

# Coronavirus Information Hub: FAQ Corporate Crime

## General introduction

### Did the Federal Council issue additional criminal provisions affecting companies?

Yes. The Federal Council has adopted new criminal provisions which are also of relevance for companies, particularly in the [Ordinance on Measures to Combat the Coronavirus \(COVID-19\)](#) (so called COVID-19 Ordinance 2; Version 4 April 2020) and in the so called «[COVID-19 Guarantee Ordinance](#)» (Version 26 March 2020). In particular, may be held criminally liable who intentionally fails to observe the ban on events or the restrictions imposed on businesses (as defined in art. 6 COVID-19 Ordinance 2). In addition, he has enacted criminal provisions in connection with COVID bridging loans. It is to be assessed in each individual case whether a particular criminal provision of the Federal Council is based on a sufficient legal basis.

### Are the cantons allowed to issue additional criminal provisions?

In an extraordinary situation under art. 7 of the Epidemics Act (which has been declared by the Federal Council on 16 March 2020), the cantons are no longer entitled to enact criminal provisions in those areas in which the Federal Council has already taken measures. If federal regulations exist in a specific field, these are deemed to be exhaustive, and the cantons may not issue additional provisions in such field. There might only be room for additional cantonal criminal provisions if the Federal Council has authorized such measures based on the clause on "exceptions for cantons in special risk situations" (currently only the Canton of Ticino applied for such exceptions; art. 7e of the COVID-19 Ordinance 2 and art. 40 and 83 of the Epidemics Act).

## Criminal proceedings in general

### Does the Coronavirus outbreak have an impact on the different deadlines related to criminal proceedings?

No specific measures have been taken by the Federal Council regarding deadlines in criminal proceedings. However, most of the Courts have limited their work to dealing with urgent cases and have, for example, suspended hearings (see [Courts Canton Zurich](#) or [Federal Criminal Court: "The hearings are suspended"](#)).

### Does the Coronavirus outbreak have an effect on the statute of limitations?

No, the Federal Council has not enacted any measures impacting the statute of limitations in criminal proceedings.

### Do companies have to expect dawn raids also during the extraordinary situation?

Dawn raids as well as all other measures remain available to the authorities. However, they will typically only make use of such measures in urgent matters. Moreover, certain public prosecutor's offices communicated that they are currently not conducting any hearings (except in matters where immediate reaction is required).

## COVID-19 Ordinance 2

### What is covered by the criminal provisions of COVID-19 Ordinance 2 (particularly relevant for companies)?

The following criminal provisions are particularly relevant for companies (art. 10f):

- any person who wilfully fails to comply with the prohibition of public or private events and the closure of all publicly accessible establishments (other than those serving to cover the daily needs of the population) under art. 6 is liable to a custodial sentence not exceeding three years or to a monetary penalty (unless a more serious offence under the Criminal Code has been committed);
- a fine of up to CHF 10'000 (or a fixed penalty of CHF 100 in a simplified, standardized procedure) may be imposed on anyone who violates the ban under art. 7c on gatherings in public areas of more than five persons (resp. the participation in such a gathering) or up to five persons without keeping a distance of at least two metres from the others.
- any person who exports protective equipment without the required licence in the sense of art. 4b may be punished by a fine of up to CHF 10'000.
- any person who passes through a closed border crossing in the sense of art. 4 para. 4.

In accordance with the principle that criminal provisions should be a measure of last resort, the Federal Council refrained from declaring all contraventions against its Ordinance as a criminal offence.

### Who is responsible for prosecution and enforcement?

Prosecution and enforcement lie with the competent cantons. An exception applies for the contravention in relation to border crossings where the Federal Customs Administration may collect fixed penalty fines if they are paid immediately.

### COVID-19 bridging loans

For details on COVID-19 bridging loans, see: [Kredite mit Bundesgarantie und weitere Massnahmen des Bundes zur Erhaltung der Liquidität schweizerischer Unternehmen in der Corona-Krise](#)

### What is covered by the criminal provision of COVID-19 Guarantee Ordinance?

A fine of up to CHF 100'000 (unless there is a more severe offence under the Penal Code, such as, e.g., fraud [see below]) may be imposed on anyone who deliberately:

- obtains a loan under the COVID-19 Guarantee Ordinance based on false information, or
- uses the credit funds for payments as defined in art. 6 para. 3 of the COVID-19 Guarantee Ordinance, e.g. by paying dividends and royalties or repayments of capital contributions, by granting of personal and shareholder loans, by replacing group loans or by transferring of credit funds to a directly or indirectly affiliated group company not domiciled in Switzerland (art. 23 of the COVID-19 Guarantee Ordinance).

In addition, the funds (including profits and interests) obtained in such manner may be blocked by the criminal authorities and eventually seized.

If someone obtained a loan in a fraudulent manner (e.g. by using forged documents or similar means), he or she may be liable to a custodial sentence of up to five years for common fraud (art. 146 Criminal Code).

## Cybercrime

### Does the Coronavirus outbreak lead to more cyber-attacks?

The cantonal police corps have noticed an increase in cyber-attacks that refer to COVID-19. The [Federal Reporting and Analysis Centre for Information Assurance MELANI](#) provides an overview of the currently detected variants of coronavirus scams on the internet.

For further information see: [COVID-19 cyber fraud and scams](#)

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### [Coronavirus Information Hub](#)

Walder Wyss is committed to supporting our clients through the challenges the pandemic presents. We will be publishing regular insights on this Information Hub.

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