

PREVENTING CORRUPTION

Information for Swiss businesses
operating abroad



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Overview

As the manager or employee of a Swiss business operating abroad, you may be exposed to situations involving corruption. Corruption is not inevitable, and you can help to fight against it by adopting appropriate behaviours. The following information will help you to resist situations of corruption.

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Respect the criminal law provisions on corruption

On 1st July 2016, the criminal legislation on corruption was modified. It is important that you are aware of this so that you can adapt your behaviour in accordance with the legislation in force.

Besides the bribery of foreign public officials, bribery in the private sector is also punishable in Switzerland;

Criminal liability of the company: a company which has not taken all reasonable and necessary organisational measures to prevent corruption may face prosecution;

Foreign law: the law of the country in which you conduct your business is also applicable.

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Assess the situation

In order to identify the risks of corruption, it is strongly advised that you perform a complete risk assessment. This brochure contains a list of scenarios inspired by experience and likely to arise in connection with your business abroad (creation of a subsidiary, tendering procedure for a public contract, solicitation of bribes, etc.).

>28**Establish an anti-corruption code of conduct**

Using the risk analysis, you must take adequate measures for preventing corruption. Emphasis is placed on adopting a written code of conduct.

Whether your business is small or medium in size (SME) or a multinational, establishing an internal code of conduct is an effective way to fight corruption.

A code of conduct tailored to the size of your company and which also takes into account the countries and sectors in which you operate your business activities.

A code of conduct which, with regard to your employees and intermediaries, demonstrates your commitment to fighting corruption.

Effective application of the code of conduct, company management commitment to compliance ('tone from the top'), training, evaluation, penalties for any violations, etc..

>30**Use the available tools**

Use the following tools developed for the attention of companies in order to help you:

The Good Practice Guidance on Internal Controls, Ethics, and Compliance by the OECD

The Rules of the International Chamber of Commerce (ICC) to combat corruption

The Business principles for countering bribery – Transparency International's edition for small and medium-sized enterprises (SME)

The Anti-bribery Guide of the HTW Chur is directly aimed at small and medium-sized Swiss enterprises (SME)

The international standard ISO 37001 for anti-corruption management systems

>35**Inform yourself**

Bear in mind that you are not alone in dealing with the problem of corruption! Please don't hesitate to ask for help:

In Switzerland: the State Secretariat for Economic Affairs (SECO), the Federal Office of Justice (OFJ) and the Federal Department of Foreign Affairs (DFAE).

Abroad: Swiss diplomatic representations abroad (embassies and consulates), Swiss Business Hubs and local chambers of commerce.

A complete list of contacts may be found at the end of this brochure.



Introduction

Why this brochure? When it comes to corruption, all companies operating abroad, including small and medium-sized enterprises (SME), face certain specific risks. This brochure will explain this problem and help you cope with the pertinent regulations in Swiss criminal law. Here you will find a series of hypothetical scenarios that may arise in the course of the business you conduct abroad and a legal assessment thereof. This brochure also highlights the effects of corruption on your business and provides advice on how to prevent corruption, and, where necessary, how to combat it.

What is corruption?

Corruption is the act by which a person provides or offers an undeserved advantage to lead a person to carry out an act that goes against his or her duties or depends on his or her discretionary powers. The act of soliciting or accepting such an advantage and, therefore, abusing a position of trust, also falls within the definition of corruption.

Corruption can involve **public officials** or **private individuals**. It commonly occurs:

- during certain procedures (e.g. awarding public contracts)

- in certain specific economic sectors (e.g. estate agency business, construction projects, etc.) or
- in certain countries (see the annual indices of Transparency International)¹.

It can take many different forms, such as giving small gifts in anticipation of a future advantage, paying large sums of money to members of a government, providing holidays to a purchasing manager in the guise of a business trip, creating false invoices, etc.

This brochure focuses on the bribery of foreign public officials and private indi-

¹ <https://www.transparency.org/country/>.

viduals in international business transactions.

International business transactions

According to a study by the University of Applied Sciences HTW Chur, for many Swiss companies operating abroad, corruption is a real problem. The study shows that small and medium-sized enterprises (SME) face a higher risk of corruption than larger companies. Under pressure in international markets (fierce competition, order books to be filled, etc.), they may also experience difficulties relating to specific legal aspects, customs or the political situation of the foreign country in which the company operates. Obtaining a contract, an authorisation that is slow to arrive, or a market authorisation that's more cumbersome to obtain than expected are all situations that could have serious ramifications for a company. In such scenarios, it is possible that certain people will inform you – and your competition – that 'greasing palms' could effectively speed up the process.²

What will you do?

«Corruption means any abuse of a position of trust in order to gain an undue advantage.»

To ensure that you are able to make the right decisions, you must have a clear vision of the consequences of your behaviour as a manager, executive or employee of the company. It is particularly important that company management adopts a clear, visible position that forbids corruption. Furthermore, solid and clearly-stated support and involvement from the highest levels of management are necessary.

