



Recent Reforms of Switzerland's Anti-Corruption Laws:

What they Mean for International Sports
Organizations

INTRODUCTION

Switzerland is perceived as one of the least corrupt countries in the world based on international rankings. According to the “Corruption Perception Index” of Transparency International, [Switzerland has regularly been rated among the top eight least corrupt countries since 2009](#). Even before then, since 1995 in fact, Switzerland has consistently received good rankings on integrity.¹ However, recent corruption allegations in the world of football, particularly the cases involving the [FIFA World Cup 2018 and 2022](#), have led to international scrutiny of the effectiveness of Switzerland’s anti-money laundering and anti-corruption regimes. This issue is particularly significant for Switzerland, which is home to numerous non-profit organizations and, importantly, many international sports organizations. Approximately sixty sports organizations are headquartered in Switzerland, including the International Olympic Committee (IOC), the Union of European Football Associations (UEFA), the International Ski Federation (FIS), and FIFA.²

For example, U.S. Attorney Robert Capers, whose office charged the FIFA case in 2015, repeatedly noted that the United States was determined to fight corruption in the world of sports within and beyond its national borders [“to make room for a new era of integrity and reform.”](#) Capers emphasized late that year, as he announced that additional FIFA officials had been indicted, that the [“work is not done. While our investigation continues at home, we also look forward to continuing our collaboration with our international partners, including in particular the Swiss authorities, because there is so much yet to be done.”](#)

[Given these statements and others in the press,](#)³ one might assume that Swiss law does not contain sufficient anti-corruption and anti-money laundering laws when compared to other countries, instead serving as a safe harbor for corruption in the sports sector. I argue in this paper that this assumption is wrong, or at least premature.⁴ An examination of the development of Swiss anti-corruption and anti-money laundering standards demonstrates that Switzerland has always been actively engaged in fighting corruption both nationally and internationally. While it cannot be denied that the corruption allegations in connection with the allocation of the FIFA-World Cup 2018 and 2022 revealed certain weaknesses in Swiss law,⁵ generally speaking, Switzerland has a comprehensive anti-corruption and anti-money laundering regulatory regime, and recent reforms have further enhanced these laws.

RELEVANT SWISS LAWS

In this paper, I focus on the following provisions of Swiss law:

1. Bribery of Swiss public officials (art. 322^{ter} and 322^{quater} Swiss Criminal Code (“SCC”)) and foreign officials (art. 322^{septies} SCC);
2. Private bribery provisions (which underwent a major revision in 2016). For these purposes, *active* private bribery means “any person who offers, promises or gives an employee, partner, agent or any other auxiliary of a third party in the private sector an undue advantage for that person or a third party in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion” (see new provision in art. 322^{octies} SCC). Similarly, *passive* private bribery means that such person “demands, secures the promise of, or accepts” an undue advantage under the above mentioned circumstances (see wording in art. 322^{novies} SCC).
3. Corporate liability in connection with bribery of foreign officials and active private bribery pursuant to art. 102 para. 2 SCC.
4. Certain anti-money laundering provisions, specifically the definition of “politically exposed persons” (“PEP”) which was revised in 2016. The new definition now includes politically exposed persons in *international organisations*, i.e. “individuals who are or have been entrusted with a prominent function by an

intergovernmental organization or international sports federations”⁶ ([see new wording of art. 2a para. 1 letter c Swiss Anti-Money Laundering Act \(AMLA\)](#)).

ESCALATION OF CORRUPTION ALLEGATIONS IN THE WORLD OF FOOTBALL IN MAY 2015

In 2015, corruption allegations in the world of football burst onto the international scene. Specifically in May 27, 2015, the [U.S. Department of Justice issued its first indictment charging fourteen defendants](#) (including several FIFA officials as well as leading officials of other FIFA-related soccer governing bodies) with racketeering, wire fraud and money laundering conspiracies, among other offenses. On December 3, 2015 [a superseding indictment followed, charging sixteen additional individuals in the case](#). These U.S. investigations involved close international cooperation with Swiss authorities, which, among other things, [led to the arrest of several high ranking soccer officials in Zurich in May and December 2015 as well as orders to numerous Swiss banks to freeze relevant client accounts](#). At the same time, the Swiss Attorney General initiated several football-related criminal investigations, which have so far amounted to approximately twenty-five separate parallel proceedings in Switzerland.⁷ Targets of the investigations include not only high ranking officials of FIFA and officials of other related soccer organizations, but other involved parties, although FIFA itself (the association) has not been directly implicated in the criminal proceedings.⁸

ANALYSIS OF RECENT REFORMS

Development of Anti-Corruption Standards in Switzerland

Before May 2015:

The debate around improving anti-corruption standards in Switzerland is not a new one. In 1999, the Swiss Federal Council initiated a major wave of legal reforms of the anti-corruption statutes, [emphasizing the need to cooperate in the fight against corruption on the international level](#). First, Switzerland got involved in the international fight against corruption at an early stage by ratifying these international treaties:

- 1) On March 31, 2000, Switzerland ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Convention”) which encompasses “legally binding standards to criminalize bribery of foreign public officials in international business transactions.”⁹
- 2) On March 31, 2006, Switzerland ratified the Council of Europe’s Criminal Law Convention on Corruption which aims to coordinate the criminalization of corrupt practices and to improve the international cooperation among member states.¹⁰
- 3) In October 27, 2006, Switzerland ratified the UN Convention against Transnational Organized Crime;¹¹ and
- 4) Since September 24, 2009, Switzerland has been a member party of the UN Convention against Corruption, a comprehensive international legal instrument against corruption.¹²

Through these agreements, Switzerland committed itself to improving anti-corruption standards on both the national and international levels.¹³ The Council of Europe’s and OECD’s conventions encompass a monitoring system which provides for a regular check of the anti-corruption standards of each member state.¹⁴ In 1999, the Council of Europe established the [Group of States against Corruption](#) (GRECO) to monitor member states’ compliance with the organization’s anti-corruption standards. On the recommendation of GRECO, Switzerland introduced the [Interdepartmental Working Group on Combating Corruption](#), which focuses on the development and implementation of a coherent anti-corruption strategy at both the national and international levels. Moreover, Switzerland is a member of the Financial Action Task Force (FATF) (in French: le Groupe d’Action Financière sur le Blanchiment de Capitaux (GAFI)).¹⁵ As such, Switzerland has regularly been evaluated on its compliance with

the FATF Recommendations, [which are recognized as the international standard for combating money laundering and the financing of terrorism](#) (the latest (fourth) evaluation report was released in December 2016, see below).

In conjunction with entering into the above treaties, Switzerland also implemented three major criminal law reforms on the national level:

- 1) In 2000, against the background of the OECD Convention (and local corruption scandals), Switzerland conducted the first criminal law reform of its anti-corruption statutes since the enactment of the SCC.¹⁶ While previous criminal statutes focused on combating corruption within national borders, bribery was now conceived as a *transnational* regulatory matter.¹⁷ As a consequence, and as an important part of the reform in 2000, Switzerland introduced the criminal offence of *active* bribery of foreign public officials, which, in short, sanctions any person who (actively) “offers, promises or gives a member of a judicial or other authority” of a foreign or international organization an undue advantage in connection with that person’s official activities (art. 322^{septies} para. 1 SCC; note, however, that the criminal offence of *passive* bribery of foreign officials was introduced in Switzerland at a later stage, see below). This first criminal law reform of anti-corruption provisions was crucial for Switzerland in order to meet the requirements under the OECD Convention and an important step in the international fight against corruption;¹⁸
- 2) In October 2003, corporate criminal liability for certain active bribery offences was introduced (art. 102 para. 2 SCC);¹⁹ and
- 3) In 2006, against the background of Switzerland’s ratification of the Council of Europe’s Criminal Law Convention on Corruption, the Swiss legislature implemented further reforms which extended the scope of certain anti-corruption statutes in the following way: Until this point in time, Swiss criminal provisions against private bribery and bribery of foreign officials had focused on sanctioning active conduct.²⁰ The reforms in 2006 brought a change in the scope of these anti-corruption statutes. The Swiss legislature extended the scope of the above mentioned criminal offence of bribery of foreign public officials to *passive* conduct (e.g. the acceptance of bribes by foreign officials).²¹ Moreover, Switzerland broadened the scope of the existing private bribery provision (which was implemented in the Swiss Unfair Competition Act), so that the latter covered both *active* and *passive* forms of bribery in the private sector.²²

Notwithstanding these changes, criticism of the Swiss anti-corruption laws continued with emphasis on the Swiss approach to private bribery regulation.

Criticism of the Swiss Approach to Private Bribery:

As corruption allegations started to swirl a few years ago in connection with the selection of Russia and Qatar as 2018/2022 FIFA World Cup venues, some commentators criticized Switzerland for weaknesses in its prosecution of private bribery.²³ Although both active and passive bribery had been criminalized in Switzerland since 2006, the provisions were derided as weak and it was claimed that the laws actually hindered the prosecutor from being able to investigate private bribery cases.²⁴ This criticism was based on the following arguments:

- 1) The offense of private bribery was not placed in the correct set of laws. While bribery of public officials has been governed by the Swiss Criminal Code, bribery of private individuals was originally regulated by the Federal Law against Unfair Competition (“UCA”) (former art. 4a and 23 UCA).²⁵ The placement of the private bribery provision in the UCA meant that prosecution of private bribery in Switzerland required, among other things, that the alleged conduct resulted in a distortion of competition.²⁶ Unfortunately, the fact that the offence had to be tied to a distortion of competition led to inconsistent results.²⁷ For instance, a person who bribed another individual and, as a consequence, was awarded a contract despite insufficient qualifications could be held criminally liable under the (former) private bribery provision, because the bribe affected a situation of competition in the UCA sense. In contrast, a person performing the same conduct after a contract had been awarded (i.e. bribing the contracting party so that the latter would overlook insufficient quality standards) would not have fallen under the former provision.²⁸ This proved to be

particularly problematic as it related to the sports sector and in corruption cases in connection with the World Cup.²⁹ Based on the concept of the Unfair Competition Act, the competing countries for the World Cup were generally not perceived to be in competition in the UCA sense; as a result, private bribery in these settings would likely not have fallen within the scope of the (former) private bribery provision.³⁰ The Swiss Federal Council identified this inconsistency as a specific weakness in the Swiss approach to private bribery.³¹

