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Switzerland

White Collar Crime

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Switzerland.

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Switzerland: White Collar Crime

1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

The primary source of Swiss substantive criminal law is the Swiss Criminal Code (SCC), which encompasses provisions on criminal liability, sanctions, and specific criminal offenses.

However, criminal offenses may also be enacted in other federal laws relevant to specific legal fields, such as the Unfair Competition Act or anti-money laundering legislation.

For most criminal offenses, the general provisions of the SCC apply. In cases of specific administrative offenses, the Criminal Administrative Law Act is primarily applicable, supplemented by the provisions of the SCC.

The key financial crime offences are:

1. **Fraud (Article 146 SCC)** Involves deceiving another person to obtain an unlawful financial benefit, resulting in financial loss to the victim.
2. **Embezzlement (Article 138 SCC)** Occurs when someone misappropriates assets entrusted to them, often seen in cases where employees or directors misuse company funds for personal gain.
3. **Disloyal management (Article 158 SCC)** Involves breaches of duty by company managers, leading to financial damage. This can include self-dealing, unauthorized transactions, or mismanagement.
4. **Forgery of documents (Article 252)** Involves creating, altering, or using false documents (including business records) with the intent to deceive and cause financial harm.
5. **Bribery and Corruption (Article 322ter to 322octies SCC)** Encompasses both public and private bribery, i.e. offering, promising, or giving undue advantages to public officials or private individuals to influence their actions.
6. **Money Laundering (Article 305bis SCC)** The process of concealing the origins of illegally obtained money, making it appear legitimate. Companies must implement measures to prevent money laundering within their operations.

2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

Criminal proceedings in Switzerland are primarily directed against individuals rather than legal entities. Typically, any individual involved in the questionable act can be prosecuted, including those who decided to make certain transactions and those who implemented them.

Each individual is responsible for their own actions. Additionally, managers and directors could be held liable if they breached their monitoring duties, based on the concept of an unlawful omission.

In general, legal entities incur criminal liability under Swiss law only if an act committed within or on behalf of the entity cannot be attributed to a specific individual (e.g., an employee) due to organizational deficiencies, known as “secondary liability” (Article 102 al. 1 SCC). This secondary liability is not applied often, as it is usually possible to identify and attribute a criminal act to a specific individual within the organization.

Aside from secondary liability, direct criminal liability of legal entities applies only to a limited number of crimes explicitly listed in the SCC, such as financing terrorism, money laundering, and bribery. This direct liability is applicable if the legal entity failed to take all reasonable organizational measures required to prevent such an offense. This liability is independent of, and parallel to, the liability of the individual offender, who also remains liable for the offense.

In both scenarios, the maximum fine cannot exceed CHF 5 million. In addition to the sanction, Swiss authorities may confiscate the proceeds that the legal entity obtained from the criminal acts.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

The commonly prosecuted offences personally applicable to company directors and officers are fraud (Article 146 SCC), embezzlement (Article 138 SCC), disloyal management (Article 158 SCC), forgery of documents

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(Article 252 SCC), bribery and corruption (Article 322ter to 322octies SCC), as well as money laundering (Article 305bis SCC), and in case the respective company goes bankrupt, a number of bankruptcy offences.

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

In Switzerland, the public prosecutor's offices is in principle the prosecuting authority for any type of criminal offence, including financial crime cases.

Most investigations for financial crime are being conducted by the prosecutor offices at a cantonal level.

The Office of the Attorney General of Switzerland (OAG) focuses on matters of organized crime, money laundering and bribery/corruption matters if they have been committed outside of Switzerland or in different cantons (Article 24 CPC). With regard to other financial crimes, the jurisdiction of the OAG is limited and requires, in particular, that the cantonal authorities have not yet opened an investigation or have requested the OAG to take over.

The public prosecutor's offices work closely with the police (in addition to the cantonal and local police departments, there is also a Federal Office of Police, called "fedpol"). The prosecutor may issue investigative orders or may delegate specific parts of an investigation to the police, such as for example the questioning of witnesses.

Other Swiss authorities that are important in the context of the investigation and prosecution of financial crimes are:

1. **Money Laundering Reporting Office Switzerland (MROS)**

MROS is the Swiss Financial Intelligence Unit (FIU) responsible for receiving and analyzing reports of suspicious financial activities. MROS processes reports of suspicious transactions related to money laundering and terrorist financing and disseminates relevant information to law enforcement agencies for further investigation and potential prosecution.

2. **Swiss Financial Market Supervisory Authority (FINMA)**

FINMA is the regulatory body overseeing financial markets in Switzerland. Its mandate includes ensuring the stability of financial markets, protecting creditors, investors, and policyholders, and enforcing financial market legislation.

FINMA supervises financial institutions and can investigate and sanction regulatory breaches, including those related to money laundering and insider trading. While it does not prosecute criminal cases, it can refer matters to the OAG or the cantonal prosecutor's offices for investigation. Additionally, FINMA can impose a variety of sanctions on both the supervised financial institution and individuals in positions of responsibility within the institution. These sanctions may include fines, restrictions on business activities, and the revocation of licenses.

