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Using corrupt proceeds to fight corruption
Rethinking how Switzerland uses illicit profits from foreign bribery

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About this report

This paper examines how Switzerland could repurpose the illicit profits disgorged by companies in foreign bribery cases to benefit the states and people most affected by these corrupt acts. It outlines arguments as to why Switzerland should consider legislative action to enable the sharing of these profits in this way and the potential methodology for doing so. Alternatively, it outlines how these funds could be used to enhance global anti-corruption efforts.

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Acronyms and abbreviations

FINMA	Swiss Financial Market Supervisory Authority
LVPC	Federal Act on the Division of Forfeited Assets *Loi fédérale sur le partage des valeurs patrimoniales confisquées* *Bundesgesetz über die Teilung eingezogener Vermögenswerte*
MROS	Money Laundering Reporting Office Switzerland
OECD	Organisation for Economic Co-operation and Development
SCC	Swiss Criminal Code
SCPC	Swiss Criminal Procedure Code
SECO	Swiss State Secretariat for Economic Affairs
UNCAC	United Nations Convention Against Corruption
IOPC Funds	International Oil Pollution Compensation Funds

Executive summary

Between 2011 and 2024, Switzerland issued 14 final judicial orders at a federal level against Swiss-linked companies that engaged in foreign bribery. In these proceedings – which were all finalised through non-trial resolutions – the companies were ordered to hand over a combined **CHF 586,128,983** and **USD 179,694,819** in **illicit profits** that they had obtained through their foreign bribery schemes.[1]

Switzerland's efforts to crack down on foreign bribery are commendable, especially given that only a handful of states have been active in pursuing the enforcement of this offence.

Nonetheless, this paper contends that **Switzerland could further leverage this success to reinforce its status as a world anti-corruption leader**.

In general, Switzerland has a strong record of sharing the confiscated proceeds of most corruption offences with the states in which these offences took place through negotiated agreements. This is not the case, however, when it comes to the disgorged proceeds of foreign bribery settlements, which have all been retained by the Swiss State.

A key reason for this is a condition in the *Loi fédérale sur le partage des valeurs patrimoniales confisquées*[2] (LVPC) requiring the pre-existence of international cooperation with a foreign state before the Swiss Government can negotiate a sharing agreement regarding illicit proceeds with that state. This condition has unintentionally impeded the negotiation of such agreements in foreign bribery cases due to the fact that international cooperation is rarely sought or required in these cases from the state in which the bribery took place. Instead, in practice, the companies themselves cooperate with authorities during proceedings and provide the requisite information.

As a result, none of the illicit profits that companies were ordered to hand over to Switzerland in foreign bribery cases have been shared with any of the states in which the actual corrupt acts took place. In light of this, this paper recommends that Switzerland reconsiders this process to better ensure that the profits of foreign bribery are treated comparably to the proceeds of other international corruption offences.

Specifically, the paper contends that Switzerland should not retain any of the illicit profits that:

1) have already been transferred to the Swiss Federal Treasury in these 14 **past foreign bribery cases**; or

2) will be transferred to the Swiss Federal Treasury in any **future foreign bribery cases** of this kind.

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1 This executive summary is also published separately as Policy Brief 15: 'Rethinking how Switzerland uses illicit profits from foreign bribery settlements', available in English, German and French at https://baselgovernance.org/publications/pb-15.

2 [Unofficial translation] Federal Act on the Division of Forfeited Assets.

Instead, the paper suggests that Switzerland take certain legislative and administrative steps to ensure that these illicit profits can be **repurposed** in line with its existing policy commitments to repair the damage caused by corruption, to uphold the rule of law internationally and to encourage prosperity and competitiveness.[3]

Namely, it recommends redirecting these funds with the following objectives:

- to **repair any tangible harm** incurred in such cases by the states in which the foreign bribery took place (the "affected states"); or
- to **mitigate the broader intangible harm** suffered by the affected states and their populations as a result of these corrupt acts through the financing of initiatives that seek:

  a) to **prevent and deter** future foreign bribery and corruption, or

  b) to **advance development** in these states.

Where this is not possible, it recommends that these funds should be used to **advance anti-corruption efforts globally** and **encourage broader development**.

Key arguments

There are several key arguments as to why Switzerland should take such action.

1) It will reinforce Switzerland's longstanding policy to reject the proceeds of corruption.

Since the wave of popular outrage in Switzerland in 1986 following the revelations that the former president of the Philippines Ferdinand Marcos had used Switzerland to hide his illicitly acquired assets, Switzerland has strongly sought to counter the perception that it actively benefits from the proceeds of international corruption.[4] It has taken significant steps to achieve this and has forged a strong record when it comes to the repatriation of corrupt proceeds to the populations of states harmed by the corrupt acts. As strongly stated in a Federal Department of Foreign Affairs 2016 document on dirty money, "*Switzerland does not want corrupt money*".[5]

3 *The Federal Council's Anti-Corruption Strategy 2021–2024*, Federal Department of Foreign Affairs, p.13, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Strategie_BR_gegen_Korruption_2021-2024; GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases, Principle 6, accessed at https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf; *Foreign Policy Strategy 2024–27*, Federal Department of Foreign Affairs, p.35, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Aussenpolitische-Strategie-2024-2027.html.

4 Swiss Department of Foreign Affairs, "No Dirty Money: The Swiss Experience in Returning Illicit Assets", Swiss Department of Foreign Affairs, 2016, available at https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/unrechtmaessig-erworbene-gelder.html.

5 Ibid.

The proceeds of foreign bribery, however, are also funds derived from corrupt acts. Therefore, in retaining the illicit profits derived from such offences, **Switzerland is effectively undermining these efforts and opening itself up to criticism that it is still benefitting from international corruption**.

Moreover, such acts of foreign bribery cause a significant amount of both tangible and intangible harm to the states in which they take place. Therefore, it can be argued that **Switzerland is enjoying this benefit to the detriment of these states**, which are all either low- or middle-income countries.

As stated by the Swiss Federal Council already in 2001 in its *Message concernant la loi sur le partage des valeurs patrimoniales confisquées*,[6] the retention by Switzerland of assets "*that originate from the corruption of foreign officials*" is "*immoral*".[7] By this clear standard, the profits of foreign bribery (i.e. the corruption of foreign officials) should not be retained. Instead, legislative reforms should be implemented to align the treatment of these funds with Switzerland's otherwise strong moral standing regarding the end use of seized proceeds of corruption.

2) Funding to boost global foreign bribery enforcement is urgently required.

Beyond ensuring Switzerland's consistent approach to the treatment of corrupt funds, repurposing the profits of foreign bribery will also present numerous opportunities to achieve a positive domestic and international impact. For example, foreign bribery and corruption are as prevalent as ever and enforcement actions in this field are likely to decrease globally (particularly given the United States' decision to refocus and likely reduce enforcement actions relating to its *Foreign Corrupt Practices Act*).

The illicit profits from Swiss foreign bribery cases could provide a much-needed boost to global enforcement efforts in this area through enhancing the capacity of affected states to detect and investigate foreign bribery. In turn, this would likely prevent a significant amount of harm caused by future acts of this kind to these states.

3) It will benefit Swiss companies.

Persistent levels of corruption are preventing law-abiding Swiss companies from obtaining business globally. A study by Transparency International Switzerland and the University of Applied Sciences Graubünden found that a quarter of Swiss companies believe that

6 [Unofficial translation] Accompanying Message to the Federal Act on the Division of Forfeited Assets.

7 [Unofficial translation] FF 2002 423 *Message concernant la loi sur le partage des valeurs patrimoniales confisquées*, 24 October 2001, Federal Council, at 1.3.2.2 and 2.3.2, accessed at https://www.fedlex.admin.ch/eli/fga/2002/69/fr.

they are losing contracts due to the corrupt behaviour of competitors.[8] Repurposing the illicit profits from foreign bribery cases to reduce corruption and increase integrity in the markets of vulnerable states will help level the playing field and prevent corrupt actors from poaching business through bribery. In turn, this will likely increase the level of business awarded to Swiss companies in these states.

4) It will enhance Switzerland's global reputation as an anti-corruption leader.

Several states are active in pursuing foreign bribery cases. Like Switzerland, these states also largely retain the disgorged illicit profits in these cases – despite the perception that they are effectively benefiting from acts of foreign bribery by their own companies. Consequently, there is an opportunity for Switzerland to establish itself as a global anti-corruption pioneer in this context.

Switzerland already has a strong record in developing innovative methodologies through which the proceeds of other corruption cases could be repurposed for the benefit of victims in foreign states, even when transferring funds to these states is politically challenging. Switzerland could draw upon this experience to establish similar ways in which the profits of foreign bribery could be repurposed. By doing so, Switzerland will be setting a clear international standard on how foreign bribery profits should be used. In parallel, Switzerland will also be reinforcing its global reputation as a leader in the fight against all forms of corruption.

The paper proposes **two sets of recommendations**. The first outlines the administrative and legislative actions Switzerland could take to repurpose the significant amount of illicit profits already awarded to it in **past foreign bribery cases** in line with the above-mentioned objectives. The second outlines the legal reforms Switzerland could take to ensure it can also do this in **future foreign bribery cases**.

