# The Anti-Bribery and Anti-Corruption Review

Third Edition

Editor
Mark F Mendelsohn

Law Business Research

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# EDITOR'S PREFACE

This third edition of *The Anti-Bribery and Anti-Corruption Review* presents the views and observations of leading anti-corruption practitioners in jurisdictions spanning every region of the globe. The worldwide scope of this volume reflects the reality that anti-corruption enforcement has become an increasingly global endeavour, resulting in a challenging environment for anti-corruption practitioners and the clients they advise.

Over the past year, a growing number of countries enacted or amended significant anti-corruption and anti-bribery legislation and, perhaps more importantly, increased their enforcement of those laws. This volume touches upon a wide range of such legislative developments. A few highlights include: Latvia's May 2014 accession to the Organisation for Economic Co-operation and Development Anti-Bribery Convention, the German Federal Cabinet's May 2014 resolution to adopt the Act on the Ratification of the UN Convention against Corruption, and the European Parliament's April 2014 adoption of the Directive on Disclosure of Non-Financial and Diversity Information by Certain Large Companies and Groups, which will require covered companies to disclose information on their policies, risks and results regarding anti-corruption and bribery issues.

In the United States, enforcement authorities continue to vigorously enforce the Foreign Corrupt Practices Act (FCPA), with the past year's cases showing both an increase in the number of charges against individuals and a continued focus on corporate conduct. The investigation and enforcement focus cuts across a range of industries including: pharmaceutical and medical device companies, the financial, mining and aviation industries, and the energy sector. In January 2014, the Department of Justice (DOJ) and the Securities and Exchange Commission announced settlements with Alcoa Inc and its subsidiary Alcoa World Alumina LLC. These settlements, involving $384 million in criminal fines, administrative forfeitures and disgorgement, constitute the fifth largest FCPA settlement in US history. In September 2014, Marshall L Miller, Principal Deputy Assistant Attorney General for the DOJ Criminal Division, announced his office's intention to 'vigorously employ proactive investigative tools that may not have been used frequently enough in white-collar cases in past years: tools like wiretaps, body wires, physical surveillance and border searches'. These investigative tools appear to have

been employed during the recent investigations of French citizen Frederic Cilins and a group of executives at BizJet International, a US-based subsidiary of the Lufthansa Corporation. Companies and their counsel continue to struggle with the issue of whether or not to self-report potential violations of the FCPA in light of the enforcement climate and concerns regarding the risk/reward calculus. And, as in previous years, we have continued to see the uncovering of bribery in mergers and acquisition diligence as well as an increase in various forms of private litigation related to FCPA investigations.

The foreign bribery landscape grows increasingly complicated for multinational companies, as China, the United Kingdom, Norway and Canada, among other countries, have each launched significant investigations and brought a substantial number of corruption actions in the past year related to international business transactions. The growing number of enforcement actions around the world are supported by a significant trend toward greater international cooperation in anti-corruption enforcement efforts. In a 17 June 2013 keynote address, then DOJ Acting Assistant Attorney General Mythili Raman commented: 'Through our increased work on prosecutions with our foreign counterparts and our participation in various multilateral fora like the OECD and United Nations, it is safe to say that we are cooperating with foreign law enforcement on foreign bribery cases more closely today than at any time in history.'

I wish to thank all of the contributors for their support in producing this volume. I appreciate that they have taken time from their practices to prepare chapters that will assist practitioners in navigating the complexities of foreign and transnational business.

**Mark F Mendelsohn**
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Washington, DC
November 2014

# Chapter 21

# SWITZERLAND

*Roman Richers and Martin Karl Weber*[1]

## I INTRODUCTION

In Swiss law, bribery of public officials and bribery of private individuals and companies is governed by two different legal acts – the Swiss Criminal Code (SCC) and the Unfair Competition Act (UCA). With the ratification of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Instruments, which entered into force in Switzerland on 30 July 2000, Switzerland expanded its criminal law on bribery and corruption. The SCC was amended in May 2000, introducing Articles 322ter to 322octies, which prohibit active and passive bribery of Swiss public officials and the granting to or accepting by Swiss public officials of an undue advantage. With Article 322septies SCC, bribery of foreign public officials was also expressly forbidden. In 2003, corporate criminal liability was tightened in Article 102 SCC. In 2006, Article 4a UCA further outlawed bribery in the private sector to the extent that such bribery results in a market distortion.