5. Which courts hear cases of financial crime? Are they determined by tribunals, judges or juries?

In Switzerland, financial crime cases are heard by different courts depending on the severity and nature of the crime, as well as the jurisdictional level (cantonal or federal).

As most financial crimes are being prosecuted on a cantonal level, cantonal courts handle most cases. Each canton has its own judiciary, including lower courts (district or regional courts) and higher courts (cantonal courts of appeal).

The Federal Criminal Court handles those cases subject to federal jurisdiction (see question 4). An Appeal chamber has been introduced into the Federal System as from 2019.

Appeals on points of law can be taken to the Federal Supreme Court: As the highest judicial authority in Switzerland, the Federal Supreme Court reviews appeals on points of law from lower federal and cantonal courts, including financial crime cases.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

A criminal investigation may be triggered by the authorities or by private individuals/companies:

1. **Initiation by authorities** The police must report criminal acts they observe during their work to the public prosecutor's office. The circumstances under which other officials and authorities must initiate a criminal investigation (reporting obligation) are still

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largely governed by cantonal law, meaning this varies across the cantons in Switzerland. Authorities and officials, like private individuals, have the right to file a criminal complaint.

In financial crime matters, many criminal investigations are triggered by the report of another authority (such as, for example, the Swiss Money Laundering Reporting Office MROS or the Swiss Financial Market Supervisor FINMA).

2. **Initiation by private individuals/companies** Private individuals have the right to file a criminal complaint, which may also trigger a criminal investigation. Some offenses in Swiss law are even only pursued by the authorities if a private individual submits a criminal complaint (although economic crimes are generally pursued ex officio, i.e. even without complaint of the injured party).

If there is reasonable suspicion that an offense has been committed or if compulsory measures are required, the prosecutor formally opens an investigation.

During this investigative phase, the prosecutor is leading and conducting the investigation and responsible for gathering evidence (but may give certain assignments to the police). This includes hearing witnesses, requesting documents from involved individuals, entities, and third parties, ordering dawn raids, and interrogating witnesses and/or the accused.

In fact, it is quite common in most cantons that the vast majority of the evidence (including the questioning of witnesses and the accused and the engaging of experts) is being taken by the prosecutor rather than by a court. This is due to the fact that the court does not have to and will not, in practice, repeat the taking of the entire evidence in open court (e.g. by hearing witnesses or experts).

Moreover, the prosecutor in charge has a very broad authority to order compulsory measures. For instance, the prosecutor does not require a court issued order to make a dawn raid or to issue (compulsive) orders to third parties to produce documents.

The prosecutor must seek the “material” truth ex officio and investigate both exculpatory and incriminatory circumstances with equal diligence.

Against this background, it is common – in particular in financial crime matters – that the prosecutor uses these powers and the coercive measures to investigate.

In particular, it has become fairly common in financial crime investigations that the prosecutor will request the defendant(s) to be put in pre-trial custody in order to prevent the risk of collusion. Whilst doing so requires a court order, it rarely happens that that court would refuse such a request made by the prosecutor. This is a particularly important feature of Swiss criminal investigations (also because there is no strict maximum duration of pre-trial custody) and pre-trial custody significantly shifts the leverage within a criminal investigation towards the prosecution.

7. What powers do the authorities have to conduct interviews?

Interviews and interrogations of the accused and of witnesses are typically conducted by the public prosecutor (as well as the courts), see Article 142 CPC. Depending on the status of the proceedings, the police may also question an accused persons or persons providing information, in particular if the prosecutor has delegated this task which means that the police may question witnesses on behalf of the public prosecutor.

The criminal authorities (namely the public prosecutors as well as the courts) may summon an individual that they want to interrogate to a hearing. Failure to comply with such a summons without an acceptable reason may result in a fine and the person may also be brought before the authority concerned by the police.

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

The person being interviewed by the criminal authorities has the right to be heard in a language that he or she understands which is why the authorities have to provide an interpreter, if necessary.

Any person interviewed by the criminal authorities has the right to be assisted and represented by a lawyer, independent of their actual status in the proceedings, i.e. no matter if they are heard as the accused, a witness, or as a person providing information.

Article 130 CPC provides for the mandatory appointment of a defence lawyer in cases where

- The accused has been in pre-trial custody for more than 10 days;

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- the accused faces a potential prison sentence of more than one year or a custodial measure
- the offence concerned may result in the expulsion from Switzerland.
- the accused is unable to safeguard his or her interests in the proceedings adequately due to his or her physical or mental condition or for other reasons, and his or her statutory representative is unable to do so either
- the public prosecutor is appearing in person before the court of first instance or the court of appeal
- accelerated proceedings are being conducted.