Legal sources and conventions on the fight against corruption

International conventions

Since the mid-1990s, the fight against corruption has gained particular strength, both at the national and international levels. In several international agreements³, the community of States has committed to deem punishable all acts of corruption committed within the country or abroad.

² Becker K., Hauser C. and Kronthaler F., Les entreprises suisses et la corruption à l'étranger [Swiss companies and corruption abroad]; La Vie économique Revue de politique économique [Economic Life Political review] 10-2012.

³ The three most significant international anti-corruption agreements in which Switzerland participates are (state of ratifications in January 2017):

- The OECD Convention of 1997 on the fight against the bribery of foreign public officials in international business transactions. The 35 member states of the OECD as well as other countries (South Africa, Argentina, Brazil, Bulgaria, Colombia and Russia) are party to this agreement.
- The Council of Europe Criminal Law Convention on Corruption, from 1999. It has 49 member States.
- The United Nations Convention against Corruption, adopted in 2003. 181 States have ratified it.

At the same time, it has taken numerous other measures with a view to improving the prevention, discovery and sanction of such acts. A country-by-country examination allows an evaluation of how each member State implements [or comply with] these international commitments and to identify areas that require additional efforts. The goal, in particular, is to ensure that all companies operating internationally remain on a level playing field in terms of corruption risk.

Swiss law

The same is true for Switzerland, whose legislation complies with these international legal instruments. Any person who bribes a Swiss or foreign public official, or a private individual while in the course of business transactions, is therefore committing an act punishable under Swiss law⁴. Such an offence is punishable not only for natural persons, but also for companies (for more information, see 'Criminal penalties for corruption', page 8).

Foreign law

Furthermore, even if a company acts in accordance with Swiss law, its actions may be punishable in another jurisdiction. In fact, certain gifts are liable to fall under the scope of foreign legislation; in

this context, the *US Foreign Corrupt Practices Act (FCPA)*⁵ and the *UK Bribery Act*⁶ hold particular importance because they have significant extraterritorial reach⁷.

Ethics

Finally, and regardless of the criminality of an act, such may be perceived as an infringement of ethics and by the same token inflict considerable damage to company's image.

⁴ SR 311.0, Art. 322^{ter} – 322^{decies} of the Swiss Criminal Code.

⁵ <http://www.business-anti-corruption.com/anti-corruption-legislation/fcpa-foreign-corrupt-practices-act>

⁶ <http://www.business-anti-corruption.com/anti-corruption-legislation/uk-bribery-act>

⁷ The FCPA particularly applies to companies listed on the American stock market and the UK Bribery Act to foreign companies managing all or part of their business in the United Kingdom



Why fight corruption?

According to the estimates of the World Economic Forum (WEF), the costs engendered by corruption come to 2.6 trillion dollars (equivalent to 5% of global GDP), 1 trillion dollars of which are paid each year in the form of bribes⁸. This exorbitant amount is wasted each year in gifts and bribes paid, among others, to foreign public officials in exchange for business advantages. Above all, corruption gives rise to substantial economic and social costs.

Business reasons

It is important to note that corruption also has **negative repercussions** for the company:

- A Swiss company that bribes a public official or a private individual abroad is committing a criminal offence that is also punishable in Switzerland.
- Certain governments and organisations, such as the World Bank, publish **lists of companies that have been found guilty of corruption**⁹. Access to public services and international projects may be denied to these companies. **In Switzerland**, for instance, the violation of anti-corruption clauses that are used in the context of development cooperation or export risk insurance can lead to the termination of contracts, **penalties for breach of contract, or exclusion from future contracts**.
- Under certain circumstances, a company that has paid bribes can also be subjected to a **civil action**, brought about, for example, by a competitor who has lost a bid.
- The **reputation** of a company can be seriously damaged in the eyes of investors, business partners and the public at large if it becomes known that the company committed an act of corruption. It takes years to build up a good

⁸ <http://reports.weforum.org/global-agenda-council-2012/councils/anti-corruption/>

⁹ List created by the World Bank of companies who cannot be awarded contracts due to convictions for fraud and corruption.

(http://web.worldbank.org/external/default/main?pagePK=64148989&piPK=64148984&theSitePK=84266&theSitePK=84266&contentMDK=64069844&querycontentMDK=64069700&sup_name=&sup_country=).

reputation, but a single corruption scandal can ruin it.

- A company that pays bribes encourages **distrust and unethical conduct** within its own ranks. Whoever tolerates corruption in his or her own company, or even condones it, fosters a climate in which other offences also thrive.
- Once a company engages in corruption, it **risks becoming the victim of blackmail** by those who are aware of it.