Avenues for repurposing illicit profits from past cases

With regards to the funds already awarded to Switzerland in finalised cases, the Swiss Government could:

- **Option 1:** Introduce **a tailor-made law** to enable Switzerland to enter into negotiated agreements with affected countries regarding the sharing of the illicit profits held in the Swiss treasury from these 14 finalised cases. Such a law should be applicable regardless of whether international cooperation took place in these cases – unlike the LVPC, which makes international cooperation a requirement.

8 Auslandskorruption bei Schweizer Unternehmen – neue Erkenntnisse zu Risiken und Gegenstrategien, p.3, accessed at: https://www.fhgr.ch/en/uas-grisons/unternehmerisches-handeln/swiss-institute-for-entrepreneurship-sife/foreign-corruption-at-swiss-companies/.

Following this, the Swiss Government could then negotiate an agreement with an affected state outlining a mechanism through which the relevant funds could be repurposed to benefit that state and its population. Such an agreement could be made directly with the affected state or, if appropriate, could also include an independent third party to administer the distribution of funds. It could be closely modelled on previous agreements Switzerland has made involving other corrupt proceeds, such as the 2022 restitution agreement that Switzerland signed with Uzbekistan through which USD 131 million in confiscated funds were effectively repurposed to benefit the population of Uzbekistan.[9]

In parallel, or as an alternative to the above option, the Swiss Government could also:

- **Option 2:** Introduce a law **establishing a Swiss-administered "anti-corruption fund"**. Illicit profits from foreign bribery cases could be redirected into this fund to finance initiatives that either mitigate specific harm or that combat corruption globally. This could include, for example, technical assistance programmes in line with Chapter 6 of the United Nations Convention Against Corruption (UNCAC). The redirected funds could also potentially be used to provide resources to victims of corruption to make claims for compensation through judicial avenues or, where appropriate, act as a substitute for compensation where judicial avenues for restitution are not available.

Avenues for repurposing illicit profits in future cases

In a similar vein, this paper proposes that the Swiss Government should also take action to ensure that the illicit profits from any **future cases** can be repurposed as well. Such actions could include:

- **Option 1: Amending the LVPC** or **passing a new law** to provide authority to the government to enter into sharing agreements in future foreign bribery cases even where no international cooperation has occurred. Since the enactment of the LVPC, Switzerland has developed a strong tradition of ensuring that the recovered illicit proceeds of most corruption offences (other than foreign bribery) are repurposed to benefit the states in which the corruption offence took place. By making this amendment, the Swiss Government would reinforce this tradition by ensuring that the recovered profits relating to foreign bribery proceedings (which usually don't rely on international cooperation) could be repurposed in the same way as those of other corruption cases.

9 *Restitution of Illicit Assets: Switzerland and Uzbekistan Sign Agreement*, the Federal Council, accessed at https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-89949.html. Note a further USD 313 million was also returned to Uzbekistan following the signing of a second related agreement in 2025, see "INFORMATION on the 'Agreement regarding the sharing of forfeited assets' between the Swiss Federal Council and the Government of the Republic of Uzbekistan", Swiss Confederation, 2025, accessed at: https://www.eda.admin.ch/countries/uzbekistan/en/home/news/news.html/content/countries/uzbekistan/en/meta/news/2025/February/restitution.

- **Option 2:** Creating a **Swiss-administered anti-corruption fund** (as noted above).
- **Option 3:** As an alternative, creating a **multilateral anti-corruption fund** with other states that are also active in enforcing foreign bribery laws. This fund could act as a financing vehicle for global anti-corruption initiatives. It could also potentially act as an international compensation fund for victims of foreign bribery that are unable to obtain adequate compensation through existing judicial avenues.

Repurposing fines to support domestic enforcement

In addition to the illicit profits that companies were ordered to pay to the Swiss State in the 14 foreign bribery cases noted above, these same companies were also ordered to pay a total of over **CHF 30 million in criminal fines**.

Given that such fines are purely punitive in nature, this paper proposes that these funds could be repurposed domestically to **assist with efforts to prevent Swiss-linked companies from engaging in foreign bribery**.

Additionally, these funds could provide much-needed resources to Swiss law enforcement agencies tasked with detecting corruption and money laundering more generally.

Fulfilling a universal responsibility

The amount of illicit profits that companies have been ordered to pay Switzerland in foreign bribery cases is enormous. While it is certainly commendable that Switzerland is active in enforcing these kinds of cases, it is also crucial to remember that the illicit profits involved have come at a significant cost to low- and middle-income states.

Given this fact, these profits should not be retained by Switzerland. Where possible, they should instead be transparently repurposed to benefit the populations of the jurisdictions in which the foreign bribery took place. This would help address any harm caused by the corrupt acts and support development more broadly. The funds could be used to empower these states to prevent and deter these corrupt acts from occurring again in the future.

If this is not feasible, the funds should alternatively be used to fulfil Switzerland's policy commitments to combat and reduce corruption globally and to foster the rule of law.

As previously stated by the Federal Council, "*[a]ll states are required by international standards to engage in the fight against corruption, and this is what their citizens expect.*"[10] By repurposing the illicit profits of foreign bribery cases involving Swiss-linked companies as suggested in this paper, Switzerland will assertively establish itself as the vanguard in this fight.

10 *The Federal Council's Anti-Corruption Strategy 2021–2024*, Federal Department of Foreign Affairs, p.12, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Strategie_BR_gegen_Korruption_2021-2024

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Introduction

Switzerland has been active in enforcing foreign bribery laws against Swiss-linked companies in the last decade. This is laudable, as many other OECD member countries have taken little or no enforcement actions of this kind.

From 2011 to 2024, Swiss courts issued at least 14 final judicial orders at a federal level in cases of foreign bribery against Swiss-linked companies.[11]

A brief summary of each order is provided in Annex 2.

These orders have all been issued as part of non-trial resolutions[12] whereby these companies have been required to pay substantial amounts to the Swiss State. Specifically:

- Twelve of these resolutions resulted in the issuance of **"summary penalty orders"**.[13] These orders required the companies in question to pay an amount to the Swiss State based on a calculation of the total illicit proceeds that they had obtained through their bribery scheme. Alongside this amount the companies were also required to pay a criminal fine.
- Two of these resolutions resulted in the issuance of **"abandonment orders"**.[14] These orders also required the relevant companies to pay the Swiss State an amount reflective of the illicit profits that they had obtained.

11 Note that several of these orders were issued under the same reference code. For the purposes of this paper, separate orders issued under the same reference code have been counted as separate "cases". For example, two separate summary penalty orders were issued against Glencore International AG under the same reference code SV.20.0632-RAM: one in 2023 and another in 2024. These have been counted as 2 cases as they relate to different schemes. It is also worth noting that this figure does not take into account procedures at a cantonal level. For instance, the figure does not include an abandonment order against an admission of guilt issued in 2017 by courts in the Canton of Geneva against Addax Petroleum Limited under which the latter was required to pay a CHF 31 million compensatory claim, see "Addax, the Auditor and the Accounting Hole", Public Eye, accessed at https://www.publiceye.ch/en/topics/commodities-trading/rohma/when-commodity-traders-get-caught/addax-the-auditor-and-the-accounting-hole. The figure also does not include cases that are potentially still subject to appeal, such as the case against Trafigura Beheer BV, see footnote 15 below.

12 Non-trial resolutions in this context are generally defined by the OECD as an "agreement between a legal or natural person and an enforcement authority to resolve foreign bribery cases without a full trial on the merits of the allegations either before or after indictment with sanctions and/or confiscation, irrespective of whether it is a conviction (e.g. plea deals) or a non-conviction mechanism (e.g. non-prosecution or deferred prosecution agreements)." See, *Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention*, OECD, 2019, p.11, accessed at https://www.oecd.org/en/publications/resolving-foreign-bribery-cases-with-non-trial-resolutions_e647b9d1-en.html.

13 **Summary penalty orders** are a form of non-trial resolution in Switzerland that can be made under criminal proceedings when an accused party has accepted responsibility for an offence in preliminary proceedings, or where their responsibility has been "satisfactorily established". It is effectively an offer made by the investigating or prosecuting authority to an alleged offender to end criminal proceedings without the need for a trial. Unless a rejection of the summary penalty order is filed by the alleged offender, a private claimant or another affected person, the order is considered a final judgment of the matter. Summary penalty orders often contain measures affecting the alleged offender, including fines and forfeiture orders relating to the established proceeds of the relevant offence (or their value equivalent), referred to, somewhat ambiguously, as "compensatory" claims (see: Swiss Criminal Procedure Code, SCPC Arts. 352-356; Swiss Criminal Code, SCC Arts 66, 67e-73).

14 The **abandonment** of proceedings can be ordered by prosecutors in Switzerland under certain conditions (SCPC Arts 319-323). Notably, such abandonment orders can include measures requiring the forfeiture of property and assets (SCPC Art. 320.2).