Currently, further anti-bribery and anti-corruption legislation is proposed by the Federal Council with regard to bribery in the private sector, but has not yet been passed by Parliament (see Section VIII, *infra*). A key change would consist of making bribery in the private sector a crime that is prosecuted *ex officio* and not only upon the request of an injured party (as is the case today). Further, bribery in the private sector shall become a statutory offence under the SCC instead of being merely addressed by the UCA.

1 Roman Richers and Martin Karl Weber are attorneys-at-law at Homburger AG.

## II DOMESTIC BRIBERY: LEGAL FRAMEWORK

### i Preliminary remark: Swiss jurisdiction

In principle, any person committing a felony or misdemeanour in Switzerland is subject to Swiss criminal law (Article 3 SCC).

Additionally, felonies or misdemeanours committed abroad may be subject to the SCC and prosecuted in Switzerland if (1) the act concerned is liable to prosecution at the place of commission; (2) the presumptive offender is located in Switzerland or extradited to Switzerland because of the offence; and (3) under Swiss law, extradition is in principle permitted for the offence but the offender not effectively extradited (Article 7 SCC).

With regard to companies domiciled in Switzerland, it is controversial whether they may be prosecuted in Switzerland under Swiss law if all relevant acts committed (or omitted) by the offender entirely took place abroad and the only link to Switzerland is the Swiss domicile of the company. The prevailing opinion, however, is that the link to Switzerland established by the company's Swiss domicile is sufficient. The Office of the Attorney General of Switzerland (OAG) has also adopted this view. Consequently, a Swiss-domiciled company failing to take all reasonable organisational measures required to prevent the relevant offences is likely to be liable for bribery of foreign public officials, bribery in the private sector and money laundering, even if the offender does not act in Switzerland. In this regard, the OAG has emphasised that it will assume jurisdiction over Swiss parent companies even if the business relationship affected by bribery was conducted exclusively abroad and through a foreign subsidiary, as the prevention of corruption is the responsibility of the group's top management and cannot be delegated.

### ii Corrupting public officials

Bribing public officials is punishable under the SCC. Articles 322ter and 322quater SCC make it a crime for any person to offer, promise or grant a public official a bribe (active bribery), or for any public official to solicit or accept a bribe (passive bribery). Article 110(3) SCC defines public officials as officials and employees of a public administrative authority or of an authority for the administration of justice as well as persons who hold office temporarily or are employed temporarily by a public administrative authority or by an authority for the administration of justice or who carry out official functions temporarily. Article 322ter SCC provides for a broader definition of a public official by including not only the public official, as mentioned above, but also any officially appointed expert, translator or interpreter, any arbitrator or a member of the armed forces. Furthermore, any individuals fulfilling a public function are subject to the same provisions as public officials even if they are not formally appointed (Article 322octies(3) SCC). As a result, under Swiss law a very broad definition of 'public official' applies, which includes many people that may not be considered government officials elsewhere, potentially including in particular employees of state-owned or state-controlled enterprises. Therefore, companies must carefully assess on a case-by-case basis whether they are dealing with a public official.

Active bribery is defined as an act by which a public official is offered, promised or granted an undue advantage, for his or her own benefit or for the benefit of any third party, for the commission or omission of an act in relation to his or her official duties

that is contrary to his or her duties or within his or her discretion (Article 322ter SCC). Passive bribery is prohibited under equivalent prerequisites (i.e., when demanding, securing the promise of, or accepting such an advantage) (Article 322quater SCC).