If the accused lacks the necessary financial means and requires a defence lawyer to safeguard his or her interests, a "duty defence lawyer" is appointed by the authorities, the costs of which are pre-financed by the state (but may have to be reimbursed at a later stage in case of a conviction and if the financial means allow the defendant to do so).

At the start of an interrogation by the criminal authorities, the person being questioned has to be advised of the subject matter of the criminal proceedings and of the role in which he or she is being interviewed, and, be informed in full of his or her rights and obligations.

The individual being interviewed by the authorities may have the right to remain silent, which however depends on his or her procedural status:

1. **Accused**

The criminal justice authorities may question the accused at any stage of the criminal proceedings in relation to the offences of which he or she is accused. However, the accused person has the right to remain silent and is not required to cooperate with the investigation and no negative inference should be drawn if he or she makes use of this right (nemo tenetur).

2. **Witness**

A witness is a person not suspected to be involved in the offence under investigation who can make a statement that may assist in the investigation. A witness is in principle obliged to answer and tell the truth and may be sanctioned in case of non-compliance. However, the witness has the right to refuse to testify in certain circumstances, for example in case the witness has a personal relationship with the accused, in case the witness would incriminate him or herself by testifying and if the witness is subject to an official or a professional secrecy obligation.

3. **Persons providing information**

Swiss law provides for a third category of individuals to be heard in the form of a a "person providing information". This status applies in a number of different scenarios (see Article 178 CPC) such as the scenario that an individual is asked to testify who cannot be ruled out as someone involved in the crime under investigation or is a representative of the private claimant. Such person provides information relevant to the case but does not have the same status or obligations as a witness or an accused person. The person providing information has the right to remain silent (and may not be sanctioned in case of a refusal).

The parties to the criminal proceedings (i.e. the accused and the injured party) have the right to inspect the documents relating to the criminal proceedings at the latest following the first interview with the accused and the gathering of the other most important evidence by the prosecutor. In practice and in particular in financial crime cases, access to the file is usually not provided before the first interview with the accused and may even be refused after that, given the broad discretion the prosecutor has in that regard.

9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

Yes. Swiss law, and in particular the laws and regulations governing financial crime, does not only apply to acts committed in Switzerland.

In particular, it also applies if the offence took effect in Switzerland or [namely in the case of money-laundering] if assets stemming from an offence committed abroad were transferred to Switzerland.

Furthermore, a person who committed an offence outside of Switzerland is liable in Switzerland if the act was also illegal at the place of commission, the person concerned is in Switzerland or is being extradited to Switzerland due to the offence; and Swiss law would, in general, allow an extradition for such an offence but the person concerned is not being extradited.

If neither the alleged perpetrator nor the injured party holds Swiss nationality, Swiss jurisdiction would additionally require that the request for extradition was refused for a reason unrelated to the nature of the offence; or the offender has committed a particularly serious felony that is proscribed by the international community. Swiss laws can also have extraterritorial effect in case an international treaty provides so and if

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- the act is also liable to prosecution at the place of commission or no criminal law jurisdiction applies at the place of commission; and
- the person concerned remains in Switzerland and is not extradited to the foreign country.

10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

Yes, Swiss authorities commonly cooperate with foreign authorities. This cooperation is particularly robust in the areas of financial crime, terrorism, and organised crime. In particular, Swiss authorities actively engage in information exchange and collaborative investigations with their counterparts abroad to address cross-border criminal activities effectively. This can include sharing evidence, conducting joint investigations, and executing requests for legal assistance.

Mutual legal assistance in criminal matters between Switzerland and other countries is either based on multilateral or bilateral international treaties. Switzerland has established various of these agreements to facilitate international cooperation. In the absence of such agreements, Switzerland is regularly providing mutual legal assistant in application of the Federal Act on International Mutual Legal Assistance in Criminal Matters. In this context, the Swiss Federal Office of Justice (FOJ) and the Office of the Attorney General (OAG) play key roles in managing and facilitating international requests for legal assistance.

In addition to formal agreements, Switzerland's proactive stance includes participating in international task forces and initiatives aimed at tackling global crime issues.

11. What are the rules regarding legal professional privilege? What, if any, material is protected from production or seizure by financial crime authorities?

In Switzerland, the legal professional privilege mainly protects attorney-client communications as well as all information that has been confided to or perceived by the attorney as a result of the typical professional activities, i.e. legal advice and representation. The information is protected regardless of whether it has been obtained through written, oral or non-verbal communication, from the client or a third party or by the attorney themselves. Other activities, in particular also compliance-related work is not covered by the privilege.

The attorney-client privilege is protected by a number of provisions:

1. **The Federal Act on the Free Movement of Lawyers (FMLA)** The Act regulates the professional activities and qualifications of lawyers in Switzerland, ensuring the free movement and professional standards of lawyers within the country. Article 13 FMLA provides that attorneys admitted to practice in Switzerland must keep all information that has been entrusted to him or her by a client confidential.
2. **Swiss Criminal Code (SCC) and Swiss Criminal Procedure Code (CPC)** Article 321 SCC provides that the intentional breach of the professional secrecy obligation by an attorney is a criminal act and subject to a monetary penalty or custodial sentence.