Social and political reasons

- In many countries, corruption is one of the primary obstacles to development.
- Corruption results in disproportionate access to public services, leads to unlawful enrichment of individuals and causes tension in the social structure.
- Corruption undermines the rule of law and provides fertile ground for organised crime.
- Corruption weakens trust in public institutions and puts the principles of democracy at risk.

Economic reasons

- Corruption leads to squandering of public and private resources.
- Corruption shakes the confidence of investors and results in long-term capital investments in particular being made elsewhere.
- Corruption impedes transparency and distorts competition.

Criminal penalties for corruption

Criminal behaviours. Since the year 2000, Switzerland has extended and tightened its criminal law on corruption in several stages (Art. 322^{ter} to 322^{decies} of the SCC [Swiss Criminal Code]).

Among other things, the provisions state that...

...bribery is punishable in both the public sector (public officials) and the private sector:

- The bribery of public officials concerns any civil servant, member of an executive, legislative or judicial authority, as well as any expert, translator or interpreter employed by any authority. It also concerns any arbitrator or member of the armed forces, as well as any private individual who carries out a public function (Articles 322^{ter} and 322^{decies}, paragraph 2, SCC). Bribery of a foreign public official follows the same definition for any person in one of these categories who acts on behalf of a foreign state or an international organisation (Article 322^{septies} SCC).
- Bribery in the private sector involves any employee, shareholder, legal representative or other auxiliary acting

on behalf of someone else in the private sector for acts relating to his or her professional or business activity. This infraction was uncoupled from the notion of unfair competition, becoming a separate offence on 1st July 2016 (Articles 322^{octies} and 322^{novies} SCC).

...both active and passive bribery are also criminal offences:

- So-called 'active' bribery is therefore an offence; this describes an act whereby an undue advantage is offered, promised or granted for the commission or omission of an act in relation to official duties that is contrary to his or her duties or depends on the exercise of his or her discretionary powers. In the public sector, the act requested must relate to official activity (Article 322^{ter} and 322^{septies} par. 1 SCC); in the private sector, it must relate to the professional or business activity (Article 322^{octies} SCC)

of the person involved. This behaviour is an offence both when the undeserved advantage is to be granted to the person involved and when it is granted to a third party.

- Passive bribery occurs when a person solicits, elicits a promise of or accepts an undue advantage, for his or her own benefit or for the benefit of a third party, for the commission or omission of an act that is contrary to his or her duties or depends on the exercise of his or her discretionary powers (Article 322^{quater}, 322^{septies}, par. 2 and 322^{novies} SCC). The same distinction applies between acts committed in the public and private sectors as described in the previous paragraph.

...the granting or acceptance of an advantage also constitutes an offence when it involves a Swiss public official:

- In the 'classic' forms of corruption, the 'undue advantage' is offered, promised or granted for the commission or omission of a concrete act that is contrary to the advantage recipient's duties or contrary to his or her discretionary powers.
- On the other hand, the diminished form of giving or accepting advantages refers to undue advantages (gifts) that are offered, promised or granted not in exchange for a specific official act, but rather with a general view to the future execution of official duties (Articles 322^{quinquies} and 322^{sexies} SCC).

«In addition to individuals, companies can also be liable and penalised for bribery committed both at home and abroad.»

This principally covers payments intended to maintain relationships and small facilitation payments. According to Swiss law, these acts are therefore not considered offences until they involve Swiss public officials.

...the advantages that follow do not constitute an offence under Swiss law (Article 322^{decies}, par. 1 SCC):

- Advantages authorised by administrative regulations or agreed upon in a contract or
- those of minor value in accordance with social custom.

...all of these infractions are prosecuted ex officio, except in less serious bribery cases in the private sector (Art. 322^{octies} par. 2 and 322^{novies} par. 2 SCC).

...the competent authority waives the right to criminal prosecution, referral to a court or any punishment where a minor offence has been committed, i.e.

when the level of culpability and the consequences of the offence is 'negligible' (Article 52 SCC). This clause is more restrictive than in 'less serious' cases involving a person in the private sector which are prosecuted on complaint (Article 322^{octies} par. 2 and 322^{novies} par. 2 SCC).

Criminal liability

In cases of corruption, it is primarily the natural person who is liable and subject to prosecution. In cases of bribery of public officials either at home or abroad, individuals are sentenced to prison for a term of up to five years, or fined (Article 322^{ter} and Article 322^{septies} SCC). Bribery in the private sector results in a prison sentence of up to three years or a fine (Article 322^{octies} and 322^{novies} SCC). Criminal liability falls not only on management and staff, but also on those who otherwise act on behalf of the company.

Under Article 102, paragraph 2 of the SCC, the company that 'has not undertaken all requisite and reasonable organisational precautions to prevent' the bribery of public officials or private individuals is also subject to criminal prosecution and a fine of up to five million Swiss francs. This liability applies regardless of whether or not a natural person can be prosecuted.