- 2) Another major point of criticism was that private bribery, unlike bribery of public officials in Switzerland, was originally prosecuted only upon complaint. As a consequence, Swiss prosecutors had no authority to open criminal proceedings in a case involving bribery among private individuals unless an affected person decided to file an official complaint. This procedural requirement turned out to be a major obstacle in the prosecution of private bribery in Switzerland,³² because often no specific individuals were aware of or directly injured by the bribery and thus no investigation was initiated.³³ This requirement also offered the parties who were involved in a private bribery scheme the chance to prevent criminal proceedings by concluding a private settlement of the case.³⁴ Not surprisingly, given these problems with the private bribery law, there were no convictions under that provision in the first eight years that it existed.³⁵

Major Reforms Proposed in 2014:

- 1) **Stricter Enforcement of Private Bribery:** The Swiss Federal Council, the highest executive authority in Switzerland which has the ability to submit proposed legislation to the General Assembly for approval, addressed the above-mentioned concerns in its proposal regarding the revision of the private bribery provision in 2014. Key objectives of reform were to transfer the private bribery provision from the UCA into the Swiss Criminal Code, and to grant prosecutors the authority to open proceedings without prior complaint by the affected person.³⁶

With regard to the first objective, the Swiss Federal Council suggested disconnecting the private bribery nexus to competition to bring bribery cases in connection with international sports organizations and large sports events clearly into the scope of the new private bribery provision. The Swiss Federal Council emphasized the importance of this revision due to the broad financial powers involved in certain international sports events and their impact on the economy.³⁷

The second objective, the elimination of the complaint requirement, aimed at strengthening the prosecution of private bribery and expressed the legislature's intent to prosecute private bribery based on the public interest and to put the matter beyond the control of the private parties involved.³⁸ Hence, private bribery became an *ex officio* crime, i.e., the prosecutor does not need to obtain a complaint to prosecute private bribery anymore.³⁹

- 2) **More Transparency in Financial Transactions:** In addition, in 2014 the Swiss Federal Council proposed amendments to Switzerland's anti-money laundering legislation to increase transparency in financial transactions and the banking sector.⁴⁰ These reforms stemmed from the FATF (/GAFI) Recommendations in 2012, which were aimed at improving regulations on transparency of the beneficial ownership of corporations, the duty of care of financial intermediaries, and combating money-laundering in connection with tax evasion,⁴¹ as well as establishing more stringent duty of care provisions for financial intermediaries.⁴² One of the crucial points of the revision was the extension of the definition of "politically exposed persons." According to the new provisions, this term encompasses "individuals who are or have been entrusted with a prominent function by an *intergovernmental organization or international sports federations*" (e.g. secretaries general, directors, deputy directors and members of the board or individuals with equivalent functions).⁴³ The broadening of the definition obliges banks to apply higher compliance standards when such persons open or use their bank accounts.⁴⁴

Assessment of Improvements in Private Bribery Provision:

Despite these improvements, private bribery remains a misdemeanor under Swiss law with a maximum penalty of three years' imprisonment.⁴⁵ This is in contrast to bribery in the public sector, which carries a maximum penalty of five years' imprisonment and, hence, qualifies as a felony.⁴⁶

This distinction is also important in the context of money laundering: According to the Swiss criminal statute of money laundering, the latter is only punishable if the proceeds originate from a “felony” or an “aggravated tax misdemeanor.”⁴⁷ This means that private bribery will not qualify as a predicate offence for money laundering under Swiss law (as it is a misdemeanor and not a felony).⁴⁸ Moreover, the new private bribery provision does not apply where the person being bribed is a volunteer⁴⁹ and does not provide for whistleblower protection.⁵⁰

After May 2015:

In May 2015, the corruption allegations in the world of football reached their peak as the investigations by U.S. and Swiss authorities became public. High-ranking soccer officials of FIFA and related soccer governing bodies were arrested in Zurich in May 2015 and December 2015.⁵¹

On January 1, 2016, the Swiss parliament passed the above-mentioned new money laundering provisions,⁵² and on July 1, 2016, the Parliament enacted the new private bribery provision described previously.⁵³ The private bribery reform also broadened corporate liability; corporations may be criminally liable if the unlawful conduct was committed in the exercise of the business activity that cannot be attributed to any specific individual.⁵⁴ And Swiss organizations can now be held liable for not having taken all reasonable measures in order to prevent active private bribery within their ranks.⁵⁵ This likely will motivate Swiss-based corporations and organizations, including sports organizations, to strengthen their compliance structures.⁵⁶

Remaining Weaknesses?