   Article 264 CPC provides the right to refuse to disclose attorney-client communication and attorney work products, provided that the information relates to the attorney's typical professional activity, i.e. legal advice and representation. It also allows the client and the attorney to refuse to testify with respect to attorney-client communications.

3. **Other laws protecting the attorney-client privilege** The attorney-client privilege is also enshrined in other procedural laws, in particular the Swiss Civil Procedure Code as well as the Swiss Federal Act on Administrative Procedure.

The Swiss attorney–client privilege does in principle not apply to in-house counsel. Accordingly, communications between employees of a corporation and in-house counsel are usually not privileged. However, the Swiss Civil Procedure Code has recently been revised and an in-house counsel privilege will be introduced (entry into force on 1 January 2025), which however only applies in civil proceedings and cannot be invoked in criminal proceedings in Switzerland.

12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

The Swiss Data Protection Act (**DPA**) does not apply to criminal proceedings. Instead, the processing of personal data and the rights of data subjects in such proceedings are governed by the applicable procedural law (Article 2 para. 3 DPA). In the context of criminal proceedings, this means that only the Criminal Procedure Code is relevant for issues concerning privacy and data protection rights.

Privacy and data protection concerns can hardly be

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invoked to prevent Swiss criminal authorities from proceeding in a certain manner. Such rights are usually overridden by the law enforcement interest, i.e. the interest to investigate and prosecute criminal activity.

This means that the criminal authorities are usually allowed (if the conditions set out in the law are met) to collect all the data that they deem necessary for investigating a crime (but they should follow the principle of proportionality, meaning that that authorities must balance the need to collect data against the individual's right to privacy). In practice, however, this is not so much of a limitation. It is very common that vast sets of confidential information are being collected (e.g. bank records of various people involved) and become part of the criminal file.

It is worth noting, however, that the criminal file is not automatically public: As opposed to the actual trial before the court of first instance and the court of appeal which are both public (Article 69 para. 1 CPC), the criminal investigation as such (i.e. the investigation phase before the formal indictment) is not public (Article 69 para. 3 CPC). In addition, members of the criminal justice authorities, their employees and experts appointed by criminal justice authorities are subject to secrecy obligations and therefore have to treat as confidential information that comes to their knowledge in the exercise of their official duties.

Still, the parties to the proceedings (the plaintiff, the accused, etc.) have the right to access the case file. This access may be restricted if a party abuses its rights or if it is necessary to safeguard private or public interests in preserving confidentiality (Article 108 para. 1 CPC). Furthermore, even if the access is granted, the prosecutor may order (for a limited period of time) that plaintiffs and other persons involved in the proceedings and their legal agents have to maintain confidentiality with regard to the proceedings and the persons concerned. In practice, however, it is generally difficult to limit access to the criminal file provided that the information in question is tangentially relevant for the proceedings. Moreover, the parties may use the information obtained in the criminal proceedings for other purposes, as well

13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

There are no specific provisions regarding successor liability in Swiss law.

However, it is undisputed that the individual criminal liability cannot be transferred to another individual (e.g. its successor) since one can only be held criminally liable, if all liability requirements are personally fulfilled (the criminal liability is intuitu personae).

With respect to corporations, recent case law provides that the criminal liability of a company may survive corporate transactions (e.g. a merger or an acquisition). Therefore, the company that acquires a target that has been engaged in criminal conduct has a certain risk to be held criminally liable (and/or to be the subject of confiscation orders or the likes) for the acts of the target. A lot will depend on the specific form of the corporate transaction.

In contrast, it is well settled case law that the status of an injured corporate party (and thus that of a plaintiff in criminal proceedings) does not transfer to a successor company. However, if an injured individual dies without waiving his or her procedural rights as a private claimant, such rights pass to his or her relatives (Article 121 CPC).

14. What factors must prosecuting authorities consider when deciding whether to charge?

In Switzerland, public prosecutors have very limited leeway and authority to decide not to charge a particular crime and to close the proceedings: In principle, the prosecutor is obliged to bring charges to the competent court if based on the results of the investigation, it regards the grounds for suspicion as sufficient (and there are no obvious justifications or procedural impediments).

What is more, the prosecutor must even bring charges if he has doubts as to whether a crime was committed. In such cases, the prosecutor must bring charges and should leave it up to the courts to decide whether or not there was a crime. The accused cannot contest or appeal the prosecutor's decision to bring charges.

In particular, Article 52 CPC which would read as if the prosecutor could refrain from bringing charges in minor cases in case of reparation of damage by the accused is rarely applied. The wording of the provision would allow for such resolution if a) the accused has made reparation for the damage caused or has at least made every reasonable effort to do so, b) the offender has admitted the offence, c) a custodial sentence not exceeding one year is at stake and d) the interest in a prosecution of the general public and of the persons harmed are "negligible". In practice, however, the last condition is very rarely deemed given (in particular by the OAG).