The undue advantage must be given in exchange for a specific act or omission (i.e., a decision, service or other official activity). Corruption under Swiss law is, however, not limited to directly linked transactions: in addition to bribery in the narrow sense of the word, Articles 322quinquies and 322sexies SCC also prohibit the granting or accepting of an advantage related to unlawful favours that are not connected to a specific official act but that are focused on future 'favourable' official behaviour. Entertaining public officials or giving public officials a gift to build business relationships may therefore violate Swiss law.

The advantages mentioned in Articles 322ter to 322septies SCC are not undue if they are allowed by staff regulations or when they are of minor value or in line with social custom (Article 322octies(2) SCC). Examples for such permitted advantages are customary small Christmas presents to post office clerks, policemen or similar, modest entertainment of public officials on the occasion of a business meeting, or an appreciation gift for firefighters following their assistance.

In the case of bribery of public officials, individuals can be sentenced to a prison term of up to five years or a fine (Article 322ter SCC). Granting or accepting an advantage as described in Articles 322quinquies to 322sexies SCC is punished with imprisonment for a term of up to three years or a fine. Pursuant to Article 34 SCC, the maximum fine of all bribery offences amounts to 1,080,000 Swiss francs. In sentencing, the court takes into account the culpability of the offender and his or her personal and financial circumstances at the time of conviction.

### iii Bribery in the private sector

The bribery of private individuals who do not fall under the above-mentioned definition of a public official is currently governed by Article 4a UCA.

In principle, the same rules apply to the bribery of private persons as to the bribery of public officials, provided that such bribery results in a market distortion in the sense of the unfair competition law. The offence consists in offering, promising or giving an employee, a member of an enterprise, a representative or other auxiliary of a third party in the private sector an advantage for an activity that is contrary to his or her duties or within his or her discretion. In addition, a connection between the granting of the advantage and the employment or business activity is required. As a consequence, paying a private individual exclusively in connection with the (private) relationship with that person itself is not prohibited under the UCA. Furthermore, only advantages that are undue qualify for the offence, and negligible, common social advantages are excluded. Passive bribery is prohibited in Article 4a(1)(b) UCA under equivalent prerequisites.

Unlike the bribery of public officials, bribery in the private sector is currently prosecuted only upon complaint and may result in imprisonment for up to three years or a fine (Article 23 UCA). Therefore, bribery in the private sector is technically qualified as a mere offence instead of a felony. This is relevant with regard to the anti-money laundering legislation that requires a crime in the technical sense as a predicate offence, (i.e., the breach of a provision punishable with more than three years of imprisonment).

### iv Corporate criminal liability

Under Swiss criminal law, it is primarily the individual who is liable to punishment and therefore prosecuted in the first place.

In addition to the liability of the acting individuals, corporate criminal liability is established in Article 102 SCC. Two different statutory bases for corporate criminal liability exist:

*a* Generally, corporate criminal liability exists if because of inadequate organisation of the company it is not possible to attribute a felony or misdemeanour (including bribery) that was committed in the exercise of commercial activities to any specific individual (Article 102(1) SCC). The company is therefore only liable in the event that no individual can be punished. In such cases, the company shall be liable to a fine not exceeding 5 million Swiss francs.

*b* An enterprise may, however, also be punished regardless of whether or not an individual can be identified and punished. Should one of the specific crimes listed in the provision be committed (including bribery of Swiss or foreign public officials or persons in the private sector), the enterprise is punishable if it did not undertake all requisite and reasonable organisational precautions required to prevent such a crime (Article 102(2) SCC).

The exact scope of the organisational measures required under Article 102(2) SCC is not defined by law. The Swiss prosecuting authorities take international good practice standards into account when determining the required compliance measures (see Section X, *infra*). The punishment is the same as in Article 102(1) SCC.

## III ENFORCEMENT: DOMESTIC BRIBERY

Bribery and corruption are investigated by the OAG if they are committed by or against federal authorities, substantially committed abroad or committed in several cantons if there is no unambiguous focus in one canton. In all other cases, the public prosecutor's office (PPO) of the competent canton in Switzerland is responsible for investigating bribery and corruption.

