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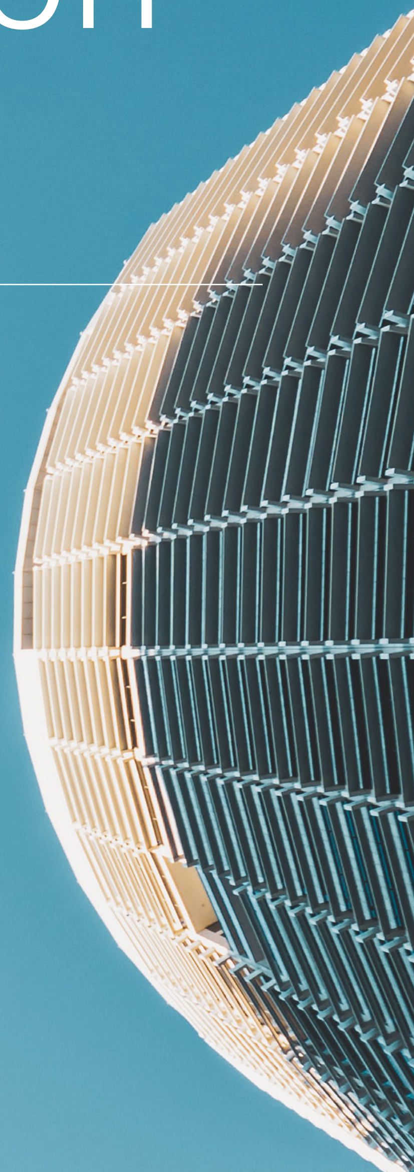

Switzerland: Trends and Developments

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Trends and Developments

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Chabrier Avocats LLC is an independent, fully integrated business law firm with offices in Geneva and Zurich, comprising a dynamic team of about 20 specialised lawyers. Chabrier has recognised expertise in anti-money laundering, anti-bribery, corporate criminal liability and white-collar crime matters, advising clients on compliance frameworks, risk assessments, due diligence, and governance structures tested by recent enforcement trends. Chabrier regularly represents companies and individuals in regulatory investigations and criminal proceedings, combining technical expertise with strategic litigation experience. The team also assists with sanctions and export-control compliance, ensuring transactions and counterparties meet Swiss and international standards. Whether preventing risks, conducting internal investigations, or representing clients before enforcement or judicial authorities, Chabrier delivers practical, end-to-end solutions across financial services and commodity trading industries. Partners Marc Hassberger and Marc Gilliéron lead the practice, together with associate Jeffrey Connor.

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Corporate Criminal Liability: What "Adequate Organisation" Now Means for Swiss Traders

Introduction – Switzerland's new enforcement reality

For many years, Switzerland's corporate criminal liability regime was regarded as largely under-used. Introduced in 2003 through Article 102 of the Swiss Criminal Code (SCC), the provision allowed for corporate responsibility when offences occurred because of organisational failings, but in practice it was rarely invoked. For more than a decade, enforcement focused almost only on individuals, and Article 102 of the SCC served mainly to align Switzerland with OECD anti-bribery and Financial Action Task Force (FATF) standards. There were a few early applications, but these remained exceptions rather than a trend.

That picture has changed markedly in recent years. Since 2019, a sequence of landmark cases has transformed Switzerland into an active jurisdiction for corporate enforcement. The Office of the Attorney General (OAG) and, more recently, the Federal Criminal Court have applied Article 102 of the SCC against some of the country's largest commodity trading houses, imposing significant financial measures and detailed findings on organisational adequacy. Among others, Gunvor (Switzerland-based), Glencore (Switzerland-based) and Trafigura (Singapore-headquartered, with major Swiss operations) have faced corporate convictions for bribery-related offences. These proceedings demonstrate that Swiss prosecutors are now willing (and have the capacity) to investigate and prosecute multinational firms operating in one of the Swiss economy's primary sectors.

The message for trading groups with presence in Switzerland is clear. Swiss authorities will investigate suspected offences and impose corporate liability even where no individual's knowledge or intent can be proven, provided the company's organisation is judged insufficient to prevent misconduct.