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15. What is the evidential standard required to secure conviction?

In Switzerland, the evidential standard required to secure a conviction in criminal cases, including financial crimes, is the principle of "in dubio pro reo". This principle is akin to the "beyond a reasonable doubt" standard used in common law jurisdictions. It ensures that if there is any reasonable doubt about the guilt of the accused, he or she must be acquitted. This is a high threshold, requiring that the evidence presented be so convincing that there is no reasonable doubt in the mind of the judge regarding the accused's guilt.

The burden of proof lies with the prosecutor. The prosecutor must present sufficient evidence to prove the accused's guilt for each element of the offense beyond a reasonable doubt.

16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

Yes, the SCC provides for statutes of limitation for the right to prosecute someone for a committed crime, and for the execution of a criminal sentence:

1. Limitation of prosecution rights

For financial crimes, the typical statute of limitation period is 10 or 15 years (depending on the potential sanction).

The limitation period is met if a first instance judgement was rendered within this time period. Thereafter, the limitation of the prosecution right is no longer relevant (even if the first instance judgement was vacated or reversed).

The limitation period generally starts from the day the offense was committed. In cases of continued or repeated offenses, the period begins when the criminal activity ceases. If an offence is committed by omission, the limitation period begins when the obligation to act comes to an end.

2. Limitation period for the execution of a sentence

The statutes of limitations relating to the execution of a sentence specify the time periods within which a sentence must be carried out after a conviction. he duration of this period depends on the severity of the penalty imposed:

- 30 years if a custodial sentence of life has been imposed;
- 25 years if a custodial sentence of ten or more years has been imposed;
- 20 years if a custodial sentence at least five and less than ten years has been imposed;
- 15 years, if a custodial sentence of more than one and less than five years has been imposed;
- five years if any other sentence has been imposed

The limitation period for the execution of a sentence typically begins when the judgment becomes final and binding, meaning there are no more possibilities for appeal or the appeal process has been exhausted.

17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

Cf. answers to question 18.

In addition, financial crimes cases are often also settled between the injured party and the accused company or individual.

If a settlement is reached in cases involving offenses that are prosecuted only upon the complaint of the injured party, the criminal authorities will drop or dismiss the case if the injured party withdraws their complaint.

In case of offenses that are prosecuted "ex officio", the criminal proceedings will not automatically terminate if the injured party withdraws their complaint. The injured party however may submit a formal declaration to the criminal authorities, stating that it does not longer want the state to prosecute the case. This typically leads to the termination of proceedings unless there is a public interest in prosecution.

18. Is there a mechanism for plea bargaining?

In Switzerland, there are no legal provisions that provide for the concept of plea bargaining as it exists in common law countries. However, Switzerland has mechanisms that somewhat resemble plea bargaining, allowing – to a certain extend – to reach an agreement with the prosecution.

In general, less than 10 % of all convictions are handed

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down in ordinary court proceedings. Most criminal cases are handled in so-called "accelerated" or "summary penalty order" proceedings. This applies in particular in financial crime and corporate crime cases, in which out of court settlements are quite common.

1. Accelerated or "Summary" Proceedings (Article 358 et seqq. CPC) The accelerated proceedings may be applied if (1) the accused admits the facts essential to the legal assessment of the relevant offence, (2) the accused admits (in principle) the civil claims (if any), and (3) the prosecutor requests a custodial sentence shorter than five years. If these conditions are met, the accused may file a request for accelerated proceedings with the prosecutor who will then discuss with the parties the charges, the sentence and the civil claims.

If an agreement is reached, the prosecutor will submit the agreed indictment to the parties. The parties are given 10 days to oppose to the proposed indictment. If any party opposes to the accelerated proceedings, ordinary proceedings must be conducted. If the involved parties do not oppose, the indictment is submitted to the court and a hearing will take place in which the court decides whether (1) the conduct of accelerated proceedings is lawful and reasonable, (2) the charges correspond to the result of the main hearing and the files, and (3) the requested sanctions are equitable. The court does however not conduct any investigations. The court either confirms the indictment or sends the case back to the public prosecutor to commence an ordinary procedure.

2. Summary penalty order proceedings (Article 352 et seqq. CPC) Another possibility to reach an agreement with the criminal authorities is in the summary penalty order proceedings. The prosecutor may issue a summary penalty order provided that (1) the accused accepts his responsibility for the offence or if his responsibility has otherwise been established and if (2) the sentence to be imposed does not exceed six months' imprisonment.

The summary penalty order proceedings have certain advantages compared to the accelerated proceedings: the duration of the proceedings is even shorter and if the summary penalty order is not appealed (i.e., if no objection is filed), the case is not submitted to and/or subject to review by a court which means that the publicity of a criminal trial can be avoided.