The total amount forfeited by companies through these orders has been substantial. In total, these companies have been ordered to transfer a combined **CHF 586,128,983** and **USD 179,694,819** in illicit profits to the Swiss State. Alongside this, the companies have been ordered to pay a total of **CHF 30,250,001** in criminal fines.[15]

Year	Company[16]	Illicit Profits Paid to Switzerland[17]		Fine (CHF)
2024	Glencore International AG	USD	150,000,000	2,000,000
2024	Gunvor SA	CHF	82,331,238	4,300,000
2023	Glencore International AG	USD	29,694,819	-
2023	SICPA SA	CHF	80,000,000	1,000,000
2022	ABB Management Services AG	-	-	4,000,000
2021	SBM Holding Inc. SA; Single Buoy Moorings Inc.; SBM Production Contractors Inc. SA.	CHF	2,813,819	4,200,000
2019	Andrade Gutierrez Engenharia SA	CHF	16,603,730	2,000,000
2019	Gunvor International BV and Gunvor Ltd	CHF	89,665,378	4,000,000
2017	Dredging International Services Ltd	CHF	36,741,473	1,000,000
2017	KBA-NotaSys SA	CHF	30,000,000	1
2016	Odebrecht SA and Constructa Norberto Odebrecht SA	CHF	117,000,000	4,500,000
2016	Braskem SA	CHF	94,500,000	-
2016	Nitrochem Distributions AG	CHF	73,345	750,000
2011	Alstom Network Schweiz AG	CHF	36,400,000	2,500,000
	TOTAL	**CHF**	**586,128,983**	**30,250,001**
		USD	**179,694,819**	

Table 1: Overview of illicit profits and fines paid to the Swiss State by companies in 14 finalised foreign bribery cases.

This paper makes two assumptions with regards to these funds:

- First, it assumes that the above funds have been (or will be) remitted to the Swiss Federal Treasury, in accordance with the Swiss Criminal Code ("SCC") and the Swiss Criminal Procedure Code ("SCPC").[18]

15 It should also be noted that in 2025, Trafigura Beheer BV was convicted by the Federal Criminal Court of not having sufficient systems in place to prevent bribery. It was ordered to pay a USD 145.6 million compensatory claim and a fine of CHF 3 million. This decision, however, may still be appealed at the time of writing and therefore it is not discussed in this paper.

16 Please note that the relevant judicial orders in these cases were anonymised. Therefore, the company names in this table are assumed based on a comparison of these orders with other circumstantial sources including Swiss Government press releases, international organisation reports and media releases. A full list of sources is provided in Annex 2.

17 Note that the total amount in this table includes funds paid to the Swiss State to date as well as funds awarded to the Swiss State that are still to be paid. For instance, at least one summary penalty order examined includes terms for the payment of funds in instalments over ten years from 2024. Therefore, the relevant company is unlikely to have paid the full amount to date.

18 See SCC Arts. 70-71, 322^{septies} and SCPC Art. 24.

- Second, it assumes that these funds are still being held within the Swiss Federal Treasury. Public information relating to the subsequent use of these funds by the Federal Government is not readily available. It does not appear, however, that the Federal Government has made any announcements outlining how these funds have or will be used, or whether they have shared any of these funds with cantons. Therefore, it is assumed that these funds have been retained.

In light of these assumptions, this paper contends that **by retaining these illicit profits, Switzerland is opening itself up to criticism that it is significantly benefitting from the corrupt practices of Swiss-linked companies in foreign countries**.

Moreover, given that such acts of foreign bribery cause a significant amount of both tangible and intangible harm to the states in which they take place, it can be argued that **Switzerland is enjoying this benefit to the detriment of these countries and their populations**.

Who benefits when companies are forced to hand over their foreign bribery profits?

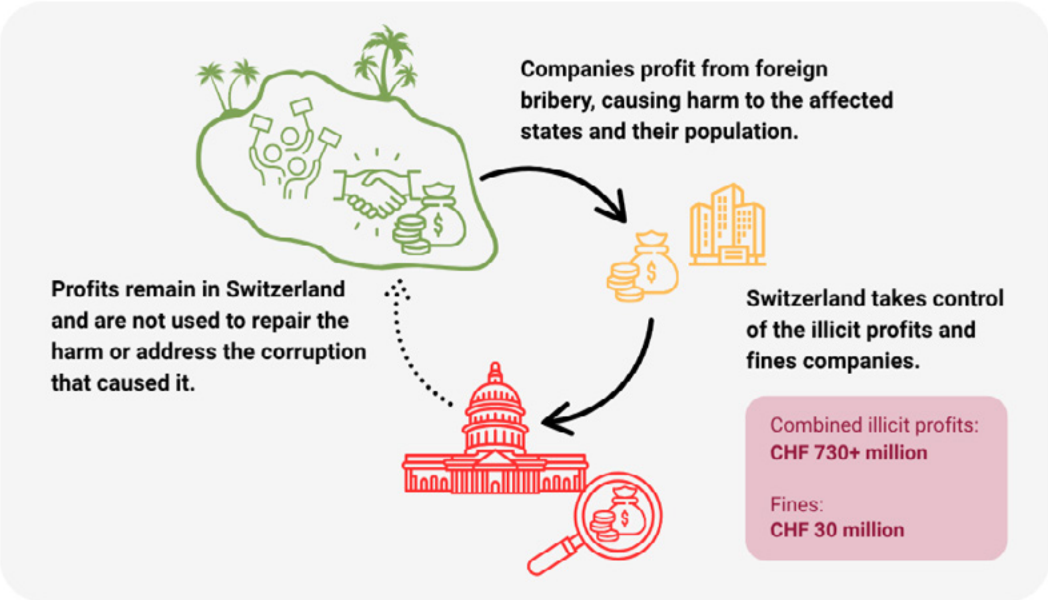

Figure 1: High-level overview of the current situation regarding profits in foreign bribery cases.

In line with these arguments, this paper contends that Switzerland has a clear obligation to **not retain** such illicit profits, whether they come from past or future cases.

Instead, this paper proposes that Switzerland should take action to repurpose these profits to **repair and mitigate any tangible or intangible harm** incurred in such cases by the states in which the foreign bribery took place (the "affected states"). Where this is not possible, these funds should instead be repurposed to finance efforts to combat corruption globally and encourage broader development.

This paper is structured as follows:

- **Section 1** sets out four key arguments for why Switzerland should repurpose the profits of foreign bribery as outlined in this paper.
- **Section 2** outlines the actions that the Swiss Government and Parliament could take to repurpose the CHF 586,128,983 and USD 179,694,819 relating to the 14 cases finalised between 2011-2024.
- **Section 3** outlines the possible actions that could be taken to ensure that the illicit profits in any future cases are also repurposed.
- **Section 4** discusses how the fine amounts relating to foreign bribery cases could be redirected to enhance Switzerland's own efforts to combat corruption.
- **Section 5** outlines several additional reforms that Switzerland could consider in the context of foreign bribery cases.

1 Why should Switzerland repurpose foreign bribery profits?

This paper outlines that Switzerland has a clear obligation to **not retain** the illicit profits that:

1) have already been transferred to the Swiss Federal Treasury in these 14 past foreign **bribery cases**; or

2) will be transferred to the Swiss Federal Treasury in any **future foreign bribery cases** of this kind.

Instead, the paper proposes that Switzerland takes action to **repurpose** such funds with the following objectives:

- to **repair any tangible harm** incurred in such cases by the states in which the foreign bribery took place (the “affected states”); or
- to **mitigate the broader intangible harm** suffered by the affected states as a result of these corrupt acts through the financing of initiatives that seek to:

  a) **prevent and deter** future foreign bribery and corruption, or

  b) **advance development** in these states.

Where this is not possible, it recommends that these funds are used to advance anti-corruption efforts globally and encourage broader development.

The premise of this proposal is based on four key arguments.

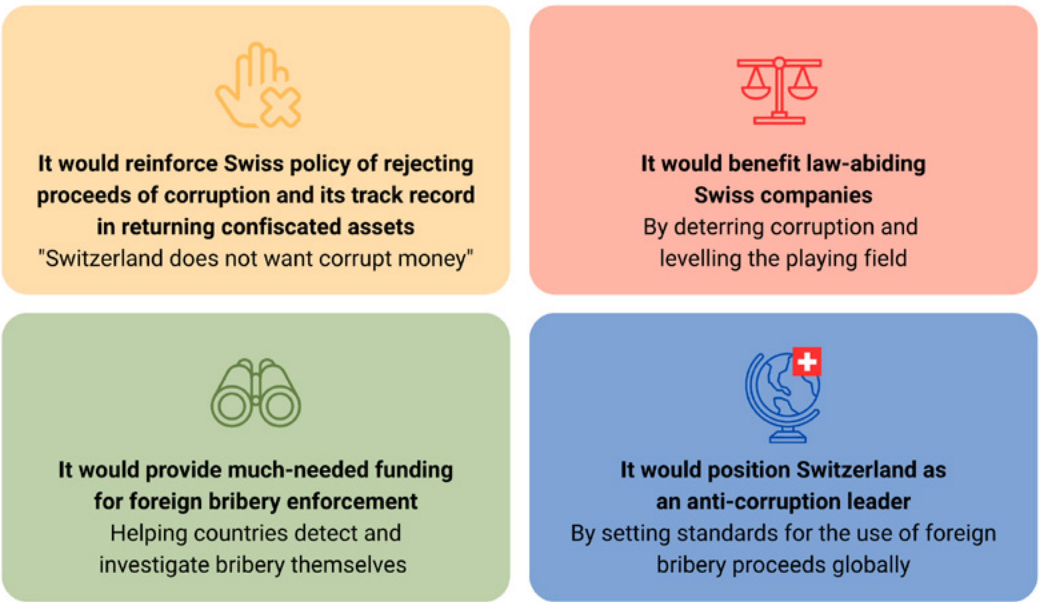

Figure 2: Four key arguments for repurposing illicit profits obtained through foreign bribery to the benefit of affected states.