In 2010 and 2011, the PPO of the canton of Zurich investigated alleged corruption within the state pension fund for Zurich cantonal employees (BVK). This investigation resulted in indictments by the PPO, including the indictment of the former chief investment officer of BVK, based primarily on multiple acts of passive bribery. He was accused of having accepted money and other financial advantages, as well as accepting a promise for such advantages from five business partners of BVK between 2000 and 2010. In November 2012, the District Court of Zurich City found him guilty and sentenced him to six years and three months in jail. In August 2014, the High Court of the Canton of Zurich upheld the conviction, slightly reducing the sentence to six years. In addition, it also confirmed the appealed verdict against three co-defendants.

In January 2014, alleged corruption in the State Secretariat for Economic Affairs (SECO) regarding the acquisition of IT services was reported. The OAG has initiated criminal proceedings against two IT service providers and the former SECO department manager. The investigation is still ongoing.

## IV FOREIGN BRIBERY: LEGAL FRAMEWORK

Active bribery of foreign public officials is defined in Article 322septies SCC as an act by which a foreign public official is offered, promised, or granted an undue advantage, for his or her own benefit or for the benefit of any third party, for the commission or omission of an act in relation to his or her official duties that is contrary to his or her duties or within his or her discretion. Passive bribery of a foreign official is set out in the same provision and mirrors the prerequisites of active bribery.

The OAG applies a very broad interpretation when defining who qualifies as a foreign official. The authorities rely on a 'functional' notion, based on which anyone in a position to influence business dealings with states or state-owned or controlled entities is deemed to be a foreign official. For instance, the son-in-law of an ex-president of a foreign country was considered by the OAG to be a foreign public official in terms of Article 322septies SCC, essentially because he was apparently able to influence the award of public contracts. In addition, the executives of a state-owned energy company were also considered foreign public officials by the OAG.

Active and passive bribery of a foreign public official are punished with imprisonment for a term of up to five years or a fine (Article 322septies SCC).

In Switzerland, the giving or accepting of advantages as defined in Articles 322quinquies and 322sexies are not punishable when a foreign public official is concerned.

## V ASSOCIATED OFFENCES: FINANCIAL RECORD KEEPING AND MONEY LAUNDERING

### i Financial record keeping

Bribery often involves the violation of financial record-keeping rules. Under Swiss law, anyone conducting commercial business must properly keep and preserve records of its accounts as necessary to accurately reflect the financial situation of the business and determine liabilities and claims in connection with them. More detailed and specific provisions apply to public and private limited companies. Financial records and underlying documents must be preserved for a period of 10 years, and financial statements must be disclosed to the company's shareholders and, in the case of public companies, to the public. In addition, if a private company is involved in a dispute and there is a legitimate interest, the company is required to disclose its financial records in legal or administrative proceedings.

Failure to keep or disclose accurate financial records may entail both civil and criminal liability for the responsible board members, the responsible managers of the company and the company itself. Civil liability may include liability for damages and any corporate resolution being declared void. Criminal liability includes liability for both failure to keep proper accounts and, potentially, forgery of documents. The sanctions are, respectively, imprisonment of up to three years and up to five years, or a fine. Public companies further risk sanctions from the stock exchange.

### ii Money laundering

Switzerland's legislation on the prohibition of money laundering and terrorist financing has been progressively expanded over the past two decades and is among the most rigorous in the world. Its objectives include the protection of Switzerland's integrity and reputation as a financial centre as well as ensuring the fair fulfilment of its economic functions.