In Glencore's 2024 case, for instance, the OAG expressly stated that liability arose despite the absence of any proven employee awareness of bribery. Although Article 102 of the SCC caps fines at CHF5 million, criminal authorities have coupled those fines with substantial compensation orders that remove profits gained through the offences. In recent resolutions, compensation orders have ranged from roughly CHF82 million to USD145–150 million, far exceeding the fine cap.

For boards and compliance officers, Article 102 of the SCC has ceased to be an abstract or symbolic risk. It now functions as a concrete design mandate for internal governance. Swiss enforcement practice shows that "adequate organisation" is no longer a theoretical concept but a measurable standard that prosecutors and courts are willing to test in real cases. Companies operating from Switzerland must therefore treat compliance architecture not as a defensive formality but as an essential condition of their operations in order to make sure that they do not breach the law and face a potential conviction in what has become an increasingly assertive and internationally co-ordinated enforcement environment.

Article 102 of the SCC – legal framework and evolution

Article 102 of the SCC entered into force on 1 October 2003, as part of Switzerland's alignment with international anti-corruption standards under the OECD Anti-Bribery Convention and broader FATF expectations. Before then, Swiss criminal law recognised only the liability of natural persons; corporations themselves could not be convicted, even if they benefited from corrupt conduct. They could, however, still be subject to asset confiscation or compensation orders. The 2003 reform filled that gap by creating corporate criminal liability grounded in organisational responsibility.

The provision establishes two distinct pathways. Under Article 102 (2) of the SCC, for certain enumerated offences, including bribery of foreign public officials, a company is primarily liable if it failed to take all necessary and reasonable organisational measures to prevent the offence, regardless of whether an individual is identified or convicted. The statutory list in paragraph 2 captures key corruption and financial-crime provisions. Under Article 102 (1) of the SCC, a company faces subsidiary/alternative liability where an offence has occurred within the business but cannot be attributed to any specific natural person due to organisational deficiencies within the company. The

CHF5 million cap on the corporate fine applies in both routes.

For more than a decade after its introduction, Article 102 of the SCC was applied sparingly, and commentators questioned its practical impact – especially given the apparent modesty of the fine cap by comparison to the turnover of multinational companies. In practice, however, the fine cap has proved far less important than critics assumed. No company has ever been fined the maximum; most fines have fallen between CHF2 million and CHF4.3 million. The real financial impact has come from compensation orders (*Ersatzforderung*), which require companies to give up profits made through misconduct. In recent headline cases, these orders have reached between USD90 million and USD150 million, far exceeding the capped fines. The Glencore resolution in August 2024 illustrates the point: a CHF2 million fine was paired with a USD150 million compensation order in a case tied to third-party misconduct. Similarly, in October 2019 Gunvor received a CHF4 million fine alongside having to pay nearly CHF90 million in compensation.

Academic debate has therefore focused less on the fine cap and more on the elusive standard of "adequate organisation". Some scholars argue the concept is vague, while others warn that, if interpreted expansively, it risks holding companies liable for unforeseeable misconduct. Even so, several corporate cases were brought before 2019, showing that the provision was never entirely dormant – just under-used.

Swiss policymakers have periodically examined (and are currently examining) whether to expand the toolkit – most notably through discussion of deferred prosecution agreements (DPA) and stronger self-reporting incentives, as well as debate over the corporate fine cap. Switzerland does not currently have a DPA regime, and proposals have encountered political reservations although there is a clear desire by many actors that such instruments would be welcome; the OAG has recently reiterated its support for additional instruments in complex corporate cases. Even without legislative change, however, recent practice demonstrates that the existing framework of Article 102 of the SCC is not insufficient to produce significant outcomes.

The enforcement arc: Gunvor, Glencore and Trafigura

A modern turning point for Article 102 of the SCC came in October 2019, when the OAG issued a summary penalty order against Gunvor for organisational failings related to bribery in the Republic of Congo and Côte d'Ivoire. The order required the Geneva-based trading company to pay almost CHF94 million, including a CHF4 million fine, after prosecutors concluded the company had not taken the necessary and reasonable organisational measures to prevent its employees and agents from bribing public officials to gain access to petroleum markets. The decision placed commodity traders – a long-recognised area of compliance risk – squarely within Swiss corporate enforcement.