Finally, it should be noted that criminal law has recourse to other measures,

such as the confiscation of the products of bribery, the publication of the verdict or, in the case of natural persons only, a ban on conducting business. Administrative consequences for businesses are also possible, including the revocation of subsidies or restricted access to certain public procurement procedures.



Case study – Evaluate the situation

The following case studies allow you to test and deepen your understanding of the issue. See if you can assess the various fictional situations and weigh up the consequences. Media coverage of corruption cases may also help you to identify the risks involved.

Initial situation

Your company wants to strengthen its presence in Country X. To this end, management has decided to set up a subsidiary there. Your research indicates that the process of setting up a company in Country X is very complicated and can take more than a year.

- 1 Your goal for the subsidiary is to begin operations as soon as possible. According to reports, other foreign companies have successfully been entered into the register of companies within a few weeks, without meeting all the necessary requirements, in return for a payment of approximately 100,000 USD to a certain government agency. You direct your project manager to make a similar offer to this agency.

An 'undue advantage' is being offered to a foreign public official in exchange for the commission of an act contrary to his or her duties: the registration of a subsidiary without fulfilling all the statutory requirements. It is irrelevant whether or not money actually changes hands – the offer or promise alone is sufficient – or whether the government office has already been bribed by other companies. This is a case of (active) bribery of a foreign public official, which is a criminal offence in Switzerland.

- 2 Would the legal situation be judged differently if it was not money being offered to the government agency, but a holiday by the sea for the responsible civil servant's family or education in Switzerland for his or her child?
- The 'undue advantage' can be of any kind. This may include anything from a valuable object given as a gift to a surcharge above the fee for a service rendered. Granting an advantage to a third party is also expressly mentioned by the law as an act of bribery.*
- 3 Would the legal situation be judged differently if your company was not offering the payment, but it was being requested by the government agency?
- If your company fulfils the request of the agency, it is also considered by Swiss law to have committed the offence of bribing a foreign public official.*
- 4 Would the legal situation be judged differently if, rather than your project manager contacting the government agency, he or she authorised a local legal representative to 'manage' the registration of your company within a few weeks in return for 100,000 USD?
- 'Indirect' bribery is also considered an offence. Indeed, according to Art. 102 par. 2 of the SCC, companies are required to take 'all requisite and reasonable organisational precautions' to prevent the bribery of public officials or private individuals 'within the company' (for requirements relating to organisational precautions, see scenario 8 below). Further, it is recognised that if an employee of the company incites a third party – in this case, a legal representative – to engage in bribery (or to accept a bribe), the act is considered to have been committed 'within the company', which results in the company being criminally liable. It should be noted that the employee can also be prosecuted as an instigator.*

- 5 Would the legal situation be judged differently if you did not yet want to establish a subsidiary in Country X, but in anticipation of a potential future need, you asked your local representative to offer an expensive gift to the head of the government agency each year?

An annual gift constitutes an 'undue advantage'. The main question in this case is whether there is a sufficient connection between the gifts and an official act committed in the future. This aspect determines whether the act constitutes criminal bribery or the granting of an advantage (which can be grouped together with a payment intended to maintain a relationship), an act that is not punishable under Swiss law with regard to foreign public officials. However, it is important to remember that the granting of an advantage may be punishable under the laws of Country X.

- 6 For almost a year, your company has undertaken all the necessary legal steps to have the subsidiary registered in Country X. All that remains is the certification of the required documents and the entry into the register of companies, both simple formalities that are particularly time-consuming in Country X. The responsible authority is faced with an overwhelming workload, and a delay of several more weeks is expected. To speed the process up, you send them 2,000 USD.

In this case, it's the expedition of an official procedure being purchased. The preferential timing has negative repercussions for other applicants, whose applications face additional wait time, which may result in them suffering losses. The payment also influences the discretion of a public official, which is again a case of criminal bribery under Swiss law.



- 7 Would the legal situation be judged differently if the registration were overdue even according to local custom, with only the affixing of a stamp still required, and you were to send 100 USD to the responsible public official so that he or she would finally handle the matter?

Here, the official act is still a mere formality. Nevertheless, the overdue registration is a legal administrative act that no longer lies within the discretion of a public official. If a small sum of money is paid so that the public official actually does the work that your company has a right to, this is considered to be a small facilitation payment. According to Swiss law, this is regarded as 'the granting of an advantage' and not the payment of a bribe. In contrast to the granting of an advantage to a Swiss public official, the granting of an advantage to a foreign public official is not a punishable offence in Switzerland. However, the possibility of penalisation in the country where the act has occurred must be taken into account, and this act is not considered best practice with regard to an anti-corruption policy.