Furthermore, the accused can accept the summary penalty order (and in particular the sanctions and fines it contains) when it is issued by the prosecutor. By formally accepting the summary penalty order and waiving the right to file an objection, the summary penalty order takes immediate legal effect and is final and binding. Thus, the parties have the certainty that the negotiated summary penalty order is valid and will not be challenged. This represents a major advantage compared to settlements in accelerated proceedings, which provides for mandatory review and confirmation of the indictment by the criminal court of first instance.

For the criminal authorities, the penalty order proceedings are particularly suitable in cases against companies, given that the upper limit of the fine is set as high as CHF 5 million and there are no maximum amounts when it comes to the forfeiture of assets.

19. Is there any obligation to disclose discovered misconduct to prosecuting authorities, or any benefit to making a voluntary disclosure? Is there an established route or official guidance for making such disclosures?

There is no general obligation in Swiss law to disclose or self-report discovered misconduct to the authorities.

However, companies and individuals in certain sectors, such as financial institutions, may have mandatory reporting obligations that require self-reporting.

With the exception of antitrust cases (where self-reporting and providing substantial evidence can result in full or partial immunity from fines), there is no binding or official guidance with respect to voluntary disclosures / self-reporting.

Some authorities, in particular the OAG, try to incentivize voluntary disclosures by stressing the advantages of the benefits of self-reporting (and by publishing "favourable" resolutions of cases which were triggered by self-reporting).

Indeed, courts and prosecutors may consider self-reporting as a mitigating factor, potentially leading to reduced sentences or fines. Article 48 SCC explicitly states that a court shall reduce the sentence if the accused has shown genuine remorse and has made reparation for the damage or loss caused. However, Swiss law does not allow the resolution of a case by way of a non-prosecution agreement in case of voluntary disclosure and it is oftentimes unclear to what extent potential sanctions will be reduced by a voluntary disclosure.

As a result, voluntary disclosure is typically limited to few cases. Still, voluntary disclosure and full cooperation during a criminal investigation can facilitate discussions with the prosecutor about a possible "plea bargain",

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leading to agreements within the framework of the procedures mentioned under Q18.

20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

There are no general and binding rules or guidelines for sentencing or charging decisions of courts or prosecutors. Quite to the contrary, the range of potential sanctions is extremely broad (oftentimes from a few monetary day fines on probation to several years of custodial sentence).

In general, Swiss criminal law provides for two types of sanctions: sentences and measures. Sentences include imprisonment, monetary penalties, and fines. Key measures related to financial crimes include asset confiscation, compensation claims, and, in certain cases, prohibitions on engaging in certain activities, such as working in the financial sector.

Individuals convicted of financial crimes may face imprisonment for up to fifteen years. Monetary penalties range from 3 to 180 daily units, with the court determining the number based on the offender's level of culpability. The value of each daily unit typically varies between CHF 30 and CHF 3,000, depending on the financial situation of the defendant (Article 34 SCC).

When determining sentences, the court considers the offender's culpability, which includes factors such as prior conduct, personal circumstances, and the sentence's impact on the individual's life. Culpability is assessed by examining the seriousness of the harm or risk to the legal interest, the reprehensibility of the conduct, and the offender's motives and objectives.

21. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?

Compliance and other organisational measures that were in place in a legal entity at the time a criminal offense was committed by an individual, is very much relevant and determining when it comes to the criminal liability of this legal entity.

When it comes to the subsidiary corporate liability, which is applicable in cases where it is not possible to attribute a criminal act to a specific individual within a legal entity, the legal entity can be held liable for its inadequate organisation. In case of cumulative criminal liability, which is for example applicable in money laundering and bribery cases, the legal entity can be held criminally liable in addition to the individual that committed the criminal act, if the legal entity failed to take all the reasonable organisational measures that are required in order to prevent the respective criminal offenses.

Accordingly, the probability that a legal entity is held liable for criminal acts committed within their organization increases if the legal entity does not have adequate compliance procedures in place. Furthermore, the level of organisational deficiencies is one of the main criteria for the criminal authorities to define the amount of the fine that is imposed to a legal entity that is held criminally liable. Finally, financial criminal authorities may also consider excluding or reducing a fine imposed on a corporation, depending on the severity of the offense and the steps taken since its occurrence to enhance the organization. This may include improvements in compliance procedures, ongoing employee training, increased levels of supervision, and similar measures.

While compliance and other organizational measures are important in evaluating a company's criminal liability, they hold no significance in the context of asset forfeiture. Criminal authorities can seize and forfeit assets derived from criminal activities, regardless of whether the asset owner was directly involved in any wrongdoing.

22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

In case of Fraud (Article 146 SCC) and Embezzlement (Article 138 SCC), the offender is liable to imprisonment of up to five years or a monetary penalty. In severe cases (in particular if the offender acts for commercial gain), the offender is liable to imprisonment of up to ten years or a monetary penalty.

Disloyal management (Article 158 SCC) and money laundering (Article 305bis SCC) is punished with custodial sentence not exceeding three years or a monetary penalty. In severe cases, the custodial sentence can be raised to up to five years.