As shown above, Switzerland has responded to international criticism on the private bribery front with a round of reforms. The revisions aimed at taking international sports organizations into the scope of the new private bribery provision. The efficacy of that provision remains to be seen.⁵⁷ Despite these reforms and the generally solid Swiss anti-corruption regime, there is still work to be done. The next reforms in Switzerland will focus on the prevention and combating of money laundering and on increasing transparency in the area of non-profit organizations (“NPO”s); these are the areas where the FATF⁵⁸ has, [in its latest evaluation report of December 2016](#), identified shortcomings in certain specific areas.⁵⁹ The improvement of the Swiss regulation in these areas is of particular importance for Switzerland, because of Switzerland's leading role in the cross-border private banking sector and its position as a global center for international NPOs.⁶⁰

With regard to the NPO sector, the Swiss Federal Council is considering increasing the transparency requirements for Swiss-based associations and foundations in order to reduce the money laundering and terrorist financing risks. In this respect, it is important to understand that Swiss law currently provides for a very flexible legal framework for associations, which is mainly based on self-governance and can be adapted to the specific needs of small as well as large international associations,⁶¹ while mandatory liability and accounting rules are kept at a minimum in Swiss association law.⁶² Moreover, NPOs in Switzerland, as a general rule (with certain exceptions), do not have to be registered, nor are they supervised by any supervisory authority.⁶³ These characteristics of Swiss association law are in many ways positive as it allows an individual NPO to adapt its structure to the particular needs of its association and to establish itself without having to overcome high legal burdens. However, according to the Interdepartmental Working Group on Combating Corruption these factors make the accessibility of information difficult and increase the money laundering (and terrorist financing) risks in the NPO sector.⁶⁴ In the context of the latest FATF Report,

the Interdepartmental Working Group on Combating Corruption has suggested a regulatory goal of increasing transparency in the NPO sector by creating a duty of registration and membership disclosure for certain NPOs that show increased terrorist financing risks.⁶⁵

With regard to the anti-money laundering regulations, the Swiss Federal Council intends to focus specifically on broadening the scope of the due diligence obligations according to the Swiss Anti-Money Laundering Act, which as of today do not encompass certain non-financial intermediary activities, and improving the Swiss reporting mechanism of suspicious transactions. The FATF Report of December 2016 identified shortcomings in both of these areas.⁶⁶ The Swiss Federal Council defined its strategy for further regulatory work on the above-mentioned points on June 28, 2017 and instructed the Federal Department of Finance to prepare a consultation draft. Switzerland must present its first follow-up report to the FATF in February 2018.⁶⁷

CONCLUSION

As demonstrated above, Switzerland does not lack a robust anti-corruption and anti-money laundering system. Moreover, an examination of legal reforms in the anti-corruption sector in Switzerland shows that major legal reforms took place in Switzerland between 2000 and 2009, indicating that Switzerland had been actively engaged in the fight against corruption before the escalation of the football-related corruption allegations. This is supported by international assessments: Switzerland has in general received good grades from different international institutions concerning its compliance with international anti-corruption standards and is perceived as one of the least corrupt countries in the world.

At the same time it cannot be denied that the major corruption cases in the world of football have revealed weaknesses in certain specific areas of the Swiss anti-money laundering and anti-corruption regulations. One major weakness in the regulation of private bribery has been addressed by the latest reforms in 2016.

There is still room for improvement. The latest assessment of the Financial Action Task Force of December 2016 has revealed remaining weaknesses in: (1) the scope of the due diligence obligations according to the Swiss Anti-Money Laundering Act; (2) the risks associated with the area of non-profit organizations; and (3) certain deficiencies in the Swiss reporting mechanism of suspicious transactions. On June 28, 2017, the Swiss Federal Council announced further regulatory work in these areas. Hence, it can be assumed that the next reforms in Switzerland in the anti-corruption sector will specifically address anti-money laundering regulation and enforcement, the first reform proposals of which may be expected in 2018.