- 8 In the meantime, your subsidiary in Country X has been registered and is now operational. It participates in the bidding on a major public procurement by the local authorities of the capital city. Receiving such a large order so soon after establishment would represent a significant success for your subsidiary. The subsidiary attempts to influence the decision to award the bid in its favour by paying 20,000 USD to a high-ranking official in the city administration. This action is brought to light. In response to questions from the media, company headquarters in Switzerland states that all parts of your company follow a code of conduct declaring that 'all forms of corruption are unacceptable'. If the subsidiary in Country X has nevertheless offered a bribe, this has been done without the knowledge or instruction of headquarters. The Swiss parent company therefore maintains that it cannot be accused of having acted unlawfully. Is this reasoning sufficient?

As mentioned in scenario 4, acts committed by intermediaries and subsidiaries are considered in principle to have been committed 'within the company'. The parent company therefore cannot simply evade liability by hiding behind a subsidiary. Furthermore, it is responsible for taking all required and reasonable organisational precautions to prevent corruption. A brief section in the company's internal code of conduct claiming that no form of corruption is tolerated will likely not be sufficient. Indeed, common practice dictates that the requirements in this respect are relatively demanding, and the company must put forth a serious effort to maintain compliance, impose strict internal standards and rigorously monitor their application.

- 9 Would the legal situation be judged differently if your subsidiary in Country X had not bribed an official of the city's government, but rather the purchasing agent of a company in the private sector?

Bribery in the private sector taking place abroad is also a criminal offence in Switzerland. The company's liability also falls under Article 102 par. 2 of the SCC in this context. It should be noted that, since 1 July 2016, only less serious cases require that a formal complaint be registered by an injured party. The scope of this standard must be determined by Swiss courts. However, even in less serious cases, it may be in the interest of company management to lodge such a complaint against its agent in order to demonstrate the strength of its commitment to fighting corruption (see scenario 8 for further discussion). In all other cases, the offender is prosecuted ex officio.

- 10 Your subsidiary in Country X has participated in a proper way in the public tender procedure mentioned above, and its offer fared well among the others. Nevertheless, the city government chooses a less favourable offer from a company in Country Y. In documents that were leaked to you, it emerges that the bid was accepted as a result of bribery by your competitor. What can you do?

Depending on the circumstances, it may be suitable to submit a formal appeal of the decision under the laws of Country X. There may also be a trustworthy government authority or anti-corruption agency to notify regarding such an incident. If this act of bribery is considered an offence in Country X or Country Y, a criminal complaint can be filed in either country. If none of these avenues seem realistic or acceptable to you, please contact the Swiss diplomatic representation on site or SECO in Bern. The Swiss authorities may then contact the authorities of the country in question in a manner appropriate to the given circumstances.



What concrete action can you take?

Corruption is one of the most complex problems facing many Swiss companies that operate abroad. Depending on the country and sector, the likelihood is higher or lower that you, or your competition, will one day find yourselves implicated in a corruption case. Make sure that you aren't caught unprepared! Especially as a member of management, but also as an employee, it is your responsibility to be adequately informed and to react appropriately. This is the only way for you to effectively counter the risk of corruption. In certain markets, and in certain lines of business, it may be especially difficult to steer clear of corrupt practices. Hence the importance of being aware of the risks that you run and taking the proper steps as soon as possible.

1. Inform yourself

Every anti-corruption strategy begins with good information. What constitutes corruption? Where does it occur and what forms can it take? What risks are you running as a result? What measures can you take to prevent it? The better informed you are, the less likely you are to experience problems.

In Switzerland

This brochure offers an introduction to the problem of corruption in international business transactions.

- If you wish to learn more about the international community's efforts to

fight corruption in international business transactions or about the OECD's anti-corruption convention, please contact the State Secretariat for Economic Affairs (SECO).

- If you are interested in knowing more about the general legal situation in Switzerland, contact the Federal Office of Justice.
- Finally, the Federal Department of Foreign Affairs will answer your questions regarding the information and support available from Swiss diplomatic representations abroad.
- The Swiss Business Federation (economicsuisse) and the Swiss branch of the

International Chamber of Commerce (ICC Switzerland) have long-standing experience with regard to the problem of corruption.

- Switzerland Global Enterprise (S-GE) has a wealth of information on the different markets.
- The leading NGO in the fight against corruption, Transparency International, also present in Switzerland, may also provide useful additional information.
- The PRME Business Integrity Action Center at HTW Chur specialises in effective prevention measures and training against corruption that are also directly aimed at small and medium sized enterprises (SME).

The addresses of all of these organisations appear at the end of this brochure.

Preparing your company requires sufficient understanding of the prevailing situation in the foreign country in question and the rules governing business in that country. In addition to the information on countries available on the SECO website, helpful information may be obtained from the chambers of commerce. You will find the addresses for the chambers of commerce and specific organisations in each country in the 'Information on countries' section of the SECO website.

