



Fight against Corruption in Switzerland

Survey of the Legal Framework and
Best Practices of Listed Companies

Executive Summary

ETHOS

The **Ethos Foundation** was founded in 1997 and aims at promoting socially responsible investment as well as a stable and prosperous socio-economic environment. Ethos is composed of more than 120 Swiss pension funds and non-profit foundations.

The Foundation owns the company **Ethos Services** which conducts all investment and consulting activities on behalf of the Foundation. Specialising in socially responsible investment, Ethos Services offers a range of investment funds and asset management mandates managed according to sustainable development

principles. In addition to this, Ethos Services provides analysis of general meeting agendas, assistance with exercising shareholder voting rights and creating a dialogue program with companies.

For further information:
www.ethosfund.ch

TRANSPARENCY INTERNATIONAL SWITZERLAND

Transparency International Switzerland is the Swiss chapter of Transparency International, the global civil society organisation fighting against corruption.

TI Switzerland was founded in 1995 as an independent and politically non-partisan non-profit

organisation. The focus of TI Switzerland's work lies on improving the awareness about transparency and corruption issues as well as bringing together key players from government, business and civil society. The members of TI Switzerland are companies and organisations from the private sector, NGOs working in development cooperation and individuals interested in anti-

corruption work. TI Switzerland's main topics are the prevention of, and fight against corruption in public procurement, in the private sector, in sports and development cooperation, transparency in the financing of political parties and referendums and the recovery of stolen assets.

Find out more:
www.transparency.ch

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STRENGTHEN THE SWISS LEGAL FRAMEWORK

The significant differences still observed between companies in Switzerland as to the relevance of their response to corruption risks evidence the limits of self-regulation and point to a need to harmonise the regulatory framework with the most stringent foreign standards – in particular those in force in the UK and the USA. Such a change would be particularly advisable to enhance the fight against private corruption, acts of corruption by third parties, prohibiting facilitation payments and regulating political party funding. Implementing this upgrade will enable companies to organise their response based on exposure to the corruption phenomenon, according to their means and corporate culture, so as to adopt appropriate measures to effectively combat corruption.

Whereas Switzerland has successfully integrated relevant international instruments to fight corruption in the public sector into its national legislation, Ethos and Transparency International share the belief that the legal framework should be strengthened as regards sanctions on companies. It should also be extended more systematically to include more complex forms of corruption, whose impact on society and the economy is no less detrimental than that of public corruption. The standards at the root of this legislative upgrade already exist and have steered the anti-corruption principles and policies adopted by a vast number of companies. Civil society and institutional investors are not alone in considering that such an improvement in the regulatory framework is a must: many of the companies themselves would like to see the development of a level playing field applicable in a uniform and fair fashion to all the players in the global economy.

Ethos and Transparency International Switzerland cooperated in 2011 to publish a survey on the fight against corruption in Switzerland in two main sections. The first part, drawn up by Transparency International Switzerland, highlights the national and international legal framework governing corruption issues in the private and public sectors. The second part is a survey on Swiss companies' practices in the field of anti-corruption principles and policies. The survey reflects a snapshot taken on 30 June 2011 among the twenty firms in the Swiss Market Index (SMI) universe.

EXECUTIVE SUMMARY

1. LEGAL FRAMEWORK

Towards tougher anti-corruption standards

The past fifteen years have witnessed major developments in the fight against corruption, particularly in the field of cross-border corruption which had developed in the wake of globalisation virtually without hindrance or regulation. A series of international instruments enacted under the aegis of OECD, the Council of Europe and the United Nations have produced legal standards adopted by a large number of States, at least in principle, although their implementation sometimes remains sketchy.