ENDNOTES

- ¹ Since 1995, Switzerland has belonged to the twelve least corrupt countries, see Transparency International, *Corruption Perception Index: Early Editions* (last visited July 18, 2017) https://www.transparency.org/research/cpi/cpi_early/0/.
- ² Marcel Meinhardt & Fadri Lenggenhager, *Switzerland, Global Insights, Bribery & Corruption*, 4th edition, 211 (2017); Mark Pieth, *Korruptionsstrafrecht* [Anti-corruption criminal law], in: Jürg-Beat Ackermann & Günter Heine (eds.), *Wirtschaftsstrafrecht der Schweiz* (2013), § 22 N 79.
- ³ See e.g. BBC News, *FIFA scandal: What took Switzerland so long to investigate?* (May 28, 2015), <http://www.bbc.com/news/world-europe-32912533>; the following article could also be interpreted in this sense, see Andy Spalding, *FIFA and Switzerland's changing role in global corruption enforcement* (September 30, 2015), <http://www.fcpablog.com/blog/2015/9/30/fifa-and-switzerlands-changing-role-in-global-corruption-enf.html>.
- ⁴ Another possible argument is that Switzerland has appropriate provisions in place, but does not adequately use those provisions to enforce the law, an issue outside of the scope of this paper.
- ⁵ Federal Council, *Botschaft über die Änderung des Strafgesetzbuches (Korruptionsstrafrecht) vom 30. April 2014* [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBl 2014 3591, 3592 et seq.
- ⁶ An international sports federation in terms of art. 2a para. 1 letter c AMLA is the International Olympic Committee and the non-governmental organisations that it recognizes that regulate one or more official sports at the global level.
- ⁷ The Federal Council of Switzerland, *The Office of the Attorney General of Switzerland seizes documents at FIFA* [Medienmitteilungen, Bundesanwaltschaft stellt Dokumente bei FIFA sicher] (May 27, 2015), <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-57391.html>; NZZ, *Ehemaliger Banker in der Schweiz verurteilt* [Former bank employee indicted] (June 16, 2017), <https://www.nzz.ch/wirtschaft/schweizer-25-straftverfahren-zum-fifa-skandal-ld.1301290>.
- ⁸ See Swiss Federal Council, *The Office of the Attorney General of Switzerland seizes documents at FIFA* (May 27, 2015), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-57391.html>; U.S. Department of Justice, *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption* (May 27, 2015), <https://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>; Swiss Attorney General, *Football: Office of the Attorney General of Switzerland concludes first criminal case* (June 16, 2017), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-67065.html>: The Swiss Attorney General held a former employee of a Swiss bank liable for document forgery (art. 251 SCC) and violation of the duty to report under the Swiss Money Laundering Act (art. 9 and 37 Swiss Money Laundering Act).
- ⁹ *Übereinkommen über die Bekämpfung der Bestechung ausländischer Amtsträger im internationalen Geschäftsverkehr* [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions], SR 0.311.21; see also OECD Anti-Bribery Convention available under <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> (last visited July 17, 2017) and Transparency International, *Global Corruption Report 2009*, 377.
- ¹⁰ *Strafrechtsübereinkommen über Korruption* [Criminal Law Convention on Corruption], SR 0.311.55; see also <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173> (last visited July 17, 2017) and Transparency International, *Global Corruption Report 2009*, 377.
- ¹¹ *Übereinkommen der Vereinten Nationen gegen die grenzüberschreitende organisierte Kriminalität* [United Nations Convention against Transnational Organized Crime], SR 0.311.54; see also United Nations Treaty Collection under https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtsg_no=xviii-12&chapter=18&lang=en (last visited July 17, 2017).
- ¹² *Übereinkommen der Vereinten Nationen über Korruption* [UN Convention against Corruption], SR 0.311.56; for further details on the UN Convention against Corruption, see also <http://www.unodc.org/unodc/de/treaties/CAC/> (last visited July 17, 2017) and Transparency International, *Global Corruption Report 2009*, 377.
- ¹³ See also Marcel Meinhardt & Fadri Lenggenhager, *Switzerland, Bribery & Corruption*, Global Insights, 4th edition 2017, 211.
- ¹⁴ See Swiss Federal Department of Foreign Affairs information on Switzerland's engagement in combating corruption under <https://www.eda.admin.ch/eda/de/home/aussenpolitik/finanzplatz-und-wirtschaft/korruption.html> (last visited: July 18, 2017); see also OECD, *Country monitoring of the OECD Anti-Bribery Convention*, <http://www.oecd.org/corruption/countrymonitoringoftheoecdantibriberyconvention.htm> (last visited on July 18, 2017).
- ¹⁵ FATF currently comprises 35 members, see the list of the current FATF member states under <http://www.fatf-gafi.org/about/membersandobservers/> (last visited on July 18, 2017).
- ¹⁶ Swiss Federal Council, *Botschaft über die Änderung des Schweizerischen Strafgesetzbuches und des Militärstrafgesetzes (Revision des Korruptionsstrafrechts) sowie über den Beitritt der Schweiz zum Übereinkommen über die Bekämpfung der Bestechung ausländischer Amtsträger im internationalen Geschäftsverkehr vom 19. April 1999* [Message of the Federal Council regarding the amendment of the Swiss Criminal Code and the Military Act (Revision of Criminal Corruption Provisions) and Switzerland's membership in the OECD Convention] of April 19, 1999], BBl 1999 5497, 5504.
- ¹⁷ *Id.* at 5515 et seq.
- ¹⁸ Swiss Federal Council, *Botschaft über die Änderung des Schweizerischen Strafgesetzbuches und des Militärstrafgesetzes (Revision des Korruptionsstrafrechts) sowie über den Beitritt der Schweiz zum Übereinkommen über die Bekämpfung der Bestechung ausländischer Amtsträger im internationalen Geschäftsverkehr vom 19. April 1999* [Message of the Federal Council regarding the amendment of the Swiss Criminal Code and the Military Act (Revision of Criminal Corruption Provisions) and Switzerland's membership in the OECD Convention] of April 19, 1999], BBl 1999 5497, 5517; Daniel Jositsch, *Möglichkeiten und Grenzen der strafrechtlichen Korruptionsbekämpfung in der Schweiz* [The potential and limits of the criminal provisions against corruption in Switzerland], ZStrR 123/2005 241, 247 et seq.; Mark Pieth, *Korruptionsstrafrecht* [Anti-corruption criminal law], in: Jürg-Beat Ackermann & Günter Heine (eds.), *Wirtschaftsstrafrecht der Schweiz* (2013), § 22 N 23.
- ¹⁹ Swiss Federal Council, *Botschaft des Bundesrates über die internationalen Übereinkommen zur Bekämpfung der Finanzierung des Terrorismus und zur Bekämpfung terroristischer Bombenanschläge sowie die Änderung des Strafgesetzbuches und die Anpassung weiterer Bundesgesetze vom 26. Juni 2002* [Message of the Federal Council regarding international treaties about combating terrorism and terrorist attacks as well as the amendment of the Swiss Criminal Code and further legislation of June 26, 2002], BBl 2002 IV 5390, 5437 ff.; see also wording of the old provision under AS 2003 3043,