Money laundering is defined as an act aimed at frustrating the identification of the origin, the tracing or the confiscation of assets that, as the perpetrator knows or must assume, originate from a felony (Article 305bis SCC). In principle, all assets that originate from a felony are subject to this provision. A felony is an offence that carries a custodial sentence of more than three years. The predicate offence can also be bribery. According to the Swiss Federal Supreme Court, proof that the assets in question stem from a felony as a predicate offence is sufficient; the exact circumstances of this offence as well as the identity of the perpetrator do not have to be known. Pursuant to Article 305bis(3) SCC, money laundering can also be committed if the predicate offence was committed abroad, provided that it is also punishable at the place of commission.

The mere acceptance, possession or custody of relevant assets is not considered money laundering. Acts that create or extend the 'paper trail' are generally not deemed to constitute money laundering (e.g., transferring funds within Switzerland between one's own accounts). In contrast, international transactions or physically transporting assets abroad will usually fulfil the elements of the offence.

To prevent money laundering and terrorist financing, Switzerland further introduced the Anti-Money Laundering Act (AMLA) and related implementing regulations under administrative law. They introduce various due diligence obligations for financial intermediaries such as strict 'know your customer' rules and a duty to report activities that are suspected of being for the purpose of money laundering and terrorist financing.

Money laundering is punishable by a custodial sentence not exceeding three years or a fine, or five years or a fine in severe cases of money laundering.

### iii No tax deductibility of bribery payments

Since January 2001, Swiss tax law expressly excludes the tax deductibility of bribery payments to Swiss and foreign public officials (Articles 27(3) and 59(2) of the Act on the Direct Federal Tax and Articles 10(1bis) and 25(1bis) of the Federal Act on the Harmonisation of Cantonal and Municipal Direct Taxes).

## VI ENFORCEMENT: FOREIGN BRIBERY AND ASSOCIATED OFFENCES

For all offences based on breaches of the SCC, the Swiss criminal prosecuting authorities are responsible for conducting investigations. As foreign bribery is to a large extent committed abroad, the competent prosecuting authority is often the OAG.

In November 2011, the OAG closed criminal proceedings conducted against two entities of the Alstom group after many years of investigation. Alstom Network Schweiz AG was convicted for not having taken all necessary and reasonable organisational precautions to prevent bribery of foreign public officials in Latvia, Tunisia

and Malaysia. The proceedings were conducted against Alstom Network Schweiz AG because the compliance organisation was centralised at this Swiss entity (Article 102 SCC). The company was fined 2.5 million Swiss francs and had to pay a compensatory claim of 36.4 million Swiss francs as well as the costs of the proceedings. The OAG further established that while the group had implemented a suitable compliance policy, it had failed to enforce it with the necessary persistence and did not provide suitable resources, therefore failing to prevent the bribery in question.

Breaches of the AMLA and the Financial Market Supervision Act by financial intermediaries are investigated and prosecuted by the Federal Department of Finance. For financial services providers, on the other hand, the Swiss Financial Market Supervisory Authority, FINMA is the principal regulator and is also responsible for supervising compliance with the obligations imposed by the AMLA.

A financial intermediary must submit a report to the Money Laundering Reporting Office (MLRO) if it knows or has reasonable grounds to suspect that the assets involved in the business relation are connected to a punishable offence originating from a crime, are subject to control by a criminal organisation or serve the financing of terrorism (Article 9 AMLA). Additionally, any person, who as a part of his or her profession accepts, keeps on deposit or assists in investing or transferring outside assets, is entitled to report observations that indicate that assets originate from a felony (Article 305ter(2) SCC). Once such a report is filed, the assets originating from the business relationship in question must be frozen immediately. The assets must remain frozen until the financial intermediary receives a decision from the responsible law enforcement authority, but at most for five working days from the time at which the report is filed with the MLRO (Article 10 AMLA). During this time the financial intermediary may not inform the affected persons or third parties about the facts concerning the report. The financial intermediary may terminate a questionable business relationship but may then permit the withdrawal of assets in a manner that allows prosecution authorities to track the funds (paper trail).

## VII INTERNATIONAL ORGANISATIONS AND AGREEMENTS

Switzerland's anti-corruption laws are in line with and implement the relevant international conventions.

