulness must be determined in the light of a set of qualitative criteria, such as the nature of the relationship between the protagonists and the circumstances in which the contacts take place, as well as quantitative criteria taking into account the scale and quantum of the advantage in question.

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

When corruption is committed by a member of an authority or an employee of the Swiss Confederation or against the Swiss Confederation (Article 23(1)(j) of the Swiss Code of Criminal Procedure – SCCP), or if the offence has been substantially committed abroad, or in two or more cantons with no single canton being the focus of the criminal activity (Article 24(1) SCCP), the investigations are run by the OAG. In all other cases, investigations are run by the competent cantonal law enforcement authorities. The Federal Office of Justice (FOJ) is the authority competent to handle international cooperation requests and matters, such as mutual legal assistance and extradition requests.

Switzerland lacks mechanisms to resolve corruption cases through plea agreements, settlement agreements or similar without-trial means. However, this can lead to refraining 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 public and private interests harmed are negligible (Article 53 SCC). Recent changes into the regime of criminal records made this solution less interesting, in the sense that dismissals based on Article 53 SCC will be, since January 2023, registered into one's criminal records.[13] As per what concerns the responsibility of corporate entities for corruption and, in general, business crimes, the OAG strongly affirms the need to have, in Switzerland, especially within the domain of the criminal responsibility of undertakings, a piece of legislation offering adequate incentives to corporations to cooperate with the authorities, as it happens in the USA, UK, France and soon Germany.

Specifically, the OAG believes that it is necessary, at the Swiss level, to create the possibility – based on the Anglo-Saxon Deferred Prosecution Agreement – to suspend an indictment. In this way, companies will be encouraged to report suspected cases falling within the scope of the criminal provisions applicable to companies (Art. 102 PC) or to promptly agree to undergo an investigation and cooperate openly and fully with the prosecuting authorities.

Though Swiss criminal law and procedure contain certain incentives for companies to cooperate, this is limited to a cooperative behaviour that might be considered by the authorities, only at the sentencing phase.[14]

Overview of cross-border issues

Cross-border corruption kept Swiss Courts busy in 2024.

On 28 August 2024, the Federal Criminal Court sentenced two managers of the Geneva-based PETROSAUDI to six and seven years' imprisonment for embezzling over 1 billion dollars from Malaysian sovereign wealth fund 1MALAYSIA DEVELOPMENT BERHAD (1MDB). According to their press release, the Federal Criminal Court found that the two defendants, acting in concert with persons working for 1MDB had set up a fraud which enabled them, to the detriment of 1MDB, to collect USD 1 billion on the basis of a false joint venture partnership between PETROSAUDI and 1MDB. The Court also found that, after converting the joint venture into an Islamic loan, the defendants provided support, as part of acts of criminal mismanagement to the detriment of 1MDB, in the diversions of two additional payments of respectively USD 500 million and USD 330 million, falsely legitimising them with alleged investment opportunities, and then laundering the entire amount diverted.[15] This judgment is subject to appeal.

In April 2023, the Geneva Court of Appeal upheld the conviction of Beny Steinmetz for corruption of foreign public officials, as per Article 322 *septies* SCC. The French Israeli mining magnate was sentenced to three years in prison (of which 18 months were suspended) and a compensation claim of CHF 50 million for having bribed the fourth wife of the late President of Guinea, Lansana Condé, with USD 8.5 million. This pact enabled Beny Steinmetz Group Resources (BSGR) to obtain the exploitation rights in one of the world's largest iron mines.[16] The case is currently appealed before the Swiss Federal Court.