- 3044; Mark Pieth, Korruptionsstrafrecht [Anti-corruption criminal law], in: Jürg-Beat Ackermann & Günter Heine (eds.), Wirtschaftsstrafrecht der Schweiz (2013), § 22 N 23.
- ²⁰ Swiss Federal Council, Botschaft über die Genehmigung und die Umsetzung des Strafrechts-Übereinkommens und des Zusatzprotokoll des Europarates über Korruption vom 10. November 2004 [Message of the Federal Council regarding the authorization and implementation of the Council's of Europe's Criminal Law Convention on Corruption of November 10, 2004], BBI 2004 6983, 7004 and 7006.
- ²¹ See art. 322septies para. 2 SCC.
- ²² See former art. 4a in connection with art. 23 Swiss Unfair Competition Act; art. 322^{novies} SCC. Swiss Federal Council, Botschaft über die Genehmigung und die Umsetzung des Strafrechts-Übereinkommens und des Zusatzprotokoll des Europarates über Korruption vom 10. November 2004 [Message of the Federal Council regarding the authorization and implementation of the Council's of Europe's Criminal Law Convention on Corruption of November 10, 2004], BBI 2004 6983, 6984 et seq. and 7009 et seq.; see also message from the Department of Justice of February 15, 2006: https://www.bj.admin.ch/bj/de/home/aktuell/news/2006/ref_2006-02-150.html and Marcel Meinhardt & Fadri Lenggenhager, Switzerland, Bribery & Corruption, Global Insights, 4th edition 2017, 211 et seq.; Mark Pieth, Korruptionsstrafrecht [Anti-corruption criminal law], in: Jürg-Beat Ackermann & Günter Heine (eds.), Wirtschaftsstrafrecht der Schweiz (2013), § 22 N 23.
- ²³ Neue Zürcher Zeitung, Markus H.F. Mohler, Es geht auch um den Ruf der Schweiz [Switzerland's Reputation is also at Stake] (July 1, 2011), https://www.nzz.ch/es_geht_auch_um_den_ruf_der_schweiz-1.11128322?reduced=true.
- ²⁴ Swiss Federal Council, Privatbestechung effizienter bekämpfen [How to combat private bribery more effectively] (May 15, 2013), <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-48853.html>; Swiss Federal Council, Botschaft über die Änderung des Strafgesetzbuchs (Korruptionsstrafrecht) vom 30. April 2014 [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBI 2014 3591, 3597.
- ²⁵ Marcel Meinhardt & Fadri Lenggenhager, Switzerland, Bribery & Corruption, Global Insights, fourth edition 2017, 212 et seq.; Swiss Federal Council, Botschaft über die Änderung des Strafgesetzbuchs (Korruptionsstrafrecht) vom 30. April 2014 [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBI 2014 3591, 3597 et seq.
- ²⁶ Daniel Jositsch & Jana Drzalic, Die Revision des Korruptionsstrafrechts [Revision of Criminal Anti-Corruption Provisions], AJP 2016 349, 352; Diego R. Gfeller, Die Privatbestechung – Art. 4a UWG Konzeption und Kontext [Private Bribery – art. 4a Swiss Competition Act, conception and context], 72 (2010); Swiss Federal Council, Botschaft über die Änderung des Strafgesetzbuchs (Korruptionsstrafrecht) vom 30. April 2014 [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBI 2014 3591, 3608 et seq.; Mark Pieth, Korruptionsstrafrecht [Anti-corruption criminal law], in: Jürg-Beat Ackermann & Günter Heine (eds.), Wirtschaftsstrafrecht der Schweiz (2013), § 22 N 93.
- ²⁷ Swiss Federal Council, Botschaft über die Änderung des Strafgesetzbuchs (Korruptionsstrafrecht) vom 30. April 2014 [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBI 2014 3591, 3602.
- ²⁸ Swiss Federal Council, Botschaft über die Änderung des Strafgesetzbuchs (Korruptionsstrafrecht) vom 30. April 2014 [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBI 2014 3591, 3601 et seq.; Neue Zürcher Zeitung, Markus H.F. Mohler, Es geht auch um den Ruf der Schweiz [Switzerland's Reputation is also at Stake] (January 7, 2011).
- ²⁹ Marcel Meinhardt & Fadri Lenggenhager, Switzerland, Global Insights, Bribery & Corruption, 4th edition, 217 (2017).
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- ³² Id. at 3597 et seq.
- ³³ Transparency International, Global Corruption Report 2009, 380 et seq.
- ³⁴ Swiss Federal Council, Botschaft über die Änderung des Strafgesetzbuchs (Korruptionsstrafrecht) vom 30. April 2014 [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBI 2014 3591, 3597.
- ³⁵ Id. at 3597 et seq.; Daniel Jositsch & Jana Drzalic, Die Revision des Korruptionsstrafrechts [Revision of Criminal Anti-Corruption Provisions], AJP 2016 349, 350 et seq.
- ³⁶ Swiss Federal Council, Botschaft über die Änderung des Strafgesetzbuchs (Korruptionsstrafrecht) vom 30. April 2014 [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBI 2014 3591, 3591 et seq.
- ³⁷ Id. at 3602.
- ³⁸ Id. at 3597 et seq.
- ³⁹ Marcel Meinhardt & Fadri Lenggenhager, Switzerland, Global Insights, Bribery & Corruption, 4th edition, 217 (2017).