Switzerland did not escape the trend and enacted legislation which largely reflects the requirements of the new international legal framework. Bribery of foreign public officials was introduced into the Swiss Criminal Code, as well as a provision on corporate criminal liability to encourage companies to adopt anti-corruption programmes. Generally speaking, implementation of Swiss legislation is deemed satisfactory. However, there remain some weaknesses, in particular regarding corruption between private companies, protection of whistleblowers, funding of political parties and sanctions imposed on companies should their liability be involved. In addition, implementation of the new legal provisions has been slow. To date, there have been

only one ruling on corporate criminal liability, and only three in cases of corruption of foreign public officials.

However, Swiss companies cannot restrict their consideration to Swiss legislation only – they must take into account American law, and more recently British law, both of which are based on an extensive notion of extraterritoriality. The application of American legislation has stepped up in recent years, as some Swiss companies found out the hard way.

2. SURVEY AMONG SWISS SMI INDEX COMPANIES

Strong management involvement in the fight against corruption

The findings of this survey confirm that major Swiss companies in the SMI Index have realised the stakes involved in the plague of corruption. Overall they demonstrate, through the commitment of their executive bodies and the information publicly disclosed on various levels, that they have all taken measures to prevent, detect and manage possible instances of corruption. Growing awareness to the damage caused by corruption, a global toughening of legal standards and associated sanctions, together with strong pressure from civil society and investors towards greater transparency and integrity, largely explain this positive trend.

Fighting public corruption – towards standardised practice

Regarding the fight against corruption in the public sector, companies' commitment and practices converge both on the declaratory aspect (formal prohibition) and in implementation (training, early warning systems, audits). The toughening of standards against public corruption, initiated some years ago, is the main reason for this. In line with national and international law, the market has indeed rallied around standards and best practice to effectively address this problem.

More complex forms of corruption – practices vary greatly

Major differences observed between companies relate more to other forms of fraudulent or dangerous practices which are not yet or not sufficiently governed by Swiss law. These practices, often more complex than those linked to public corruption, relate to acts of e.g. corruption between private entities, indirect corruption, political party funding, charity donations or facilitation payments.

This observation should be qualified in light of the fact that a number of large multinational listed companies, whose activities abroad expose them to more comprehensive and stringent legal provisions, have already opted for more exacting standards which recognise the complexity of the corruption

phenomenon. Compliance with this more demanding playing field is less obvious for small Swiss companies with generally fewer international activities and resources.

Whistleblowing – a practice in the making...

Early warning systems of the "whistleblowing" type, whose use has gradually spread among major companies in Switzerland and elsewhere, enable employees to raise the alarm in case of fraud or suspicion of fraud. The feature of such a warning system is that it guarantees the whistleblowers' protection provided that they act in good faith.

The survey also shows significant differences in this field, from sophisticated systems to much more basic measures which do not offer the same degree of protection. In Switzerland, legislation on this issue is currently subject to political debate. The absence of a legal provision guaranteeing the protection of whistleblowers within a company largely explains the disparity in company practice in this field. Those companies which have introduced a sophisticated whistleblowing system were driven to it not by compliance with the law, but rather by the conviction that this instrument makes it possible to rapidly detect and manage possible instances of fraud in-house by enabling the staff to "blow the whistle" with impunity. Other companies tend to distrust the system which they consider

could lead to excesses, in particular in terms of wrongful claims.

To counter this lack of regulatory visibility and help companies to manage how the system is used, it would be advisable for provisions on this issue to be included under Swiss law.

Disclosing information about corruption – need for greater transparency

Company stakeholders, including institutional investors, attach growing importance to information other than purely financial disclosed by listed companies. These qualitative and quantitative data enable them to better measure a company's exposure to risks of corruption, the corporate strategy in this field and the concrete measures taken to prevent, detect and manage corruption-related problems.

Generally speaking, the degree of transparency displayed by companies on this theme in their annual report appears insufficient to assess company exposure to corruption problems and how relevant their responses are. This observation particularly applies to the lack of information provided by firms on instances of fraud and corruption which occurred during the year under review, as well as on any measures implemented to fix related problems. One also notes that a small number of companies resorts to external auditors to check corruption-related data.



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