1.1 Argument 1: It will reinforce Switzerland's longstanding policy to reject the proceeds of corruption

Switzerland is undermining its own anti-corruption advancements by benefitting from the profits of foreign bribery to the detriment of low- and middle-income states.

For some time, Switzerland has strongly sought to counter the perception that it is a haven for the proceeds of international corruption. For example, in its 2001 *Message concernant la loi sur le partage des valeurs patrimoniales confisquées*, the Swiss Federal Council already stated that the retention by Switzerland of assets "*that originate from the corruption of foreign officials*" is "*immoral*" and that such funds should be returned to an "*injured*" state where possible – potentially through development projects.[19] To its credit, Switzerland has subsequently taken significant action to uphold this standard and demonstrate that it does not welcome the proceeds of corruption in its financial system. For example, Switzerland has negotiated numerous innovative agreements to transfer over 2 billion in proceeds of corruption to the states from which they were derived.[20]

The amounts transferred to the Swiss State in the settlement of foreign bribery cases, however, are also funds that have been derived from corrupt acts, namely the "corruption of foreign officials". With the exception of fines (which are punitive), the amounts companies have paid to the Swiss State to resolve foreign bribery cases are a direct representation of the illicit profits they obtained through their corrupt conduct.[21]

For instance, the CHF 150 million Glencore was ordered to pay in August 2024 was based on a calculation of the gain that Glencore received through a bribery scheme in which they obtained a stake in a state-owned mining company in the Democratic Republic of the Congo.[22] Similarly, the USD 82,331,238 Gunvor SA was ordered to pay in March 2024 was a portion[23] of the USD 384 million in

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19 [Unofficial translation] FF 2002 423 Message concernant la loi sur le partage des valeurs patrimoniales confisquées, 24 October 2001, Federal Council, at 1.3.2.2 and 2.3.2, accessed at https://www.fedlex.admin.ch/eli/fga/2002/69/fr.

20 Swiss Department of Foreign Affairs, "No Dirty Money: The Swiss Experience in Returning Illicit Assets", Swiss Department of Foreign Affairs, 2016, accessed at https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/unrechtmaessig-erworbene-gelder.html.

21 Even if the exact funds obtained through the relevant offences are not available for forfeiture, the Swiss Criminal Code permits the Swiss State to obligate offenders to pay an "equivalent" sum to the total benefit they acquired through the commission of a relevant offence (SCPC Art. 352.2; SCC Art. 70-71). Given the fact that the exact illicit profits are rarely available for forfeiture in foreign bribery cases, the amounts outlined in the table in the introduction of this paper largely reflect an "equivalent" amount of the illicit profits obtained by the relevant company through their bribery scheme, based on a calculation outlined in the summary penalty order itself.

22 See: summary penalty order SV.20.0632-RAM of 5 August 2024.

23 The amount was only a portion of the total profits as the majority of these profits were retained by the United States under their own settlement with Gunvor SA. There was also a possibility that the total amount to be paid by Gunvor SA under the US agreement could be offset by an amount paid directly to Ecuador within a year of the signing of the agreement, however it was not possible to confirm if this took place, see: "Commodities Trading Company Will Pay Over $661M to Resolve Foreign Bribery Case", U.S. Department of Justice, accessed at https://www.justice.gov/archives/opa/pr/commodities-trading-company-will-pay-over-661m-resolve-foreign-bribery-case.

profits the company was calculated to have obtained through a bribery scheme in Ecuador regarding state oil contracts.[24]

Moreover, these illicit profits are not derived from corrupt acts occurring in Switzerland, but from the bribery of foreign officials in foreign states currently classified as either low- or middle-income states (i.e. past cases have involved jurisdictions such as the Democratic Republic of the Congo, Ecuador, Nigeria, Cameroon, Côte d'Ivoire, Equatorial Guinea, South Africa, Brazil, Venezuela, Colombia, Morocco, Kazakhstan, Libya, Tunisia and Malaysia).[25]

Figure 3: Map showing countries in which the 14 past foreign bribery cases involving Swiss-linked companies have caused tangible or intangible harm.

And these corrupt acts are undoubtedly causing significant "injury" to these states:

- In **some cases**, this includes clearly **tangible harm** to an easily identifiable victim (for example where a foreign state or a state-owned entity has incurred additional costs through inflated contracts or suffered losses through the sale of assets at undervalued prices).
- In **all cases**, this damage also includes **intangible harm** to a less easily identifiable victim, such as the institutions of the foreign state

24 See: summary penalty order SV.21.0600-ROH of 1 March 2024. Note that at para 103, this summary penalty order explains how the assets subject to forfeiture can be calculated (unofficial translation): "Forfeitable assets refer to all illicit economic advantages obtained directly or indirectly by means of an offence which can be determined for accounting purposes. Assets acquired by the briber through a contract concluded as a result of bribery are forfeitable insofar as they are in a natural and appropriate causal relationship with the offence from which they derive. In this context, if the amount of assets subject to confiscation cannot be determined with precision, or if such determination would require disproportionate means, art. 70 para. 5 of the Swiss Criminal Code provides that this may be done by means of an estimate. This provision eases the burden of proof in determining the amount to be confiscated, and applies irrespective of the nature of the basic offence. It confers on the judge, and on the public prosecutor respectively, a broad discretionary power."

25 See the OECD list of countries eligible to receive official development assistance (ODA), based on classifications made by the World Bank, accessed at https://www.oecd.org/en/topics/sub-issues/oda-eligibility-and-conditions/dac-list-of-oda-recipients.html; The one exception to this list of developing and middle income states is Latvia, where Alstom Network Schweiz AG were also found to have engaged in foreign bribery (in addition to Tunisia and Malaysia).

in question, or more broadly, to the general population of that state. The fact that corruption can cause such unquantifiable damage has long been recognised.[26] Corruption (including foreign bribery) erodes trust in public institutions, undermines economic development and discourages foreign investment.[27] Moreover, as noted by Switzerland in its *Anti-Corruption Strategy 2021–2024*, it "undermines legal certainty and deprives the state of vital resources for fundamental public services".[28]

Taking this into consideration, there is a strong argument that by retaining the illicit profits forfeited to it through these finalised foreign bribery proceedings (and by using these profits for general government expenditures):

Switzerland is financially benefitting from "the corruption of foreign officials" by Swiss-linked companies; and this financial benefit has been obtained by Switzerland **to the detriment of low- and middle-income states.**

Consequently, by retaining the profits of foreign bribery, Switzerland is undermining its own high ethical standards. Therefore, by taking action to ensure that the profits of foreign bribery are **not retained**, and are instead **repurposed** to benefit the states most affected by these corrupt acts, **Switzerland will be upholding and reinforcing its own decades-long moral code to reject the benefits of international corruption**.

1.2 Argument 2: Funding to boost global foreign bribery enforcement is urgently required

Corruption is an international issue that is thriving. In the 2024 Transparency International *Corruption Perceptions Index* the scores for 148 of the 180 assessed countries either stagnated or declined.[29]

26 For an extensive list of studies and papers discussing the wide range of harm caused by bribery and corruption as a whole, see: *Why corruption matters: understanding causes, effects and how to address them: Evidence paper on corruption*, DFID (UK) and UKAID, pp.35-54, accessed at https://assets.publishing.service.gov.uk/media/5a7f86f2e5274a2e87db6625/corruption-evidence-paper-why-corruption-matters.pdf. Also see: *Literature review on costs of corruption for the poor*, U4, accessed at https://www.u4.no/publications/literature-review-on-costs-of-corruption-for-the-poor.pdf; *Victims of Corruption: Back for Payback*, the World Bank, accessed at https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf; Elizabeth Dávid-Barret, *Are Some Bribes More Harmful than Others? Exploring the Ethics Behind Anti-Bribery Laws*, accessed at: https://journals.sagepub.com/doi/abs/10.1177/0260107914540830; *Exporting Corruption 2022*, Transparency International, accessed at: https://www.transparency.org/en/publications/exporting-corruption-2022.

27 *Fighting Foreign Bribery*, OECD, accessed at https://www.oecd.org/en/topics/sub-issues/fighting-foreign-bribery.html; Adrian Blundell-Wignall, Caroline Roulet, *Foreign Direct Investment, Corruption, and the OECD Anti-Bribery Convention*, OECD, accessed at https://www.oecd-ilibrary.org/docserver/9cb3690c-en.pdf?expires=1732314328&id=id&accname=guest&checksum=71D5740C5BE63BCFD77222FF40E046BF.