In March 2024, the OAG sanctioned Gunvor again – this time for bribery linked to PetroEcuador between 2013 and 2017. In a summary penalty order dated 1 March 2024, the OAG required the company to pay almost CHF86.7 million, including a CHF4.3 million fine and the rest as compensation. On the same day, the US Department of Justice announced a USD661 million settlement with Gunvor under the Foreign Corrupt Practices Act (FCPA). The timing of the two actions highlighted how closely Swiss and US prosecutors now co-ordinate and showed that corporate compliance programmes must be strong enough to meet expectations in multiple jurisdictions at once – even if the mechanisms of co-operation remain considerably opaque.

Later that year, on 5 August 2024, the OAG issued a summary penalty order against Glencore arising from conduct in the Democratic Republic of Congo in 2011. Prosecutors ordered a CHF2 million fine and a USD150 million compensation order. Notably, the OAG recorded that it did not identify any Glencore employees as having had knowledge of the bribery carried out by the local third-party business partner or agent, yet still found the company criminally liable for organisational failings. The resolution confirmed that under Article 102 of the SCC, corporate liability can attach even where no natural person's knowledge is proven, which raises the bar for preventive systems designed to intercept misconduct before it occurs.

The most consequential development came on 31 January 2025, when the Federal Criminal Court in Bellinzona convicted Trafigura and three individual defendants in a case involving bribe payments connected to Angolan oil contracts (currently under appeal). The court fined the company CHF3 million and ordered approximately USD145.6 million in compensation; Trafigura's former chief operating officer received a 32-month sentence, partially suspended. Unlike the Gunvor and Glencore matters, which concluded by summary penalty orders, the Trafigura case produced a reasoned trial judgment, the first of its kind for a multinational trader in Switzerland. While the decision is subject to appeal, it provides the most detailed judicial articulation to date of how "adequate organisation" is assessed in practice.

In its public communication on the 2024 reporting year, released on 3 April 2025, the OAG highlighted the summary penalty orders against international commodity companies and the first corporate trial for foreign bribery as evidence that Swiss corporate criminal law is effective. It also emphasised the efficiency of summary penalty orders, while signalling readiness to take cases to court where jurisprudential clarification is required or settlement is not feasible.

Adequate organisation: lessons from the cases

The recent Swiss cases show in concrete terms how prosecutors and courts are applying the "adequate organisation" test under Article 102 of the SCC. A recurring focal point is the handling of intermediaries and consultants. Where trading companies engaged agents who acted as conduits for bribes, but failed to perform meaningful vetting, set clear mandates, monitor performance, or control payment flows, corporate liability followed. The OAG's Gunvor 2019 penalty order expressly framed the conviction as a failure to take "all the organisational measures that were reasonable and necessary" to prevent employees and agents from bribing officials; the Glencore 2024 order likewise grounded liability in organisational failings regarding a third-party business partner. Taken together, these outcomes confirm that vague scopes of work, opaque offshore accounts, and unchecked beneficial ownership of counterparties are red-flag indicators of inadequate organisation in the trading context.

A second key theme is documentation and record-keeping. In practice, Swiss prosecutors (and, in the Trafigura case, the Federal Criminal Court) placed strong emphasis on contemporaneous evidence such as emails, messages, approval forms and payment records to test whether internal controls actually worked. Reports on the Trafigura trial show that the court reviewed extensive documentary evidence and gave significant weight to what was written at the time. In effect, if compliance steps are not properly documented, prosecutors and judges will give little or no weight to steps that are not documented when assessing the company's organisational adequacy after the fact.

Governance and top-level oversight also feature in the adequacy analysis. While the Swiss penalty orders do not prescribe a specific board workflow, international benchmarks that inform Swiss expectations (including OECD Phase 4 monitoring of Switzerland) emphasise top-level commitment and clear organisational responsibility for anti-bribery systems. Transparency Switzerland's compliance guidance likewise explains that companies may be held liable where they cannot demonstrate necessary and reasonable organisational measures – an expectation that, in practice, reaches board and senior-management oversight of high-risk relationships. The enforcement pattern in trading cases (where senior-management decision-making, approvals and exceptions are parsed) confirms that passive receipt of information is insufficient when prosecutors assess organisational adequacy.