As stated above, Switzerland is a signatory to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997. Switzerland has also ratified the Council of Europe's Civil Law Convention on Corruption 1999 and the UN Convention against Corruption 2003.

## VIII LEGISLATIVE DEVELOPMENTS

### i Planned extension of the bribery offences

The Swiss government plans to extend the scope of the bribery offences in the SCC. In light of certain criticism regarding the Swiss anti-corruption laws and their implementation, the Federal Council published a preliminary draft for revised statutory provisions in May 2013 and initiated a political consultation process on the suggested changes. Based on the feedback from the consultation process, the Federal Council submitted draft

legislation to the Swiss parliament on 30 April 2014. The revised law may be passed by the Swiss parliament possibly in 2015 and the revision may enter into force possibly in 2016.

Under the proposed new law, bribery in the private sector shall become a statutory offence under the SCC instead of merely being addressed by unfair competition law. As a consequence, there will no longer be a requirement of an impact on the competition in any (Swiss) market, which expands the scope of application of the provision. In addition, the requirement of a request for prosecution by the injured party shall be abolished. Bribery in the private sector will therefore be prosecuted by the authorities on their own motion whenever they become aware of any relevant facts sufficiently indicating potential bribery in the private sector. In all other respects, the prohibition of bribery in the private sector shall essentially remain the same as it is at present.

Furthermore, the scope of application of the offences of granting or accepting an undue advantage (Articles 322quinquies to 322sexies SCC) shall be expanded to include advantages that are granted to a third party (for instance, a sports club or a political party) instead of the official, bringing the provisions in line with the current provisions prohibiting bribery (Articles 322ter and 322quater SCC).

### ii Planned revision of the employment law regarding whistle-blowing

At present there is no specific statutory protection for whistle-blowers in the private sector. Furthermore, whistle-blowing is widely perceived as contradicting Swiss business culture. Therefore, employees in the private sector who report to the public cases of serious malpractice within a company face a high level of legal uncertainty. Under Swiss employment law, employees must carry out the work assigned to them with due care and loyally safeguard the employer's legitimate interests. This duty also provides the basis for the employee's duty of confidentiality, including maintaining business secrets. A whistle-blower is always at risk of being found to have breached these obligations, in particular if the internal procedures were not followed before reporting the concerns to a competent authority. This risk is further increased by the fact that the wrongful dismissal of a whistle-blower does not make the dismissal null and void. There is no right to re-employment, and the employer who terminates the employment relationship unlawfully only risks paying financial compensation to the employee of up to six months' salary.

The current regime for whistle-blowers in the private sector has been criticised and the Swiss government has therefore proposed an amendment to Parliament, clarifying the legal protection of employees. Under the proposed rules, an employee would in principle first have to escalate his or her concerns internally and would only be entitled to contact the authorities if the employer failed to take appropriate measures within a defined time period. Directly contacting the authorities would be permissible only exceptionally if provisions of public or criminal law were breached and (1) if it must be assumed that notifying the employer will be fruitless; (2) if an internal escalation would likely result in an obstruction of the authorities' investigation; or (3) if an immediate threat to life, health, safety or the environment exists. Contacting the media would in any event only be permissible as a measure of last resort should the authorities unlawfully fail to update the employee regarding their actions. However, the

proposed law does not change the current employment law regarding dismissals as the initially suggested changes were severely criticised during the public consultation phase.

## IX OTHER LAWS AFFECTING THE RESPONSE TO CORRUPTION

Article 22a of the Act on Federal Public Officials governs the duty to report, the right to report and the protection of federal employees reporting in good faith crimes and offences or other irregularities that they become aware of in the course of official work activities. Such reports may be made to their superiors, the prosecution authorities or the Swiss Federal Audit Office. A federal public official may not be discriminated against on account of reporting in good faith.

## X COMPLIANCE

Under Swiss law, a company must undertake all required and reasonable organisational precautions to prevent bribery of Swiss and foreign public officials and persons in the private sector. An important organisational precaution is the adoption and implementation of an effective anti-corruption compliance programme that starts with a corruption risk analysis, followed by the issuing of a code of conduct based on a zero-tolerance approach.