28 *The Federal Council's Anti-Corruption Strategy 2021–2024*, Federal Department of Foreign Affairs, p.14, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Strategie_BR_gegen_Korruption_2021-2024.

29 Corruption Perceptions Index 2024, Transparency International, accessed at https://www.transparency.org/en/cpi/2024.

Acts of foreign bribery in particular are rampant – including amongst Swiss companies. For example, a 2024 joint study by Transparency International Switzerland and the University of Applied Sciences Graubünden found that "*every second Swiss company that exports goods is confronted with demands for bribes or gifts*" and almost two thirds of these companies "*comply with these demands*".[30]

Despite its persisting prevalence, however, the global rates of enforcement actions against foreign bribery are notably low and are even on the decline.[31] Moreover, this negative trend will undoubtedly deepen in the near future following the United States' 2025 decision to scale back enforcement of the *Foreign Corrupt Practices Act*.[32]

As already noted, corruption and foreign bribery cause significant harm. From the perspective of low- and middle-income countries, it "*poses a serious challenge to sustainable development and the fulfilment of human rights*".[33] Consequently, efforts to combat such corruption – e.g. by strengthening capacity and resources both in affected states and in Switzerland – urgently need to be intensified to prevent the continued infliction of harm on these countries.

1.3 Argument 3: Combating foreign bribery will benefit Swiss companies

The prevalence of foreign bribery causes financial harm to law-abiding Swiss companies by impacting their ability to obtain foreign business. The above-mentioned study by Transparency International Switzerland and the University of Applied Sciences Graubünden also found that a quarter of Swiss companies believe that they are losing contracts due to the corrupt behaviour of competitors.[34]

Persistent levels of corruption also significantly raise the cost of doing business, effectively adding a surcharge to procurement contracts. This was

30 Andri Nay, "Every Third Swiss Company Pays Bribes when Conducting Business Abroad", NZZ, accessed at https://www.nzz.ch/english/swiss-companies-with-foreign-operations-continue-to-engage-in-corruption-ld.1819799. A copy of the study itself is available at https://www.fhgr.ch/en/uas-grisons/unternehmerisches-handeln/swiss-institute-for-entrepreneurship-sife/foreign-corruption-at-swiss-companies/.

31 *Exporting Corruption 2022*, Transparency International, accessed at: https://www.transparency.org/en/publications/exporting-corruption-2022. The report states that the enforcement of foreign bribery declined negatively up until 2022.

32 Chris Prentice, "US Justice Department resumes scaled-back enforcement against foreign bribery", Reuters, 10 June 2025, access at https://www.reuters.com/business/finance/us-justice-department-resumes-scaled-back-enforcement-against-foreign-bribery-2025-06-10/; *U.S. Pausing of Foreign Bribery Enforcement will Harm Economies and Governance Worldwide*, accessed at: https://www.transparency.org/en/press/us-pausing-of-foreign-bribery-enforcement-will-harm.

33 *The Federal Council's Anti-Corruption Strategy 2021-2024*, Federal Department of Foreign Affairs, p.14, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Strategie_BR_gegen_Korruption_2021-2024.

34 Auslandskorruption bei Schweizer Unternehmen – neue Erkenntnisse zu Risiken und Gegenstrategien, p.3, accessed at: https://www.fhgr.ch/en/uas-grisons/unternehmerisches-handeln/swiss-institute-for-entrepreneurship-sife/foreign-corruption-at-swiss-companies/.

confirmed, for example, by the above-mentioned study which found that those Swiss companies engaging in foreign bribery are spending 5.6% of their turnover in bribes and gifts.[35]

Therefore, redirecting the profits of foreign bribery towards initiatives that prevent and reduce corruption in countries where Swiss companies already do business will have an overall positive impact on these companies. Levelling the playing field and preventing corrupt actors from distorting markets through bribery will, in all likelihood, increase the number of contracts awarded to Swiss companies in these countries and lower overall costs.

1.4 Argument 4: It will enhance Switzerland's global reputation as an anti-corruption leader

In the last three decades, Switzerland has asserted itself as a pioneer in the field of anti-corruption. It has repeatedly committed to policies that enhance domestic and international efforts in this area.[36]

In the specific field of foreign bribery, Switzerland is one of the few countries that actively enforce cases of this kind.

While several states (including Switzerland) have been successful in stripping the profits obtained through foreign bribery from offending companies, these states have not explored innovative approaches regarding the subsequent use of these funds.[37] Unless a clearly quantifiable harm has been inflicted on a clearly identifiable victim, the significant sums have largely been retained by the enforcing states. For the most part, these funds have not been used to address the intangible harm caused in the country in which the foreign bribery occurred, nor have they been used to prevent future foreign bribery or corruption from taking place.[38]

By introducing innovative measures to repurpose the forfeited profits of foreign bribery – even when it is difficult or impossible to quantify financial damage – Switzerland would reinforce itself as a pioneer in the field of anti-corruption and would assertively establish itself as a world leader in the global fight against foreign bribery.

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35 Ibid.

36 *Switzerland's Commitment at the International Level*, Federal Department of Foreign Affairs, accessed at: https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/unrechtmaessig-erworbene-gelder/internationales-engagementderschweiz.html.

37 For an outline of the UK's approach in this context, see: Sam Hickey, *Compensating the victims of foreign bribery: UK legislation, practice and recommended reforms*, Basel Institute on Governance, 2025, accessed at: https://baselgovernance.org/publications/wp-55.

38 Kathleen Roussel, Todd Foglesong, Marke Kilke, *A Relief Fund for Victims of Corruption*, University of Oxford, accessed at https://www.bsg.ox.ac.uk/sites/default/files/2024-04/The%20Chandler%20Papers%20%E2%80%93%20A%20relief%20fund%20for%20victims%20of%20corruption.pdf; *Resolving Foreign Bribery Cases with Non-Trial Resolutions*, OECD pp.126-129, accessed at https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/fighting-foreign-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf.

As noted previously, the total illicit profits that have been transferred to the Swiss Federal Treasury in foreign bribery proceedings is substantial. It is very likely that future cases will significantly add to this total. Consequently, the impact that Switzerland could achieve in preventing future cases of foreign bribery, and corruption as a whole, could be enormous.

2 Options for repurposing illicit profits from finalised cases

In view of the arguments outlined above, this paper contends that Switzerland should not retain the CHF 586,128,983 and USD 179,694,819 in illicit profits already transferred to it under the 14 foreign bribery cases that were finalised between 2011–2024.

Instead, it proposes that these funds be repurposed to **repair any tangible harm** inflicted on the affected states in these cases or to **mitigate the broader intangible harm** suffered by these states through the financing of prevention and development initiatives. Where this is not possible, this paper proposes that these funds should be used to advance anti-corruption efforts globally and encourage broader development.

The Swiss Government (and Parliament) could consider two options to achieve this:

- **Option 1:** It could **introduce a tailor-made law** to enable the Swiss Government to enter into negotiations with affected countries regarding the sharing of the illicit profits from these 14 finalised cases specifically.
- **Option 2:** It could pass a law that would establish a **Swiss-administered anti-corruption fund** to oversee the repurposing of these funds to mitigate any harm caused in specific cases (where this is possible) or finance broader efforts to combat corruption globally.

Each of these options will be explained in detail below.

2.1 Option 1: Introduce a tailor-made law to enable the execution of sharing agreements for proceeds relating to the 14 finalised cases

The LVPC provides a legal basis for the Swiss Government to conclude agreements with foreign states for the sharing of illicit assets confiscated by Swiss authorities. This law has been applied in various cases involving proceeds of crime.[39] However, it has not been used to negotiate a sharing agreement regarding the illicit profits stemming from any of the 14 finalised foreign bribery cases.[40]

39 *Division of forfeited assets (asset sharing)*, Swiss Federal Office of Justice, accessed at https://www.ejpd.admin.ch/bj/en/home/sicherheit/rechtshilfe/strafsachen/sharing.html.

40 Parliamentary Question 247691, 18 September 2024, accessed at https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20247691.

The reason for this, as argued by the Federal Council in response to several parliamentary questions on the issue, is that the wording of the LVPC only permits the Swiss Government to enter an asset sharing agreement with a foreign state if that state provided "cooperation" to Switzerland during the relevant criminal process.[41]

While the justification for this condition is debatable – particularly in the context of foreign bribery cases, which don't normally rely on international cooperation with the states in which the act took place (see Section 3.1 below) – this paper does not dispute that a strict reading of the LVPC precludes its application to the 14 foreign bribery cases that have already been finalised.

Instead, in view of this limitation, this paper recommends that Switzerland consider passing a tailor-made law that bypasses the international cooperation condition in the LVPC and grants the Swiss Government authority to enter into sharing agreements with affected states in some or all of these 14 cases specifically. While the primary objective of any such agreements should be to mitigate any harm caused in these cases and to ensure that funds are transferred in a way that directly benefits the population of an affected state, the specific design of such agreements may vary.

A detailed outline of possible agreement models is contained at Annex 1.