In September 2023, the OAGS filed two indictments before the Federal Criminal Court with, for both, charges of corruption with an international dimension. The first case was filed against a former employee of Gunvor accused to have participated actively, in the payment of bribes to enable the Geneva commodities trading company to gain access to the petroleum market in the Republic of the Congo.[17] The second one was filed against Gulnara Karimova, the daughter of former Uzbek President Islam Karimov, and the former CEO of the Uzbek subsidiary of a Russian telecommunications company. The two defendants are accused of participating in a criminal organisation operating in various countries, including Switzerland. The charges cover the period from 2005 to 2013, and include, among others, participation in a criminal organisation (Art. 260*ter* Swiss Criminal Code), money laundering (Art. 305*bis* Swiss Criminal Code) and passive corruption of foreign public officials (Art. 322*septies* para. 2 Swiss Criminal Code). In connection with the indictment, the OAG also requested the confiscation of assets for more than CHF 440 million.[18] Criminal judgments of first instance are still expected.

Corporate liability for bribery and corruption offences

As mentioned before, since 2003, the Swiss Criminal Code provides for a specific criminal responsibility of legal entities which, when concerning financial crimes such as corruption (Articles 322 *ter*, *quinquies*, *septies* (1), *octies*) is independent from the criminal responsibility of any physical person, if the organisation did not put in place all the reasonable and necessary measures to avoid the commission of one of the offences listed in the norm (Article 102 (2) SCC).

On 5 December 2023, the Office of the Attorney General of Switzerland filed an indictment in the Federal Criminal Court against three individuals and against the commodities trading company TRAFIGURA BEHEER BV. The Federal Criminal Court must for the first time assess the criminal liability of a company in relation to the bribery of foreign public officials. A former Angolan public official is charged with having accepted, between April 2009 and October 2011, bribes of more than EUR 4.3 million and USD 604,000 from the TRAFIGURA Group, in relation to its activities in the petroleum industry in Angola. In addition, a former intermediary and a former senior executive of the TRAFIGURA Group are charged with being involved in this corruption scheme. Finally, TRAFIGURA BEHEER BV is charged with failing to take all reasonable and necessary organisational measures to prevent the payment of these bribes.[19]

In three other cases, the OAGS continues its practice of issuing sentenced orders without publication. In March 2024, the OAGS convicted GUNVOR SA, sentencing them to pay a sum of nearly CHF 86.7 million, including a fine of CHF 4.3 million. The Geneva commodities trading company did not take all the reasonable and necessary organisational measures in order to prevent the commission by its employees of offences of bribery of foreign public officials, in relation to its activities in the petroleum industry in Ecuador. This conviction took place in the context of a coordinated outcome with U.S. authorities.[20] In the wider context of the LAVA JATO proceedings, the OAGS ordered PKB PRIVATBANK AG to pay a fine of CHF 750,000 for money laundering committed by their employees, a local consultant in South America and his direct hierarchical superior.[21] In August 2024, GLENCORE INTERNATIONAL AG was found guilty of bribery of foreign public officials bribery of foreign public officials by a business partner in connection with the latter's acquisition of minority stakes in two mining companies in the Democratic Republic of Congo (DRC) in 2011. The OAG ordered Glencore to pay a fine of CHF 2 million and a compensation claim amounting to USD 150 million. Regarding a part of the other facts investigated by the OAG and relating to Glencore's business activities in the DRC between 2007 and 2017, the OAG issued an abandonment order. These investigations were conducted in cooperation with the Dutch criminal authorities.[22]

For the time being and before a judgment is issued in the TRAFIGURA case, one can rely on a sentenced order of 2022 – of which the content has been made indirectly published and commented[23] – in which the OAGS examines the organisational deficiencies that enabled the underlying offence (corruption of public foreign agents, as per Article 322 *septies* (1) SCC, in this case) to be committed.

As constitutive elements of the underlying offence of corruption of foreign public officials were met, the OAG also analysed the question of whether the three companies under investigation could be accused of a lack of organisation that enabled the corrupt acts to be committed. To determine the measures that a company should put in place to prevent corruption, the OAG referred to the rules of conduct, standards and best practices in this area, notably, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, SECO's Guidelines on Preventing Bribery – Advice for Swiss Companies Operating Abroad and the Rules of the International Chamber of Commerce.