- ⁴⁰ See Federal Council, Botschaft zur Umsetzung der 2012 revidierten Empfehlungen der Groupe d'action financière (GAFI) vom 13. Dezember 2013 [Message of the Swiss Federal Council regarding the Implementation of the FATF Recommendations of December 13, 2013], BBI 2014 605, 605 et seq.
- ⁴¹ Peter Lutz & Martin Kern, Umsetzung der GAFI-Empfehlungen: Massgebliche Auswirkungen bei der Geldwäschereibekämpfung und im Gesellschaftsrecht [Implementation of GAFI recommendations: Effects in the fight against money-laundering and in corporate law], SJZ 111/2011 301, 301 et seq.; See Federal Council, Botschaft zur Umsetzung der 2012 revidierten Empfehlungen der Groupe d'action financière (GAFI) vom 13. Dezember 2013 [Message of the Swiss Federal Council regarding the Implementation of the FATF Recommendations of December 13, 2013], BBI 2014 605, 606 et seq.
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- ⁴³ The term is found in art. 2a para. 1 letter c Anti-Money Laundering Act (emphasis added); see also Peter Lutz & Martin Kern, Umsetzung der GAFI-Empfehlungen: Massgebliche Auswirkungen bei der Geldwäschereibekämpfung und im Gesellschaftsrecht [Implementation of GAFI recommendations: Effects in the fight against money-laundering and in corporate law], SJZ 111/2011 301, 303.
- ⁴⁴ See in particular art. 13 para. 4 letter b and d in connection with art. 15 FINMA-Anti-Money-Laundering Ordinance [GwV-FINMA].
- ⁴⁵ Under Swiss law, misdemeanors are offences that carry a custodial sentence not exceeding three years or a monetary penalty.
- ⁴⁶ Under Swiss law, felonies are offences that carry a custodial sentence of more than three years.
- ⁴⁷ Art. 305^{bis} SCC.
- ⁴⁸ Swiss Federal Council, Botschaft über die Änderung des Strafgesetzbuchs (Korruptionsstrafrecht) vom 30. April 2014 [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBl 2014 3591, 3608.
- ⁴⁹ As outlined by the Swiss Federal Council, the new private bribery provision shall not cover a situation where, for example, an honorary president of a local club is being bribed in order to favor a certain project, see id. at 3601.
- ⁵⁰ Daniel Jositsch & Jana Drzalic, Die Revision des Korruptionsstrafrechts [Revision of Criminal Anti-Corruption Provisions], AJP 2016 349, 355-357.
- ⁵¹ Swiss Federal Office of Justice, Annual Activity Report 2015: Mutual Legal Assistance, 13 (June, 2016).
- ⁵² Swiss Financial Market Supervisory Authority (FINMA), FINMA veröffentlicht total-revidierte Geldwäscherei-Verordnung [FINMA publishes the new and fully amended anti-money laundering ordinance] (June 23, 2015), <https://www.finma.ch/de/news/2015/06/mm-gwv-finma-20150623/>.
- ⁵³ During the legislative process, the Swiss Parliament included a minor amendment into the wording of the provision holding that *minor cases* of private bribery will still be prosecuted only upon complaint. See art. 322^{ovies} para. 2 SCC and art. 322^{novies} para. 2 SCC; “minor cases” include situations where 1) the bribery payment does not exceed a monetary amount of CHF 1000; 2) the case does not threaten the security or health of third parties; 3) the conduct was not a repeated wrongdoing and was not committed by a gang; and 4) there was no forgery of documents involved, see Daniel Jositsch & Jana Drzalic, Die Revision des Korruptionsstrafrechts [Revision of Criminal Anti-Corruption Provisions], AJP 2016 349, 355; Swiss Department of Justice, Privatbestechung wird wirksamer bekämpft [Enforcing the Fight against Private Bribery] (April 20, 2016), https://www.bj.admin.ch/bj/de/home/aktuell/news/2016/ref_2016-04-20.html.
- ⁵⁴ See art. 102 para. 1 SCC; Marcel Meinhardt & Fadri Lenggenhager, Switzerland, Global Insights, Bribery & Corruption, 4th edition, 216 (2017); Lucius Richard Blattner, Die Privatbestechung – eine Herausforderung für fast jede Unternehmung [Private Bribery – a Challenge for almost every Company], *forumpoenale* 2/2015 94, 97 et seq.
- ⁵⁵ See art. 102 para. 2 in connection with art. 322^{ovies} SCC; Lucius Richard Blattner, Die Privatbestechung – eine Herausforderung für fast jede Unternehmung [Private Bribery – a Challenge for almost every Company], *forumpoenale* 2/2015 94, 97 et seq.
- ⁵⁶ Id.
- ⁵⁷ Swiss Federal Council, Botschaft über die Änderung des Strafgesetzbuchs (Korruptionsstrafrecht) vom 30. April 2014 [Message of the Swiss Federal Council regarding the Amendment of the Swiss Criminal Code (anti-corruption provisions) of April 30, 2014], BBl 2014 3591, 3602.