As noted above, the Swiss Federal Council recognised the immorality of retaining funds derived through the "corruption of foreign officials" in its 2001 *Message concernant la loi sur le partage des valeurs patrimoniales confisquées.*[42] While the technical limitation in the LVPC is essentially acting as a block on the negotiation of asset sharing agreements in these 14 finalised cases, this does not negate the fact that the subsequent retention of these funds by Switzerland would still be "immoral" by the standards set by the Federal Council in its 2001 Message.

Consequently, there is an obligation on the Swiss Government to find a legislative avenue through which it can effectively repurpose these amounts to benefit the states most affected by their illicit acquisition.

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41 *Loi fédérale du 19 mars 2004 sur le partage des valeurs patrimoniales confisquées*, Article 11; Official Bulletin of the National Council, 13 June 2025, *Postulate 24.3989*, accessed at https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=68277#votum3; *Interpellation 25.3472*, 7 May 2025, accessed at https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20253472; *Postulate 24.3989*, 25 September 2024, accessed at https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20243989; Parliamentary Question 24.7691, 18 September 2024, accessed at https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20247691; Parliamentary Question 24.7560, 11 September 2024, accessed at https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20247560.

42 *FF 2002 423 Message concernant la loi sur le partage des valeurs patrimoniales confisquées, 24 October 2001*, Federal Council, at 1.3.2.2 and 2.3.2, accessed at https://www.fedlex.admin.ch/eli/fga/2002/69/fr.

2.2 Option 2: Create a Swiss-administered anti-corruption fund

In parallel with Option 1, or as an alternative, Switzerland could pass legislation to create a general "anti-corruption fund".

If acting as an alternative to Option 1, this fund could operate as a centralised receptacle through which the illicit profits of past foreign bribery cases could be managed and repurposed to the benefit of affected states in line with the objectives outlined in Section 1.

If acting in parallel to Option 1, a fund of this kind could operate as a "catch-all" mechanism. Even in cases where it is not possible or appropriate to redirect illicit profits into initiatives that benefit a particular affected state (e.g. due to political circumstances), the fund would provide an avenue through which these amounts could still be effectively redirected towards broader anti-corruption or development-focused objectives.

As noted in Section 3.2 below, the fund could then also be used as an ongoing mechanism to repurpose any similar amounts arising from the finalisation of future foreign bribery cases.

While the specifics of the design of such a fund are not thoroughly discussed in this paper, the primary aims of the fund should be to finance initiatives that mitigate the harm caused by foreign bribery (in affected countries where possible) and to reinforce the rule of law globally. For example, in seeking to achieve this, the fund could:

- **Finance broad anti-corruption focused projects** aimed at reinforcing the rule of law or enhancing public transparency in countries where there are opportunities to do so. For example, the fund could finance anti-corruption technical assistance programmes in line with Article 60 of the United Nations Convention Against Corruption (UNCAC). This would in turn also strengthen Switzerland's compliance with its commitments under this instrument.

- **Finance specific efforts to target corruption through law enforcement action** where opportunities arise, for example through the provision of technical expertise to countries pursuing corruption cases similar to the United States' *Global Anti-Corruption Rapid Response Fund*.[43]

- Function as **"a victim's support fund"** for victims of future foreign bribery committed by Swiss-linked companies. Specifically, the fund could provide assistance to under-resourced victims of these cases (i.e. low-income states or the populations of these states via a civil

43 Global Anti-Corruption Rapid Response Fund, Department of Justice (USA), accessed at https://www.justice.gov/criminal/criminal-opdat/global-anti-corruption-rapid-response-fund#:~:text=OPDAT%20manages%20a%20Global%20Anti%2DCorruption%20Rapid%20Response,related%20transnational%20crime%2C%20and%20to%20recover%20assets.&text=The%20RRF%20currently%20supports%20a%20six%2Dmonth%20engagement,technical%20assistance%20to%20prosecutors%20and%20other%20counterparts.

society organisation) who require funding to make judicial claims for compensation in Switzerland.

As highlighted in the Federal Council's *Anti-Corruption Strategy 2021–2024*, corruption poses a serious challenge to sustainable development and is a severe threat to security, democracy and peace.[44] Given the significant illicit profits often obtained by companies in foreign bribery cases, the potential impact that a Swiss anti-corruption fund could have in reducing global corruption would be enormous.

This option would be an innovative approach to repurposing illicit profits in foreign bribery cases and would cement Switzerland as a world leader in the fight against corruption. It could also assist Switzerland to achieve commitments included in its *Foreign Policy Strategy 2024–27*[45] and specifically its pledge to implement the 2030 Agenda for Sustainable Development (and specifically Sustainable Development Goal 16 regarding the building of governance institutions and the combating of corruption and bribery).[46]

The design of any such fund would of course require significant deliberation and short-term effort. It would also require long-term administration costs. Ultimately, however, the creation of a mechanism of this kind would ensure that the proceeds of both past and future foreign bribery cases can be repurposed transparently and efficiently, in line with established and consistent processes. Moreover, if necessary, the ongoing administration costs of this fund could potentially be drawn from the fund amounts themselves to ensure its budget neutrality.

If designed effectively, the fund would encourage other countries to repurpose the illicit profits obtained through their own cases of foreign bribery – and would provide a clear blueprint on how to do so.

A multilateral version of this fund could also be considered and this is discussed in Section 3.3 below.

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44 *The Federal Council's Anti-Corruption Strategy 2021-2024*, Federal Department of Foreign Affairs, p.14, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Strategie_BR_gegen_Korruption_2021-2024.

45 See for example Switzerland's commitment to strengthen democratic institutions and reinforce the rule of law, and its commitment to contribute to the efficient implementation of the 2030 Agenda for Sustainable Development: *Foreign Policy Strategy 2024–27*, Federal Department of Foreign Affairs, pp.28, 34 and 36, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Aussenpolitische-Strategie-2024-2027.html.

46 SDG 16: Peace, justice and strong institutions, 2030 Agenda for Sustainable Development, Federal Department of Foreign Affairs (Switzerland), accessed at https://www.agenda-2030.eda.admin.ch/en/sdg-16-peace-justice-and-strong-institutions.

3 Options for repurposing illicit profits forfeited in future foreign bribery cases

It is inevitable that Switzerland will also finalise more foreign bribery cases in the future. Therefore, in addition to the actions outlined in Section 2 regarding illicit profits from past cases, Switzerland should also implement legislative reforms to ensure that any illicit profits transferred to the Swiss State in *future* cases are repurposed in line with the same objectives outlined in Section 1.

To achieve this, the Swiss Government could consider one or more of the following options:

- **Option 1:** It could **amend the LVPC** or **pass a new law** authorising sharing agreements in the context of future foreign bribery cases regardless of whether international cooperation occurred.
- **Option 2:** It could pass a law to establish a **Swiss-administered anti-corruption fund** to finance efforts to combat corruption globally.
- **Option 3:** It could explore the feasibility of creating a **multilateral anti-corruption fund** for the victims of foreign bribery.

3.1 Option 1: Introduce legal reforms authorising the entering of sharing agreements in foreign bribery cases (without requiring international cooperation)

As noted above in Section 2.1, a strict interpretation of the LVPC is that it only authorises the negotiation of sharing agreements with a foreign state in cases where the foreign state provided "cooperation" to Switzerland during the relevant criminal process.[47] This condition has prevented the application of the LVPC in past foreign bribery cases. If the status quo remains, this condition will likely continue to block the application of the LVPC in future cases of foreign bribery as well.

An argument to justify this condition was outlined in the Federal Council's official response to the 2024 *Postulate 24.3989*, where it asserted that it is necessary to "encourage" foreign states to provide cooperation to Switzerland in criminal proceedings, and that waiving this condition would "jeopardise" international cooperation, as well as criminal prosecutions that rely on such cooperation.[48]

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47 Loi fédérale du 19 mars 2004 sur le partage des valeurs patrimoniales confisquées, Article 11.

48 This is an unofficial translation. The original states: "Renoncer à cette condition serait contraire au sens et au but de la LVPC et compromettrait la coopération internationale, qui est aussi dans l'intérêt de notre pays, ainsi que la poursuite pénale qui fonctionne sur cette base…". *See: Postulat 24.3989*, available at https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20243989.

There is a strong counter argument to these claims. Specifically, in practice, Swiss foreign bribery cases against companies have not normally been resolved through traditional criminal prosecutions, nor have they depended on international cooperation from the states in which the foreign bribery took place.

Instead, the vast majority of foreign bribery cases against companies in Switzerland have been finalised through non-trial settlements, in cooperation with the relevant offender (i.e. the company), who provided the necessary evidence to establish the offence in question. In other words, there was never a need for an affected state to provide evidence to secure a conviction in these cases, and consequently, it appears that international cooperation with the affected states in these cases was never required and never requested.[49]

It is likely that this is how the majority of foreign bribery cases will also be finalised in the future (i.e. without the need for international cooperation from an affected state). Consequently, it is difficult to contend that removing the LVPC's condition for cooperation – at least in cases of foreign bribery – would jeopardise international cooperation in future cases.

In line with this, there is a **strong argument that the LVPC should be amended to remove the condition requiring the pre-existence of international cooperation before a sharing agreement can be negotiated – at the very least, in cases of foreign bribery**.