In light of the scale and duration of the acts of corruption, the OAG noted that, in that specific case, the analysis of the risk of corruption, the measures and processes for combatting corruption, and the controls were non-existent or inadequate. Until 2008, there was not a compliance department, and the intermediaries and agents were not supervised in any way, nor had any internal directives been issued to monitor their activities. The OAG therefore concluded that, at the time of the events, there was not

only disorganisation within the accused companies regarding the fight against corruption, but also a systematic corrupt scheme aimed at making bribe payments. These serious and multiple organisational shortcomings made it possible for the companies to commit the offences, and were common to all three companies, since they shared the same premises and, in part, the same employees and directors.

Proposed reforms / The year ahead

At the national level, as pointed out by the Federal Council in its 2021–2024 Strategy against corruption, Switzerland shows an important lack of protection of whistleblowers, which makes the detection of corruption difficult. The employees of the Federal administration benefit from a programme of protection through the implementation of a reporting programme that guarantees their anonymity. The Canton of Geneva also implemented a similar programme. In the private sector, the duty of banks and financial intermediaries to report suspicious activities of money laundering to the MROS has undoubtfully enhanced the detection, prosecution and punishment of corruption committed in or through Switzerland. However, the private sector at large will remain the weak link in the fight against corruption as long as there is no legal protection of whistleblowing for their employees.

The SCCP was revised on 1 January 2024. Although the OAGS proposed to introduce a system of Deferred Prosecution Agreements, the Federal Council, in his addresses to the Parliament, rejected this proposition in 2019.[24] Surprisingly, only five months after the entry into force of the new SCCP and in spite of the intent of the legislator not to include DPAs in the Swiss criminal system, the OAGS *"regret*[s]" the situation in these terms: "*Regrettably, there was no place in the revised Criminal Procedure Code for the proposal that the OAG submitted as far back as 2018 of introducing the option, in line with the Deferred Prosecution Agreement (DPA) familiar in Anglo-American law or the Convention judiciaire d'intérêt public (CJIP) in France, of reaching a settlement with companies that themselves report potential cases of corporate criminal liability (Art. 102 SCC) or that cooperate fully with the prosecution authorities in the criminal investigation that spares the companies from conviction. The OAG is proposing that companies be required to pay an amount equivalent to the fine and to repay the unlawfully achieved profits as part of the settlement. In addition, they should provide restitution for the damage caused by their activities and reform the structure of their business so as to make a repetition of the offence impossible. The settlement negotiated between the public prosecutor and the company should be approved by a court. The OAG still takes the view that a settlement procedure of this kind is an urgent necessity in Swiss corporate criminal law*".[25]

At the European level, the creation of the European Public Prosecutor's Office (EPPO), the EU criminal prosecution body responsible for prosecuting offences against the EU's financial interests, such as fraud, corruption and transnational VAT offences took office in 2021 and, since then, the Swiss authorities have already received several requests for mutual assistance, which have been refused for lack of a legal basis. As a consequence, Switzerland has first intensified "reflections" on how to cooperate with this new body and, finally, in December 2022, published a new piece of legislation allowing the collaboration between Switzerland and the EPPO[26] on the basis of the international mutual assistance in criminal matters legislation. This new decree entered into force in February 2023 and if, correctly used, would avoid the risk Switzerland be used for criminal purposes which is contrary to the declared Switzerland's objectives in the fight against transnational crime and its willingness in ensuring a clean financial centre.

Endnotes

1 Corruption perception Index 2023 (available at https://images.transparencycdn.org/images/Report_CPI2022_English.pdf, last visited 19 September 2024).

2 *Auslandskorruption bei Schweizer Unternehmen – neue Erkenntnisse zu Risiken und Gegenstrategien*, available at

efaidnbmnnnibpcajpcglclefindmkaj/https://transparency.ch/wp-content/uploads/2024/02/FHGR_TI-Schweiz_Auslandskorruption_2024.pdf (last visited 19 September 2024).

3 Free translation from the Stratégie du Conseil fédéral contre la corruption 2021–2024, page 3, available at https://www.eda.admin.ch/eda/fr/dfae/dfae/publikationen.html/content/publikationen/fr/eda/schweizer-aussenpolitik/Strategie_BR_gegen_Korruption_2021-2024 (last visited 5 October 2023).