Several other organisations offer free access to useful information for business conducted in foreign markets. Of particular note are the sites available from the World Bank (www.doingbusiness.org) and the internet portal www.business-anti-corruption.com focussing on information to help businesses prevent corruption in certain countries. Transparency International also publishes an annual survey on the level of corruption in approximately 180 countries (www.transparency.org).

Various organisations offer concrete solutions, such as the **International Chamber of Commerce (ICC)** with its 'Corporate Practices Manual', **Transparency International** with its 'Business Principles for Countering Bribery' and **HTW Chur** with its 'Lutter efficacement contre les risques de corruption' [Effectively combating the risks of corruption - available in French, German and Italian only] as well as the internet portal www.business-anti-corruption.com.

Another online resource comes from the United Nations Global Compact and the United Nations Office on Drugs and Crime: a **learning tool** comprising **six interactive modules** designed to build comprehension of the provisions of the United Nations Convention against Corruption as applied to the private sector, in particular. You can access this learning tool online at the following address: www.thefightagainstcorruption.org/.

On site

Familiarise yourself with the local legal system and customs. The tasks of Swiss diplomatic representations abroad (embassies, 'Swiss Business Hubs'¹⁰, consulates or offices of the Swiss Development Cooperation) include monitoring developments on site and supporting Swiss businesses with information about local conditions and practices. If necessary, you will be referred to suitable advisors; a chamber of commerce is one example.

2. Take appropriate measures

The prevention and detection of transnational corruption require solid, explicit and visible support and commitment from the highest levels of management concerning programmes or measures for internal monitoring, ethics and compliance in order to prevent and detect transnational corruption ('tone from the top').

Anti-corruption measures may vary considerably in form and scope. However, it is important that they be tailored to the size and structure of your company, as well as to the country and business domains in question. Thus, a small company whose director controls all of its inner workings can be content with a much simpler policy than a multinational enterprise that employs thousands of peo-

ple in multiple locations around the globe.

When devising your anti-corruption strategy, be sure to take the following points into account:

Organisational measures

- Ensure transparent business processes. Document and keep records of procedures and archive them.
- Ensure that every employee's competencies are clearly specified in his or her job description.
- Identify activities and jobs that face particular risks of becoming involved in corruption. By applying the principle of dual control, and by requiring the counter-signature of commitments, the risks can be reduced.
- Add an integrity clause to your contracts (e.g., orders and employment contracts).
- Particular due diligence has to be applied for the selection and assignment of local agents.

Measures relating to staff and management

- **Make your employees aware** of the problems and consequences of corruption through training sessions and presentations and/or online tools (E-learning).

¹⁰ A network of Swiss Business Hubs was established by Switzerland Global Enterprise in order to help Swiss companies operating abroad (<https://www.s-ge.com/en/swiss-business-hubs>).

- Provide special **training**, if necessary, **to your employees** who are particularly at risk. Job rotation can reduce the risk of corruption.
- Draw up and distribute a **checklist** compiling typical signs of corrupt activities.
- Establish a **point of contact** (an individual, an email address, a phone line, etc.) that enables employees to report sources of problems or suspicions of corruption without risk of reprisal, and which can provide helpful advice. It is important that the problems and suspicions of corruption then be passed on to the highest management levels.

Supervisory measures

- The best intentions are of little use if they are not properly implemented and efficiently supervised.
- Conduct regular tests and random inspections to ensure compliance with internal directives and contractual and accounting provisions. The results of these tests should then be brought to the attention of the governing bodies.
- Test your employees' level of understanding regarding corruption to assess areas of weakness and gaps in knowledge. Mandatory, company-internal training sessions for all employees should be implemented.
- Evaluate problems that arise and any incidences of bribery in a systematic manner and make revisions where necessary. Compile a list of the most

efficient solutions (best practices).

- Your anti-corruption system should be subject to regular external audits to help you implement the best possible solutions that are tailored to your company.

3. Code of conduct to combat corruption

3.1 Develop a code of conduct to combat corruption

Many internationally operating Swiss companies have already decided to introduce an anti-corruption code of conduct. Such a code has several advantages: employees are made aware of the problem of corruption and its consequences; they receive guidance on how to recognise corruption in good time and how to fight it. Moreover, your company's business partners and clients as well as the general public perceive your company to be reliable and trustworthy.

Content

By adopting an anti-corruption code of conduct, a company undertakes to act with integrity and to fight against corruption. A code of conduct encompasses general principles, rules of conduct to prevent corruption from arising and instructions on how to proceed in an actual situation involving corruption. It serves as a reference point for managers and employees within the company. More important than its length are



its core messages, which can include the following:

- The stance of the company's management regarding corruption and the involvement and role of its employees.
- The basic principles of the company's relations to third parties (agents, clients, and suppliers).
- The company's mechanism through which corruption or suspected corruption can be reported.
- The definition of advantages that may be permitted (e.g., small gifts up to a certain value).
- The principles of handling conflicts of interest.
- The sanctions incurred by disregarding the code of conduct.