If removing this condition – even in the limited context of foreign bribery cases – is assessed as being too antithetical to the intended "meaning and purpose of the LVPC",[50] then the Swiss Government could instead introduce an entirely **separate law** that authorises the entering of negotiated sharing agreements in certain circumstances where international cooperation did not take place.

This law could include a narrow scope and be drafted so that it only applies to cases of foreign bribery. It could also include a wider scope and apply to any case involving corruption offences where international cooperation was not requested by Switzerland, or was not possible to provide (i.e. for political reasons).

Beyond the argument already noted above regarding the lack of international cooperation from affected states in foreign bribery cases, there is another strong justification for a law of this kind. Cases of foreign bribery (and wider corruption) often involve countries that lack the capacity or resources to provide effective cooperation to Swiss law enforcement agencies, even if they are provided with an opportunity to do so.

In some instances, cooperation may even be deliberately hindered by the same governments connected to the very corrupt acts being investigated. In such cases, the populations of these countries should not be precluded from the opportunity to share in any recovered proceeds of this corruption due to

49 This assumption has been made after an examination of the judicial documents in these cases which do not mention any such cooperation taking place.

50 *Postulate 24.3989*, available at https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20243989.

the inability or unwillingness of their institutions to engage in international cooperation. These populations are effectively doubly punished. Not only do they suffer the negative impacts of the original acts of corruption, but they are denied the prospect of benefitting from a sharing agreement that could finance efforts to tackle and prevent future corruption.

If an amendment to the LVPC was passed, or alternatively a new law was introduced, any subsequent sharing agreement with an affected state could take on a number of designs.

Proposals for such designs are outlined in Annex 1.

3.2 Option 2: The creation of a Swiss-administered anti-corruption fund

As outlined in Section 2.2, Switzerland could also create a domestically-administered "anti-corruption fund" as an alternative, or in parallel to Option 1. Specifically, this fund could act as a parallel catch-all mechanism for any illicit profits obtained in foreign bribery cases that could not be repurposed through a sharing agreement resulting from the implementation of Option 1 (e.g. for political reasons). Alternatively, it could act as a centralised mechanism for the receipt and repurposing of the illicit profits in all foreign bribery cases.

3.3 Option 3: Assess the international community's appetite to create a multilateral anti-corruption fund

As an alternative to option 2 above, Switzerland could also explore the possibility of establishing a multilateral version of an anti-corruption fund, in cooperation with other states looking for avenues to repurpose foreign bribery profits.

There are a number of countries that have also had a significant amount of success in finalising foreign bribery cases through settlements.[51] Like Switzerland, these cases normally:

- relate to instances of foreign bribery that have caused tangible and intangible harm to an affected state;
- involve the payment of significant amounts of illicit profits to the treasuries of the enforcing countries which are then retained by those countries.

51 The United States, the United Kingdom, France and Germany are some examples.

Like Switzerland, these enforcing countries also often lack effective judicial or administrative avenues through which these profits could instead be repurposed to mitigate the harm caused in affected countries.[52]

Therefore, as a potential long-term solution, instead of establishing a domestically-administered anti-corruption fund, Switzerland could advocate to establish a multilateral anti-corruption fund in partnership with these other jurisdictions.

This fund would act as a jointly or independently administered reserve into which each member state could transfer any illicit profits in foreign bribery cases that cannot possibly or appropriately be repurposed through judicial avenues or through an administrative agreement with the government of an affected state. The fund could also potentially be financed through fines issued against the relevant complicit companies.

The amounts could be used for similar purposes as outlined in Section 2.2 above, with an overarching objective to prevent and counter corruption globally. Specifically, the amounts in the fund could be redirected to:

- **Finance global initiatives to counter corruption** (e.g. through projects seeking to strengthen the institutions tasked with preventing, detecting and combating corruption or with public financial management responsibilities in affected states or other vulnerable states).
- **Provide technical assistance** to affected states or other vulnerable states seeking to recover assets stolen through all forms of corruption (e.g. in line with Article 60 of the UNCAC).
- **Finance efforts of the victims of foreign bribery to assist them to make claims for compensation** through judicial avenues where this is still a possibility (i.e. to support affected states in such cases, or the populations of these states, in their efforts to make international claims for compensation relating to these cases).

Moreover, the fund could also potentially act as an **international compensation fund for victims of foreign bribery**, whereby such victims could make direct claims to the fund for compensation to mitigate the damage caused by foreign bribery when domestic-level judicial avenues for such compensation are not feasible or are unavailable.

52 For an analysis of the UK context in this regard see: Sam Hickey, *Compensating the victims of foreign bribery: UK legislation, practice and recommended reforms*, Basel Institute on Governance, 2025, accessed at: https://baselgovernance.org/publications/wp-55. In the context of the United States and Canada, see: Kathleen Roussel, Todd Foglesong, Marke Kilke, *A Relief Fund for Victims of Corruption*, University of Oxford, accessed at https://www.bsg.ox.ac.uk/sites/default/files/2024-04/The%20Chandler%20Papers%20%E2%80%93%20A%20relief%20fund%20for%20victims%20of%20corruption.pdf.

Specifically, this compensation mechanism could be modelled on similar mechanisms that already exist globally in other contexts, such as the International Oil Pollution Compensation (IOPC) Funds, which provides compensation for victims of oil spills.[53]

A potential international foreign bribery compensation mechanism:

Under the IOPC mechanism, if a tanker causes oil damage to a particular victim, the owner of the tanker is liable for the damage up to a certain limit.[54] If there is additional damage not covered by this limit, a victim (including a state, public body, private organisations and individuals) can make a claim to the IOPC for additional compensation.

A version of this model could be applied in the foreign bribery context through establishing an anti-corruption fund along these lines, financed by the illicit profits obtained by companies through foreign bribery (and even the fines they are ordered to pay as criminal penalties).

Under this model, if a particular case includes clear, calculable, tangible damage, a potential victim could pursue compensation directly from the company through normal judicial avenues if they are available. If this is not a feasible or available avenue in a particular case, or if the compensation awarded is inadequate, the victim could instead or additionally apply to the anti-corruption fund for compensation to cover the damage.

For instance, if a judicial system is not willing to award compensation for intangible damage caused by the foreign bribery in question, the fund could act as a secondary option for this compensation.

Similarly, if the victim in a particular case claiming damages is the population of an affected state as a whole (represented perhaps through a civil society organisation) but the relevant judicial system only recognises "states" as victims of corruption, then an application for compensation from the fund could also be made.

The multilateral anti-corruption fund could be created within the existing framework of an international organisation (such as the United Nations or the OECD). It could potentially even exist independently, through a multilateral agreement signed by willing states. For example, reflecting the spirit of the

53 For an in depth overview of the issues surrounding the creation of a fund such as this, see: Kathleen Roussel, Todd Foglesong, Marke Kilke, *A Relief Fund for Victims of Corruption*, University of Oxford, accessed at https://www.bsg.ox.ac.uk/sites/default/files/2024-04/The%20Chandler%20Papers%20%E2%80%93%20A%20relief%20fund%20for%20victims%20of%20corruption.pdf; The International Oil Pollution Compensation Funds, https://iopcfunds.org; The Trust Fund for Victims, accessed at https://www.trustfundforvictims.org/en; Chie Kojima, *Compensation Fund*, Oxford Public International Law, 2019, accessed at https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1837?p=emailAQLG.mPQUm2FQ&d=/10.1093/law:epil/9780199231690/law-9780199231690-e1837&print.

54 *Compensation and Claims Management*, The International Oil Pollution Compensation Funds, accessed at https://iopcfunds.org/; *Compensation for Oil Pollution Damage*, Danish Maritime Authority, accessed at https://www.dma.dk/safety-at-sea/ship-safety/batteries-lng-and-oil/compensation-for-oil-pollution-damage.

recently created alliance between the UK, France and Switzerland to tackle bribery and corruption, a multilateral fund such as this could be launched amongst such willing states as a first step, before seeking membership from other states active in enforcing foreign bribery laws.[55]

Admittedly, the effort and negotiations required to establish such a Fund would likely be significant. Nonetheless, if Switzerland took a leading role in advocating for and establishing a mechanism along these lines it would decisively reinforce its reputation as a global anti-corruption leader.

55 The Swiss Confederation, *UK, France and Switzerland announce new alliance to tackle bribery and corruption threat*, 20 March 2025, accessed at https://www.news.admin.ch/en/nsb?id=104571.

4 Repurposing fines to tackle foreign bribery issues within Switzerland

In addition to repurposing the illicit profits from foreign bribery to prevent and deter future similar acts in affected countries, Switzerland could also take domestic-focused action to prevent and deter Swiss-linked companies from engaging in these practices globally.

This paper does not propose that the illicit profits in foreign bribery cases should be used for this purpose for the same reasons outlined in Section 1. Instead, this paper proposes that actions to enhance Switzerland's own efforts to counter foreign bribery could be financed, in part, by the **criminal fines** imposed in past and future foreign bribery cases.

