

Coronavirus Information Hub: FAQ Corporate Crime

Version 1 February 2021; for comments on the legal situation in spring 2020, see [Version 8 April 2020](#).

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 of 19 June 2020 on Measures during the Special Situation to combat the COVID-19 Epidemic](#) (so called COVID-19 Ordinance Special Situation; Version 1 February 2021) and in the [COVID-19 Joint and Several Guarantee Act](#) (Version 19 December 2020). In particular, may be held criminally liable who intentionally fails to observe the ban on events, or the restrictions imposed on businesses (as listed in art. 13 COVID-19 Ordinance Special Situation). In addition, the Federal Assembly 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?

Since June 2020, Switzerland has been in a so called "special situation" under the terms of the Federal Epidemics Act. The Federal Council determines the measures that apply throughout Switzerland. However, compared to the so called "extraordinary situation" (under the terms of the Federal Epidemics Act) in spring 2020, the cantons may also adopt additional measures if the case numbers in their territory increase or threaten to increase. Therefore, the measures can differ from one canton to another.

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. In order to comply with the applicable hygiene and distance recommendations, specific instructions of the courts may apply (especially with regard to participation rights) and particularly questionings by the public prosecutor's offices in criminal proceedings with several parties may be conducted via videoconference.

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).

With regard to the measures to protect employees from infection, the cantonal labor inspectorates can conduct checks to determine whether an employer is implementing the protective measures correctly.

COVID-19 Ordinance Special Situation

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

The following criminal provisions are particularly relevant for companies (art. 13). Any operator or organizer may be punished by a fine of up to CHF 10'000, who willfully or negligently fails to comply with:

- the obligation to develop and implement a protection concept in accordance with the applicable requirements (art. 4);
- the prohibition to operate restaurants, bars, clubs, discotheques and dance halls (art. 5a) or publicly accessible facilities and businesses in the areas of culture, entertainment, leisure and sports (art. 5d);
- the closure of all publicly accessible establishments (other than those serving to cover the daily needs of the population; permitted is the collection of ordered goods on site) (art. 5e);
- the obligation to keep publicly accessible stores or establishments offering services, such as post offices, banks, travel agencies or hairdressers, including corresponding self-service offers, closed between 19:00 and 6:00 and on Sundays (art. 5f).

In addition, a fine of up to CHF 10'000 (or a fixed penalty in a simplified, standardized procedure) may be imposed on any person who wilfully fails to comply with the prohibition of public or private events in the sense of art. 6.

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.

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 Joint and Several Guarantee Act?

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 Joint and Several Guarantee Act based on false information, or
- uses the credit funds for payments as defined in art. 2 para. 2-4 of the COVID-19 Joint and Several Guarantee Act, 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. 25 of the COVID-19 Joint and Several Guarantee Act).

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 [National Cyber Security Centre NCSC](#) provides an overview of the currently detected variants of scams on the internet.

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

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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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