Finally, Forgery of documents (Article 251 SCC) and the bribery of Swiss public officials (Article 322ter and 322septies SCC) are sentenced with up to five years of imprisonment, whereas the bribery of private individuals (Articles 322octies to 322novies SCC) is punished with up to three years of imprisonment or a monetary penalty.

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The maximum sentences are increased by 50% in case of multiple actions.

As already mentioned above, legal entities in principle incur criminal liability under Swiss law only if an act committed within or on behalf of the entity cannot be attributed to a specific individual (e.g., an employee) due to organizational deficiencies (secondary criminal liability). Only in case of a few specific offenses listed in Article 102 para 2 SCC, legal entities may be criminally liable in addition to the individual that committed the crime. In both cases, the fine that can be imposed to the legal entity cannot exceed 5 Million Swiss Francs.

Sentences in Switzerland for financial crimes tend to be rather lenient (compared to other jurisdictions), in particular for first-time offenders. Sentences with a monetary penalty or imprisonment very often do not exceed two years and the execution is generally suspended. The specific sentences however highly depend on the circumstances and facts of each case.

In financial crime offenses, it is usually the forfeiture of assets, or the compensations claims as well as the length of the criminal proceedings and, in the case of an individual offender the often imposed pre-trial detention, that are the most painful punishment.

23. What rights of appeal are there?

The Swiss criminal law system provides multiple avenues for appeal at different levels, including cantonal courts, the Swiss Federal Supreme Court, and potentially the ECHR. Individuals and entities can challenge factual findings, legal interpretations, and procedural errors through these appeals. However, the scope of review narrows as cases progress to higher courts, particularly at the Federal Supreme Court, where only legal and constitutional issues are typically reconsidered.

In Swiss criminal proceedings, there are mainly two types of “appeals”, i.e. the objections against decisions and acts of the prosecutor during the criminal investigation, and appeals against court orders and decisions.

Certain acts and decisions made by the prosecutor during the criminal investigation can be appealed independently. These appeals focus on procedural issues or decisions that affect the parties’ rights during the ongoing investigation. Grounds for objection can be legal errors, procedural violations, etc. The deadline for the objection/appeal is typically 10 days.

Besides the objections and appeals of the prosecutor’s acts and decisions during the investigation phase, the first level of appeal in Swiss criminal law typically involves appealing a lower court's judgement to a higher cantonal court. Most cantons have specialized criminal appeal courts or chambers that review first-instance judgements. A party can appeal on various grounds, including legal errors, misinterpretation of the facts, procedural violations, or an unjust or disproportionate sentence. Appeals must be filed within a specific timeframe, typically 10 days from the notification of the judgments.

A decision of a cantonal court of appeal may be appealed to the Swiss Federal Supreme Court. This is Switzerland's highest judicial body and provides a final review of legal issues. Appeals to the Federal Supreme Court are generally limited to issues of law, such as incorrect application of federal law, including constitutional law, or violations of international treaties to which Switzerland is a party. The court typically does not reconsider factual matters unless they directly involve a constitutional issue.

Finally, even after a case is closed and a judgment is final, under certain exceptional circumstances, a party may file a motion for a review (retrial). Grounds for a review can include the discovery of new evidence, procedural fraud, or a violation of rights that could have altered the outcome of the case.

24. How active are the authorities in tackling financial crime?

Swiss authorities are highly active in tackling financial crime, reflecting the country's commitment to maintaining the integrity of its financial system and complying with international standards.

Key institutions include the Financial Market Supervisory Authority (FINMA), which oversees financial institutions for compliance with anti-money laundering (AML) and counter-terrorism financing (CTF) regulations, and the Office of the Attorney General (OAG), responsible for prosecuting serious financial crimes like money laundering, corruption, and fraud. Additionally, the Money Laundering Reporting Office Switzerland (MROS) serves as the national central office for receiving and analysing reports of suspicious financial activities, working closely with financial institutions and other stakeholders.

Legislative measures play a crucial role in Switzerland's fight against financial crime. The Anti-Money Laundering Act (AMLA) imposes stringent requirements on financial institutions, such as identifying and reporting suspicious transactions and performing due diligence. The SCC

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outlines severe penalties for various financial crimes, including fraud, embezzlement, insider trading, and corruption. Swiss authorities actively engage in international cooperation and facilitate cross-border investigations as well as information sharing.

Despite ongoing efforts to enhance the prosecution of financial crimes through investments in training, advanced technologies, and updates to regulatory frameworks, Swiss criminal authorities continue to experience a significant case overload. This strain substantially affects the efficiency of criminal prosecution in Switzerland. In particular the length of criminal proceedings in complex financial crime matters remain an issue and an area for improvement.