4 Federal Court Decision 4A_372/2023 of 5 September 2024.

5 Federal Office of Police fedpol, Money Laundering Reporting Office Switzerland MROS, *Annual Report 2023* , May 2024, page 27, available at https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei/jb.html (last visited 29 October 2024).

6 *Id.*, page 20 and following.

7 Office fédéral de la Statistique (OFS), *Adults: convictions for a misdemeanour or felony under the articles of the Swiss Criminal Code (SCC), Switzerland and cantons*, available at https://www.bfs.admin.ch/asset/en/28205936 (last visited 29 October 2024).

8 Nora Markwalder, *Die Sanktionierung von Unternehmen gemäss Art. 102 StGB in Theorie und Praxis – Teil 2*, in ZStrR 3/2022, page 286.

9 the Federal Council published its Anti-corruption Strategy 2021-2024, available at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Strategie_BR_gegen_Korruption_2021-2024 (last visited 27 October 2023).

10 *Loi sur le personnel de la Confédération* (LPers), 24 mars 2000, available at https://www.fedlex.admin.ch/eli/cc/2001/123/fr (last visited 23 October 2023) and the *Ordonnance sur le personnel de la Confédération* (OPers), 3 July 2001, available at https://www.fedlex.admin.ch/eli/cc/2001/319/fr (last visited 23 October 2023).

11 Article 25 of the regulations implementing the General Law on Personnel of the Cantonal Administration, the Judiciary and Public Medical Establishments (RPAC; RS/GE B 5 05.01, the Mémento des instructions de l'Office du personnel de l'État de Genève (MIOPE), and the directive entitled "*Avantages octroyés au personnel de l'administration cantonale par des tiers*", no. 01.07.06; 18 December 2012, available at https://www.ge.ch/memento-instructions-ope-miope (last visited 23 October 2023).

12 6B_220/2022, available at https://www.bger.ch/ext/eurospider/live/fr/php/aza/http/index.php?highlight_docid=aza%3A%2F%2Faza://31-10-2022-6B_220-2022&lang=fr&zoom=&type=show_document (last visited 23 October 2023).

13 Yvan Jeanneret, *La réforme du casier judiciaire et l'exemption de peine : d'une incohérence à un droit au classement?*, in Revue pénale Suisse, RPS, 3/2023, page 255.

14 Report of the Office of the Attorney General of Switzerland on its activities in 2022 for the attention of the supervisory authority, page 11–12, available at https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html (last visited 25 October 2023).

15 Press release of 28 August 2024, https://www.bstger.ch/uploads/2024-08-27_Press_Release_SK.2023.24.pdf (last visited 29 October 2024).

16 Judgment AARP/116/2023, case P/12914/2013 and Press release of the Cour of Justice of Geneva of 4 April 2023), subject to appeal to the Swiss Federal Court, case 6B_669/2023 (https://justice.ge.ch/apps/decis/fr/parp/show/3256626?doc= and https://justice.ge.ch/media/2023-04/pj-cj-cpar-arret-Steinmetz-2022-04-04.pdf; last visited 29 October 2024).

The official press release of the Geneva Court of Appeal can be found here: https://justice.ge.ch/en/node/2506 (last visited 24 October 2023); the text of the decision can be found here: https://justice.ge.ch/apps/decis/fr/parp/show/3256626?doc= (last visited 24 October 2023).

17 Press release of the AOGS of 26 September 2023, Indictment filed against former Gunvor employee, available at https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-97875.html (last visited 29 October 2024).

18 https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/nsb_medienmitteilungen.msg-id-97944.html (last visited 31 October 2024).

19 https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-99242.html (last visited 29 October 2024).

20 Press release of the OAGS 1 March 2024, https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/nsb_medienmitteilungen.msg-id-100264.html (last visited 29 October 2024).

21 Press release of the OAGS of 4 April 2024, https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/nsb_medienmitteilungen.msg-id-100600.html (last visited 29 October 2024).