An anti-corruption code can be part of the company's overall code of conduct or be drafted as a separate set of regulations in its own right.

Tools

The following tools may help you implement an effective anti-corruption code of conduct:

- One helpful and practical tool is the OECD **Good Practice Guidance on Internal Controls, Ethics and Compliance** found in Annex II of the Recommendation of the Council for Further Combating Bribery of Foreign

Public Officials in International Business Transactions of 26 November 2009.¹¹ This guide is also written for small and medium-sized enterprises (SME) operating abroad and, among other things, seeks to improve the efficiency of anti-corruption programmes and measures. It does not contain any legally binding directives and can be used freely by any company. This flexibility allows companies to adapt their monitoring systems based on the specific circumstances under which they operate (size and legal status, geographic area of operation, sector, etc.).

In concrete terms, it is recommended that companies:

- 1) construct their **internal monitoring procedures** and their **ethics and compliance programmes** on the basis of a **risk evaluation** and that it be regularly re-examined, renewed and adapted to the circumstances where necessary.
- 2) adopt an unequivocal **anti-corruption policy**, with resolute and vocal support from management both within and outside the company.
- 3) **properly inform** executives and **arrange courses** for internal and external employees (agents, etc.) in order to ensure that compliance measures are being followed and applied.

¹¹ OECD, Good Practice Guidance on Internal Controls, Ethics and Compliance (Annex II) of 26 November 2009. <https://www.oecd.org/daf/anti-bribery/44884389.pdf>

- 4) plan out a **disciplinary procedure** that will be rigorously applied in the event of violations of internal directives.
- 5) allow for company employees and business partners to **make reports** (in good faith, based on reasonable suspicions and confidentially if possible) to an **internal authority** regarding breaches of the law, ethics or professional standards taking place within the company.

The OECD Good Practice Guidance is also aimed at employer organisations and professional associations, which also play a crucial role in terms of prevention. Their support for companies must include conducting informational sessions and training courses, as well as providing advice on specific questions regarding the application of due diligence.

- The **International Chamber of Commerce (ICC) Rules on Combating Corruption**¹² provide a self-disciplinary method for companies and contain a series of elements to include in an anti-corruption programme, among other resources.
- The NGO Transparency International's publication entitled '**Business princi-**

ples for countering bribery – Small and Medium Enterprise (SME) Edition'¹³ (French version adapted for Switzerland by Transparency International Switzerland) can provide invaluable advice for implementing an anti-corruption programme for your company.

- The HTW Chur publication '**Lutter efficacement contre les risques de corruption – Stratégies pour les entreprises internationales [Effectively combating the risks of corruption – Strategies for international companies]**'¹⁴ contains concrete business recommendations for Swiss SME operating on an international scale to prevent corruption.
- The international standard **ISO 37001** on anti-bribery management systems¹⁵ is a tool for combating bribery whose aim is to help companies (and other organisations) prevent, detect and manage problems of corruption within the context of their business. It contains a series of monitoring measures and means that allow companies to implement an anti-bribery management system.

¹² International Chamber of Commerce (ICC), ICC Rules on Combating Corruption, 2011 Edition (<https://iccwbo.org/global-issues-trends/responsible-business/combating-corruption/>)

¹³ Transparency International Switzerland, Business Principles for Countering Bribery - Small and Medium Enterprise (SME) Edition, 2008 and 2010, available at: http://files.transparency.org/content/download/159/639/file/2008_BusinessPrinciplesSME_EN.pdf and https://transparency.ch/wp-content/uploads/2017/08/2011_Principes_de_conduite_fr.pdf

¹⁴ Becker K., Hauser C. et Kronthaler F., Lutter efficacement contre les risques de corruption – Stratégies pour les entreprises internationales, HTW Chur Verlag, Coire, 2012 : www.sife.ch/anti-korruption.

¹⁵ ISO 37001 – Anti-bribery management systems (<https://www.iso.org/iso-37001-anti-bribery-management.html>)

3.2 Implementation of an anti-corruption code of conduct

Even more important than the code of conduct is its application. Management's main responsibility is to ensure that all company employees comport themselves honestly. In concrete terms, this means that it is obligated to rigorously oppose all corruption and to act clearly and with credibility in this respect. Efficient measures to prevent corruption can only be applied to operational processes once this condition has been met.

The critical importance of the company's message is also confirmed by the HTW Chur study mentioned above: bribery occurs with much less frequency in companies whose management bodies actively establish it as a problem, internally and externally, and send explicit signals to demonstrate that any under-the-table payment or gift will neither be made nor be tolerated in any form whatsoever.

Make sure that your employees and those representing your company know the code and understand the company's anti-corruption policy. By signing a written agreement, your employees undertake to act responsibly in accordance with the code. Regular information sessions, combined with the monitoring of practices and adaptations when necessary keeps the code up-to-date and effective.