25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

Generally speaking, the Swiss criminal authorities have intensified their focus on financial crimes, particularly money laundering. As a global financial hub, Switzerland has faced increasing domestic and international pressure to clamp down on illicit financial activities. Authorities have concentrated their efforts on complex financial networks, offshore accounts, and cross-border transactions, targeting both financial institutions and professionals, such as bankers and fiduciaries, who may facilitate money laundering schemes.

Another significant trend is the heightened scrutiny of the cryptocurrency and fintech sectors. The rapid rise of these industries has brought new challenges, particularly concerning the potential for fraud, money laundering, and other financial crimes. Swiss regulatory bodies, including FINMA, have responded with stricter monitoring and enforcement actions, ensuring that these new technologies comply with existing anti-money laundering regulations.

Furthermore, many companies have invested time and effort in compliance programs and other activities to prevent potential environmental crimes (or the related “greenwashing”). However, there has been no noticeable increase in criminal investigations around that topic. It is to be expected that the broader global shift towards holding companies accountable for their environmental impact may lead to an increased scrutiny by the Swiss authorities which will ultimately start triggering more investigations and prosecutions related to environmental violations.

26. Have there been any landmark or notable cases, investigations or developments in the past year?

There have been a number of significant cases in the past few years when it comes to financial crimes.

One of the most significant cases was the conviction of Credit Suisse by the Swiss Federal Criminal Court in June 2022 for failing to prevent money laundering linked to a Bulgarian drug ring. This case marked the first time a major Swiss bank was convicted of a criminal offense, signalling a stringent approach to enforcing anti-money laundering (AML) regulations. The court found that Credit Suisse failed to properly monitor and prevent illicit funds from entering its system, leading to a fine of 2 million Swiss Francs for the bank.

Pierin Vincenz, the former CEO of Raiffeisen Bank, one of Switzerland’s largest financial institutions, has been under investigation for several years due to allegations of corruption and mismanagement. In March 2022, Vincenz was convicted of multiple charges, including fraud and embezzlement, and was sentenced to several years in prison and a suspended monetary penalty of over 800’000 Swiss Francs. Four business partners were also convicted. Pierin Vincenz filed an appeal, and the Zurich High Court overturned the first-instance judgement in 2024 due to procedural errors and referred the case back to the public prosecutor, who must now bring new charges.

Finally, Switzerland has been deeply involved in the investigation of the 1MDB scandal, which involved the misappropriation of billions of dollars from Malaysia’s state investment fund. Swiss authorities, including FINMA and the OAG, launched investigations into the role of Swiss banks in facilitating the laundering of these funds. Notably, several banks faced severe penalties for breaching anti-money laundering regulations. Switzerland froze approximately USD 400 million in assets suspected of being linked to the scandal. Furthermore, Switzerland extensively cooperated with global authorities, including the U.S. Department of Justice, to track and recover stolen funds.

27. Are there any pending or proposed changes to the legal, regulatory and/or enforcement framework?

On 1 January 2024, the revised CPC came into force, introducing significant changes to the sealing and unsealing of evidence in criminal cases. These

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provisions, found in Articles 248, 248a, and 264 para. 3 CPC, play a crucial role in protecting the rights of the accused party as well as the confidentiality of third parties by temporarily preventing criminal authorities from accessing certain documents or data until a court decides on their unsealing.

The sealing of evidence is often requested in Swiss criminal proceedings, in particular in financial crime cases, where typically large volumes of data and sensitive documents are seized. The unsealing and triaging of this data has become increasingly complex and lengthy, with proceedings sometimes lasting and delaying the criminal investigations for years.

The revised CPC aims to streamline this procedure, reduce delays, and narrow the grounds on which sealing can be requested. These changes are expected to impact how parties approach the protection of their data during dawn raids and other investigatory actions.

Under the revised CPC, the grounds for sealing have been limited to specific legal protections, such as professional secrecy obligations (i.e. attorney-client privilege), removing the broader “other grounds” that previously allowed for claiming protection rights that were not explicitly stated in the law. This change particularly affects third parties that are not target of the criminal investigation, who may no longer request sealing based on personal or business secrets.

The revised CPC also imposes a strict ten-day deadline for submitting objections to unsealing requests. This shortened period poses significant challenges, especially in complex cases involving large amounts of data. The new law applies immediately to all unsealing proceedings that are pending before the court of first instance and will likely influence future proceedings under both criminal and administrative law.

28. Are there any gaps or areas for improvement in the financial crime legal framework?

Whistleblower protection is crucial for effectively combating financial crimes and corruption.

Currently, Switzerland lacks any specific legislation protecting whistleblowers and several proposed reforms to clarify whistleblowing protections were rejected by both the Federal Council and the National Council. Accordingly, Swiss courts currently only rely on existing labour, criminal, and data protection laws to address whistleblowing cases which however fail to provide comprehensive safeguards against retaliation. Enhancing whistleblower protection in Switzerland could encourage more individuals to come forward with information about financial misconduct. Furthermore, aligning Swiss whistleblower protection practices with international standards and best practices could strengthen the effectiveness of these measures.

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