22 Press release of the OAGS of 5 August 2024, https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/nsb_medienmitteilungen.msg-id-101995.html (last visited 29 October 2024).

23 Nora Markwalder, *La responsabilité pénale de l'entreprise selon l'art. 102 al. 2 CP: nouvelle ordonnance pénale du MPC prononcée à l'encontre de trois entreprises suisses*, 14 June 2022, in Crimen.ch, available at https://www.crimen.ch/113/#:~:text=Le%20MPC%20examine%20ensuite%20les,l'infraction%20sous%2Djacente. (last visited 26 October 2023).

24 See GOETZ STAEHELIN Claudia and LEMBO Saverio, Transparency in Cross-Border Corruption Cases – From Investigation to Disclosure and Resolution, in Negotiated Justice in transnational Corruption – Between Transparency and Confidentiality, University of Neuchatel 2024, page 88 and following.

25 OAGS' Annual Report 2023, pages 13–14.

26 Office fédérale de la justice, *Rapport d'activité 2022, Entraide judiciaire internationale*, May 2023, available at https://www.bj.admin.ch/bj/fr/home/sicherheit/rechtshilfe/strafsachen.html (last visited 24 October 2023); *Le Conseil fédéral rend possible la coopération avec le Parquet européen*, Communiqué de presse, 21 December 2022, available at https://www.eda.admin.ch/europa/en/home/aktuell/medienmitteilungen.html/content/europa/fr/meta/news/2022/12/21/92319 (last visited 24 October 2023).

Antonia Mottironi

Tel: +41 22 319 21 20 / Email: amottironi@ardenterlaw.ch

Antonia Mottironi has been a legal advisor since 2009. She is the founding partner of the Geneva-based law firm Ardentĕr Law, which was launched in October 2021. She was admitted to the Geneva and Swiss Bars in 2013 and has worked for several years in international tax law matters before joining a leading law firm in international asset recovery and white-collar crime.

She advises on the implementation of global strategies aiming at the efficient resolution of complex disputes, in particular, in the fields of fraud, cross-border insolvency and anti-corruption.

She represents creditors, foreign insolvency office holders and persons affected by economic crime before Swiss courts and authorities. She focuses on civil and criminal litigation, especially in the area of business crime, international judicial assistance and enforcement of foreign arbitral awards and judgments.

Over the past years, she has handled a great number of international asset recovery cases which included the laying of civil and criminal attachments and the enforcement of foreign judgements. She also assisted clients in preparing and coordinating multi-jurisdictional disputes, in particular with common law jurisdictions. She has developed a strong experience in cross-border insolvency cases involving foreign bankrupt banks and fraud schemes.

She is recognised among Global Elite Thought Leaders by *Who's Who Legal* GIR's Asset Recovery Guide and by *Who's Who Legal Switzerland*. She is described as "an impressive lawyer", "a renowned specialist in the area", and "widely respected as a top-tier lawyer" who "navigates perfectly across jurisdictions and is a go-to for plaintiffs and liquidators seeking information and assets in Switzerland".

Silvia Palomba

Tel: +41 22 319 21 20 / Email: spalomba@ardenterlaw.ch

Silvia Palomba specialises in national and international criminal litigation.

Her areas of practice range from business criminal law to environmental criminal law, passing through fundamental rights. With many years of experience gained both in courts and in the field, she intervenes in high-impact international cases before national and international courts. She works alongside anyone requiring defence or representation before these bodies and is driven exclusively by the conviction that the right to defence is one of the pillars of the rule of law.

Silvia Palomba also works on projects with a high social impact and advises companies on ESG (Environment, Social and Governance) issues helping them with the development of strategies that anticipate changes in legal obligations and case law rather than reacting to them.

Before joining Ardentĕr Law, Silvia Palomba practised for five years in Geneva, worked for several non-profit and international organisations specifically dealing with civil and political rights, arbitrary detention, fair trial and UN human rights protection mechanisms.

Ardentĕr Law

6, rue Verdaine, CH- 1204 Geneva, Switzerland

Tel: +41 22 319 21 20 / URL: www.ardenterlaw.ch