«A company undertakes to act with integrity by adopting an anticorruption code of conduct.»

4. In a real-life scenario

The information gathered and the preventive measures already in place will help you properly evaluate the situation in a real-life scenario. If necessary, seek help, because as a representative of the company, you will bear the final responsibility.

Evaluate the situation

With the help of a checklist, give your employees the means to detect bribery issues in time and to take the necessary action.

Checklist of warning signs

A checklist will help you to ensure early detection of bribery within your company, either involving a local partner or a foreign authority. When one or several indications are observed, employees must identify the risk and report it. These indications include, in particular:

Depending on the country and business sector

- Certain countries involve a high risk of corruption¹⁶

¹⁶ For more on this subject, see the Corruption Perceptions Index (CPI) published each year by the NGO Transparency International (<http://www.transparency.org/research/cpi>)

- Certain business sectors such as public procurements, real estate and construction projects involve higher risks of corruption

On an organisational level

- Insufficient management and monitoring abilities
- Poorly defined skills and responsibilities
- An inventory that's managed using approximation

On an operational level

- Significant irregularities or delays in operational reports
- Significant, unjustified gaps in operational planning
- Weaknesses in the purchasing process

Regarding finances

- Opaque accounting, poorly kept books and irregularities in financial or audit reports
- An overstated budget with respect to future business and unfounded modifications to the budget or invoicing
- Unusual short- or long-term spending
- Commissions that are exaggerated and/or paid in cash
- Commissions paid in a different country from that in which the economic business takes place

Regarding personnel

- Non-compliance with internal directives
- Disproportionate salaries and provisions

- Lavish lifestyle, personal dependencies and favouritism

Apply disciplinary sanctions

If unethical or illegal conduct should be reported, the disciplinary sanctions called for in the code of conduct must be applied by company management in a consistent and proportionate manner. The situation must then be evaluated and the faults leading to such behaviour corrected.

Seek help

If your company's experience or resources are insufficient for handling a corruption incident, why not seek counsel and support?

Specifically, you can ask for help from a lawyer, your professional association or the competent chamber of commerce.

Where a competitor has engaged in bribery or a foreign civil servant has solicited bribes, in particular, you may be advised to contact the local Swiss diplomatic representation, which will examine the possibility of an intervention by local authorities.

Furthermore, since the summer of 2015, the Federal Office of Police fedpol has provided an online platform through which people can directly and anonymously report potential reprehensible behaviour linked to corruption. The reporter's anonymity is guaranteed

(<https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/korruption.html>).

Be aware of your responsibilities

As a manager of the company, it is your responsibility to be actively involved in the fight against corruption and to make the right choices for success. Conduct your business abroad in accordance with the law starting now in order to avoid extremely harmful implications for you and for your company.

Additional information and contacts

You can find the most recent version of this brochure on the SECO website:
www.seco.admin.ch/seco/en/home.html > Foreign trade & Economic Cooperation
> Fight against corruption

Legal framework

Swiss law

- Swiss Criminal Code (SCC)
- Corruption (Art. 322^{ter} to 322^{decies})
<https://www.admin.ch/opc/en/classified-compilation/19370083/201701010000/311.0.pdf>
- <http://www.admin.ch/ch/f/rs/3/311.0.fr.pdf>
- Corporate criminal liability, Art. 102:
<https://www.admin.ch/opc/en/classified-compilation/19370083/201701010000/311.0.pdf>

International anti-corruption agreements

- OECD Convention on the fight against the bribery of foreign public officials in international business transactions (1997):
<http://www.oecd.org/corruption/oecdantibriberyconvention.htm>
[http://www.oecd.org/topics > Bribery and corruption > Bribery in international business](http://www.oecd.org/topics/Bribery%20and%20corruption/Bribery%20in%20international%20business)
- Council of Europe Criminal Law Convention on Corruption (1999):
[http://www.coe.int \(Rule of law > Corruption - GRECO > Documents > Legal instruments\)](http://www.coe.int/Rule%20of%20law%20>%20Corruption%20-%20GRECO%20>%20Documents%20>%20Legal%20instruments)
- United Nations Convention against Corruption (2003):
http://www.unodc.org/unodc/en/corruption/tools_and_publications/UN-convention-against-corruption.html

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(Foreign trade & Economic Cooperation > Fight against corruption)

Other contacts at SECO:

- For information on countries: (Foreign trade & Economic Cooperation > Economic Relations > Information on countries)
- For cooperation on economic development: (Foreign trade & Economic Cooperation > Economic Cooperation and Development)

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The ICC has provided several recommendations for the fight against corruption:

<http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/fighting-corruption/>

Other links mentioned in the brochure:

www.doingbusiness.org
www.business-anti-corruption.com
www.thefightagainstcorruption.org
www.doingbusinesswithoutbribery.com