The compliance policy should be adopted by the senior management and implemented throughout the company and its subsidiaries. An independent compliance organisation that has access to top management must be established; the overall responsibility for compliance lies with the board of directors and the top management and cannot be delegated.

Compliance with anti-corruption provisions solely on paper is insufficient, and the prosecuting authorities have made it clear that they expect effective enforcement within the company. Hence, a company must also be able to show that the employees were made aware of the relevant compliance policy and that appropriate training took place. Such training can be done in different ways, such as face-to-face training or e-learning. Written periodical acknowledgments and the implementation of dual control and double signature requirements are additional steps that may be implemented in that respect. Furthermore, the compliance policy has to be understandable for all employees and should therefore also be translated into the local language. Implementing adequate monitoring of business practices and periodically making the necessary adjustments to the compliance organisation are further steps to ensure effective compliance. In particular, the training of the employees and the implementation of the compliance policy should be verified on a regular basis. To enforce compliance and sanction violations, the compliance department has to be adequately staffed and must be empowered to take all required measures.

To mitigate the risk of corporate criminal liability, issuing specific compliance directives is strongly recommended.

In view of potential liability costs and reputational damage, anti-corruption structures should also receive careful attention when selecting intermediaries or in the context of any merger or acquisition, in particular as part of the due diligence process.

## XI OUTLOOK AND CONCLUSIONS

Because of its important financial sector and the large number of multinational enterprises based in Switzerland, the country is particularly exposed to the risks of bribery of foreign public officials. Swiss law, but also the extraterritorial reach of foreign anti-bribery acts, requires the implementation of an effective anti-corruption compliance programme. The existing case law concerning foreign bribery has shown that the related legal and reputational risks are by no means abstract.

These risks are not limited to the company and its own employees, as the conviction of intermediaries, suppliers or distributors can also have wide repercussions and may lead to an investigation of the company itself.

Companies that are doing business internationally, and that may even be listed on a foreign stock market, should carefully assess their specific risks regarding bribery and corruption, and must take all appropriate steps to ensure strict compliance with the current Swiss and international anti-corruption legislation. It is equally important to ensure that the company's code of conduct is adhered to by affiliated third parties.

Implementing effective anti-bribery rules unquestionably places a burden on the company and may require changes to the way it organises and conducts its business. The current trend to vigorously combat corruption is, however, unlikely to change any time soon, and the days of 'muddling through' with only negligible risks are clearly over. It is therefore in the best interest of any enterprise to face this challenge and adopt sound and sustainable business practices that will ensure the long-term success of the company.

## Appendix 1

# ABOUT THE AUTHORS

**ROMAN RICHERS**

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Roman Richers is a partner with Homburger's litigation and arbitration team and a member of the firm's white-collar investigations team. He graduated from the University of Basel (lic. iur.) and the University of Cambridge (LLM) and is admitted to all Swiss courts. Roman Richers regularly advises and represents businesses and individuals in relation to criminal investigations and proceedings and related judicial assistance proceedings as well as internal investigations. His practice further focuses on complex international and domestic arbitration proceedings and commercial litigation, including conflict of laws, international legal assistance and enforcement proceedings. Roman Richers is fluent in German, English and Spanish.

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Martin Weber is an associate with Homburger's litigation and arbitration team as well as with Homburger's financial services team and a member of the firm's white-collar investigations team. He graduated from the University of Lucerne (Dr. iur.) and the University of Neuchâtel (Bilingual Master of Laws) and is admitted to all Swiss courts. Additionally, he trained as a specialist in forensics and also sits as an investigating judge of a Swiss military tribunal. Martin Weber regularly advises and represents businesses and individuals in relation to regulatory investigations and proceedings as well as internal investigations. His practice further focuses on banking litigation, financial markets law and corporate law. Martin Weber is fluent in German, English and French.

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