Perhaps the most important lesson is that adequacy is dynamic. Standards evolve with enforcement experience, and the baseline against which Swiss authorities will measure programmes is higher in 2025–2026 than a decade ago. The Glencore resolution is especially instructive: the OAG recorded no proven employee knowledge of bribery yet still found the organisation inadequate in relation to a business partner's conduct. This shows that authorities now expect the companies to adopt systems capable of preventing problems before they arise, not merely detecting them afterwards. The Trafigura trial went a step further, providing the first judicial test of what adequacy means in a real-world trading context. In today's environment, traders that do not regularly update their third-party checks, contractual clarity, documentation standards, and escalation procedures risk being measured against a higher, more current benchmark – and failing it under Article 102 of the SCC.

Prosecutorial strategy and defence implications

Swiss prosecutors have relied increasingly on Article 102 of the SCC because it addresses a structural difficulty in corporate crime enforcement: in large, decentralised organisations, identifying and proving an individual's criminal intent can be extremely hard. Commodity trading companies, with diffuse management structures and complex agent networks, are classic examples. Article 102 of the SCC allows prosecutors to focus on whether the company's organisation was adequate to prevent the offence, rather than on who personally authorised an unlawful payment. This approach is consistent with the structure of Article 102 of the SCC and is reflected in recent OAG orders (Gunvor 2019; and Glencore 2024), where prosecutors highlighted that internal structural weaknesses were decisive for liability, rather than individual guilt.

In practice, most Swiss corporate cases are concluded through summary penalty orders (*Strafbefehl*) under the Swiss Criminal Procedure Code. When a company does not contest the factual findings, the OAG can issue a written penal order imposing a fine and any compensatory measures without a full trial. These orders are public and final once accepted, and they create binding corporate convictions. For companies, the process offers efficiency and closure while limiting reputational damage, since the OAG publishes only the essentials of each order. *Gunvor 2019*, *Gunvor 2024* and *Glencore 2024* cases all followed this route, demonstrating how the summary-order mechanism has become the OAG's preferred enforcement tool in complex cross-border bribery matters.

The Trafigura case illustrates that trials are used selectively, when the companies/persons indicted are not willing to recognise culpability and/or prosecutors seek to test contested issues or to create jurisprudence. On 31 January 2025, the Federal Criminal Court in Bellinzona issued the first reasoned corporate bribery judgment against a global trading company, confirming Trafigura's liability and imposing a CHF3 million fine plus approximately USD145.6 million in compensation. The decision (currently under appeal) provides a concrete judicial articulation of the organisational-adequacy test and the evidentiary standards for proving corporate fault. From now on, companies have clearer guidance on how Swiss courts interpret Article 102 of the SCC: the Federal Criminal Court has supplied an explicit benchmark.

Comparative experience helps contextualise Switzerland's model. In the UK, Section 7 of the Bribery Act 2010 creates a "failure to prevent bribery" offence that mirrors the logic of Article 102 of the SCC: corporate liability arises from deficient preventive systems, not from direct intent. The crucial procedural difference is that the UK regime allows resolution through Deferred Prosecution Agreements (DPAs), giving companies an incentive to self-report and co-operate. Switzerland has no equivalent instrument (the OAG has called for additional instruments), so its prosecutors rely on the summary-order mechanism instead.

In the US, corporate liability under the FCPA follows the doctrine of respondeat superior, under which companies are vicariously liable for employees' acts performed within the scope of employment, regardless of compliance quality. In theory, Article 102 of the SCC is narrower because prosecutors must establish organisational failings. In practice, however, Swiss authorities have interpreted "adequate organisation" strictly, and the financial consequences (through the compensatory order) can rival US penalties.

Compared with other civil-law systems, Switzerland sits in a middle position. France's Sapin II introduced both compliance duties and a DPA-like mechanism – the *Convention judiciaire d'intérêt public* (CJIP) – while Germany relies on administrative sanctions and corporate fines under the *Gesetz über Ordnungswidrigkeiten* (OWiG). Through its recent cases, Switzerland has moved closer to the UK model of fault based on inadequate preventive organisation, while maintaining its own procedural architecture under Article 102 of the SCC and the *Strafbefehl* framework.

Building a 2026-ready compliance programme

The recent cases define the attributes of an adequate compliance framework under Swiss expectations for 2026.