- ⁵⁸ Switzerland has undergone several evaluations by the FATF, the latest being the FATF “Anti-money laundering and counter-terrorist financing measures Switzerland Mutual Evaluation Report” (“FATF Report”) of December 2016 which summarizes the Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”) measures in place in Switzerland based on an evaluation during an on-site visit (February 25 – March 11, 2016). The report focuses on an analysis of Switzerland’s level of compliance with the forty FATF Recommendations and the level of effectiveness of Switzerland’s AML/CFT system.
- ⁵⁹ FATF, Anti-Money Laundering and Counter-Terrorism Measures Switzerland, Mutual Evaluation Report (2016), <http://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf>, see in particular Recommendations 20, 22 and 35; see also Interdepartmental Coordinating Group on Combating Money Laundering and the Financing of Terrorism, Bericht über die Risiken im Bereich der Non-Profit Organisationen [Report about the risks associated with the area of non-profit organizations] (June 28, 2017), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-67338.html>.
- ⁶⁰ Mark Branson, Annual Media Conference (FINMA), Combating money laundering is a duty of every banker (April 7, 2016), <https://www.finma.ch/de/dokumentation/finma-publikationen/referate-und-artikel/#Order=4>; Interdepartmental Coordinating Group on Combating Money Laundering and the Financing of Terrorism, Bericht über die nationale Beurteilung der Geldwäscherei und Terrorismusfinanzierungsrisiken in der Schweiz [Report about the national assessment of risks associated with money laundering and terrorism in Switzerland], 58 (June 28, 2017), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-67338.html>.
- ⁶¹ Margareta Baddeley, Gesellschaftsformen für Sportvereinigungen, *Sportrecht* Band I, 124 et seq. (2013).
- ⁶² Margareta Baddeley, Gesellschaftsformen für Sportvereinigungen, *Sportrecht* Band I, 124 et seq. (2013); see also Daniel Jositsch & Jana Drzalic, Die Revision des Korruptionsstrafrechts [Revision of Criminal Anti-Corruption Provisions], AJP 2016 349, 350.
- ⁶³ Interdepartmental Coordinating Group on Combating Money Laundering and the Financing of Terrorism, Bericht über die Risiken im Bereich der Non-Profit Organisationen [Report about the risks associated with area of non-profit organizations], 5 et seq. (June 28, 2017), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-67338.html>.
- ⁶⁴ Id. at 15 et seq.
- ⁶⁵ Federal Council, Federal Council defines thrust of follow-up work on FATF mutual evaluation report on Switzerland (June 28, 2017), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-67338.html>; Interdepartmental Coordinating Group on Combating Money Laundering and the Financing of Terrorism, Bericht über die Risiken im Bereich der Non-Profit Organisationen [Report about the risks associated with area of non-profit organizations] (June 28, 2017), 37 <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-67338.html>; Moreover, the latest allegations of corruption in the world of football have raised the question whether large international sports organizations with wide economic and political power should be subject to additional legal requirements. Margareta Baddeley suggests the creation of a new *commercial association* for these purposes. The *commercial association* would keep the democratic membership structure but imply a mandatory corporate governance regime on the association and its executives; see Margareta Baddeley, Gesellschaftsformen für Sportvereinigungen, *Sportrecht* Band I, 125 (2013).
- ⁶⁶ FATF, Anti-Money Laundering and Counter-Terrorism Measures Switzerland, Mutual Evaluation Report (2016), <http://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf>, see in particular Recommendations 20, 22 and 35; see also Federal Department of Finance, Combating financial market crime (June 2017), <https://www.efd.admin.ch/efd/en/home/themen/wirtschaft-wachstum->

[finanzplatz/finanzmarktpolitik/combating-financial-market-crime/fb-bekaempfung-finanzmarktkriminalitaet.html](https://www.nzz.ch/wirtschaft/bundesrat-luecken-in-der-bekaempfung-der-geldwaescherei-schiessen-ld.1303295); NZZ, Bundesrat: Lücken in der Bekämpfung der Geldwäsche schliessen [Federal Council – Closing of gaps in combating money laundering] (June 28, 2017), <https://www.nzz.ch/wirtschaft/bundesrat-luecken-in-der-bekaempfung-der-geldwaescherei-schiessen-ld.1303295>.

⁶⁷ Swiss Federal Council, Federal Council defines thrust of follow-up work on FATF mutual evaluation report on Switzerland (June 28, 2017), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-67338.html>.

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