Trading companies must implement rigorous procedures covering the entire life cycle of third-party relationships: from onboarding to termination. This entails enhanced due diligence, beneficial-ownership verification, and comprehensive adverse-media and sanctions screening before and during engagement. Contractual terms should set clear scopes of work, include audit and termination rights, and ensure fees are proportionate and paid only to approved accounts in the correct jurisdiction after verifiable performance. These elements mirror the shortcomings identified in *Gunvor* (2019) and *Glencore* (2024).

Equally important is documentation discipline. Swiss prosecutors apply a practical rule: compliance actions must be contemporaneously recorded to be creditable. Files should include due diligence reports, approval rationales, and escalation notes. In relation to agents in countries where they do business, companies should require regular detailed and written reports on the agent's activity. In enforcement, compensation order (*Ersatzforderung*) often equals the economic advantage gained – thus, documentary evidence of rejected or remediated transactions can materially reduce exposure. In effect, if compliance steps are not properly documented, prosecutors and judges will give little or no weight to them when assessing organisational adequacy after the fact.

Governance must extend beyond compliance teams. Boards should demonstrate active engagement with integrity risks through minutes reflecting challenge and oversight. OECD Phase 4 monitoring stressed "tone from the top" and measurable management accountability. Compliance functions must be properly resourced and empowered to block transactions independently – a standard reinforced by Transparency Switzerland's 2024 guidance on organisational adequacy.

In addition, anti-bribery, sanctions, and anti-money laundering (AML) controls must operate in an integrated risk framework. Many Swiss traders encountered issues where sanctions-screening gaps mirrored bribery-risk failures. Prosecutors increasingly view fragmented control systems as organisational weaknesses. The expectation for 2026 is a complete, cross-functional framework ensuring escalation across compliance domains.

Finally, financial institutions have become de facto enforcers. Swiss and international banks, already subject to stringent AML and sanctions obligations, have begun to apply enhanced due diligence expectations to commodity trading clients in response to recent enforcement cases. Trading companies under investigation, or operating with weak governance over intermediaries, increasingly face restrictions such as frozen credit lines, delayed trade-finance approvals, or outright off-boarding. In practice, therefore, "adequate organisation" is no longer just a legal defence against prosecution, but a prerequisite for maintaining essential banking relationships.

Multi-jurisdictional enforcement

Swiss enforcement has become profoundly international. The *Gunvor 2024* case demonstrated parallel action by Swiss and US authorities, with the OAG's penalty order issued the same day the US Department of Justice announced a USD661 million FCPA resolution – a high level of co-ordination.

In March 2025, the OAG publicly confirmed its participation in a joint task force with the UK Serious Fraud Office and France's Parquet National Financier (PNF) to co-ordinate investigations into cross-border corruption in extractive and trading industries. This reflects the co-operative model promoted by the OECD Working Group on Bribery, under which Switzerland has pledged enhanced mutual legal assistance and information-sharing.

Historically, Switzerland was criticised by the OECD for limited enforcement of foreign-bribery offences (see OECD Phase 3 and Phase 4 evaluations). The surge of corporate convictions between 2019 and 2025 is widely interpreted as a response to that scrutiny and evidence to international partners that Switzerland is now enforcing its law in substance, not only in form.

Conclusion

Switzerland has become a test case for corporate criminal liability, with a recent emphasis on the commodity-trading sector. Article 102 of the SCC, once regarded as dormant, has been activated through a series of landmark cases, and the Federal Criminal Court has begun to articulate what "adequate organisation" means in law and in practice. The trajectory from *Gunvor 2019* to *Glencore 2024* to *Trafigura 2025* demonstrates that prosecutors will pursue organisational failings in third-party management, documentation and governance, even absent proof of individual intent.

For companies, the implications are unequivocal. Article 102 of the SCC is now a live source of liability. The best viable defence is a compliance system that prevents foreseeable misconduct, records decision-making contemporaneously, and secures active board oversight. In 2026, "adequate organisation" is not an abstract slogan but a demonstrable operational standard. Switzerland stands at the forefront of global corporate-enforcement practice, and its commodity-trading industry is the proving ground on which this new accountability regime is being defined.

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