To date, companies have paid over CHF 30 million in fines to the Swiss State in the 14 finalised foreign bribery cases discussed above. It is highly likely that companies will continue to be fined in future cases. Unlike the amounts discussed previously in this paper, these fines do not represent illicit profits obtained by these companies as a result of their acts of foreign bribery. Instead, they are punitive amounts that they must pay in addition to the value of illicit profits involved in the case. Consequently, the use of such fines to fund domestic efforts to tackle foreign bribery is justifiable.

There are a number of ways that Switzerland could use these fines to finance its own domestic efforts to tackle foreign bribery issues. For example, Switzerland could use additional funds to fulfil its obligations under the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (OECD Anti-Bribery Convention) and *OECD 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions* (2021 Anti-Bribery Recommendation). Amongst other things, these instruments require member states to:

- provide adequate resources to law enforcement authorities to investigate and prosecute foreign bribery and proactively gather information;
- fund training and awareness raising initiatives amongst the public and private sector; and
- foster and facilitate anti-bribery Collective Action initiatives with private and public sector representatives, as well as civil society organisations, aiming to address foreign bribery and bribe solicitation.[56]

56 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Arts. VII, VIII, IX, XII, XIII.

Switzerland could also use additional funds to support its own agencies tasked with identifying illicit funds generally.[57] For example, recent annual reports of the Money Laundering Reporting Office Switzerland (MROS), as well as a 2025 report by the Swiss Federal Audit Office, have highlighted that MROS is lacking the resources it requires to process all the suspicious activity reports (SARs) they receive.[58] SARs are a key tool in detecting illicit funds – including those obtained through foreign bribery. As stated by MROS in their 2023 report, "*...Due to the drastic increase in SARs and reporting volume, MROS is no longer able to analyse and process all information with the same detail as was possible five or ten years ago.*"[59] Additional funds would undoubtedly assist the agency to better perform these critical tasks and fulfil its legal mandate.

Similarly, additional funds from fines would also assist agencies such as the Swiss Financial Market Supervisory Authority (FINMA) and the State Secretariat for Economic Affairs (SECO) to fulfil their responsibilities relating to the prevention and regulation of foreign bribery.

Options for repurposing illicit profits from foreign bribery cases:

Funds from past cases	Past and future	Funds from future cases
• Tailor-made law to enable sharing agreements with states affected in past cases	• Establishing a Swiss fund to address the harm caused by foreign bribery and finance anti-corruption initiatives globally	• Legal amendments to the LVPC or a new law to enable sharing agreements with affected states (regardless of pre-existing cooperation) • Establishing a multilateral anti-corruption fund with other international financial centres

Repurposing fines domestically:
- to enhance foreign bribery prevention efforts
- to boost law enforcement capacities to detect corruption and illicit finance

Figure 4: Overview of options for repurposing illicit profits and fines related to foreign bribery cases.

57 This would have an added benefit of increasing Switzerland's compliance with the FATF Recommendations. For example, the Interpretative Note to Recommendation 4 specifically outlines that countries must "provide sufficient resources to effectively pursue asset recovery". See: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: the FATF Recommendations, Financial Action Taskforce, accessed at https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html.

58 *Annual Report 2023*, MROS, accessed at https://www.ejpd.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei/publikationen.html; Annual Report 2024, MROS, accessed at https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei/publikationen.html; "Audit of the Resource Situation – Federal Office of Police", Swiss Federal Audit Office, 10 September 2025, accessed at https://www.efk.admin.ch/en/audit/resource-situation/.

59 *Annual Report 2023*, MROS, accessed at https://www.ejpd.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei/publikationen.html. Note also that their 2024 Annual Report highlighted this issue again, mentioning it's "limited resources" in this regard, see: Annual Report 2024, MROS, accessed at https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei/publikationen.html.

5 Final note: Related reforms regarding foreign bribery

As a final note, there are additional areas for reform relating to foreign bribery enforcement processes that Switzerland could consider. These are explained below.

5.1 An increase in fine limits

Under Switzerland's current criminal laws, companies involved in foreign bribery offences can only be fined up to CHF 5 million.[60] This limit has received a significant amount of criticism, including from the OECD, which has repeatedly called for Switzerland to raise this limit on the basis that it is not dissuasive enough.[61]

In view of this, Switzerland should consider amending this provision to either include a higher specific limit, or a maximum proportional amount based on a multiple of the total illicit benefit received or on an individual company's total turnover.[62] An increase in fine limits could significantly reinforce the integrity of the Swiss financial system. Not only would it ensure a greater level of deterrence, the increased fine amounts could also be used to significantly enhance Swiss domestic efforts to prevent and detect future acts of this kind (as alluded to in the previous section).

5.2 A review of compensation avenues

Affected states did not make claims for compensation in any of the 14 finalised cases outlined in this paper. This is despite the fact that harm was undoubtedly suffered by these states – at the very least in an intangible sense – in all these cases. In view of this, the Swiss Government could undertake a review to assess whether realistic pathways to compensation for all victims of foreign bribery offences (i.e. affected states and the populations of these states) both exist and are easily navigable.

If such pathways do exist, a clear guidance document should be drafted for future victims in these cases that explains any such pathways to compensation and how they could be utilised.

60 Swiss Criminal Code, Article 102.

61 For example see Phase 4 *Two-Year-Follow-Up Report – Switzerland*, OECD, p.8 and p.36, accessed at https://www.oecd.org/en/topics/sub-issues/fighting-foreign-bribery/switzerland-country-monitoring.html; *Phase 4 Evaluation of Switzerland: Additional Follow-Up Report*, OECD, p.4, accessed at https://www.oecd.org/en/topics/sub-issues/fighting-foreign-bribery/switzerland-country-monitoring.html.

62 For example, the EU's latest proposals for a Directive on Corruption includes maximum fines indexed in this manner. These proposals can be accessed at https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-directive-on-combating-corruption.

If an assessment concludes that no feasible pathways to compensation exist for victims of foreign bribery offences, the Swiss Government could consider options for legal reform that would create these pathways and make it easier for victims to make claims for compensation. For example, legal provisions requiring an assessment of damages be included in summary penalty orders relating to foreign bribery offences would provide a clear foundation on which claims for compensation could be made.

5.3 Introducing a deferred prosecution agreement (DPA) mechanism

Switzerland is currently considering the adoption of a DPA mechanism.[63] Such mechanisms have been used successfully as a non-trial settlement option in foreign bribery cases in jurisdictions such as the United States and the United Kingdom. On the one hand, they provide a significant level of flexibility to a prosecutor to enforce specific conditions on an offender – e.g. to introduce more adequate compliance programmes. On the other hand, such mechanisms have also faced criticism that they do not adequately deter offending.[64]

In view of the issues outlined throughout this paper, if Switzerland does introduce a mechanism of this kind, it is recommended that significant consideration be given to the adoption of clear provisions that guarantee that DPA processes also include a transparent assessment of damage (both clear and calculable damage as well as intangible damage) and a consideration of how this damage can be mitigated.[65]

In clear cases this is could include direct transfers of funds to an injured party. However, where this is not appropriate (e.g. due to the nature and extent of any intangible damage also caused or due to political circumstances), any settlement amounts could also be distributed first to the Swiss Government, who could then assess the most appropriate avenues to repurpose the funds to mitigate any damage caused (e.g. through a potential anti-corruption fund as outlined in Sections 2.2 and 3.2).

Any adopted DPA mechanism should also include an inbuilt obligation to consult with potential victims of the foreign bribery scheme during a negotiation process to ensure that their interests are taken into account in a final agreement.

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63 It should be noted that a postulate (25.3028) is currently before the Parliament on this issue, and an examination of the arguments for and against this process is already underway. Deferred prosecution agreements are negotiated settlements between a defendant and a prosecutor under which further judicial action is not pursued if the defendant agrees to fulfil certain requirements (e.g. the payment of a fine and the implementation of corporate governance reforms).

64 *Expanding Canada's Toolkit to Address Corporate Wrongdoing*, Government of Canada, p.6, accessed at https://www.tpsgc-pwgsc.gc.ca/ci-if/ar-cw/documents/volet-stream-eng.pdf; Sam Hickey, *Compensating the victims of foreign bribery: UK legislation, practice and recommended reforms*, Basel Institute on Governance, 2025, p.15, accessed at: https://baselgovernance.org/publications/wp-55.

65 Lessons from the UK, however, should be noted here. Despite regulations prioritising the assessment of compensation in cases of foreign bribery, resultant DPAs in these cases have increasingly failed to include provisions on compensation. For more information, see: Sam Hickey, *Compensating the victims of foreign bribery: UK legislation, practice and recommended reforms*, Basel Institute on Governance, 2025, accessed at: https://baselgovernance.org/publications/wp-55.

6 Conclusion

The Swiss Government should take the necessary action to ensure that any illicit profits directed to it in both past and future foreign bribery cases are repurposed to mitigate the damage caused by such corrupt acts.

There is a clear **obligation** on Switzerland to do this, based on its own high ethical standards. Corruption is a scourge on development. Repurposing the profits of such corruption to empower those states most vulnerable to its negative effects will significant assist their ability to develop their institutions and foster the rule of law.

Furthermore, taking this action will not only establish Switzerland as a global leader in the fight against corruption. It will also have a positive overall impact on Switzerland itself through both increasing the opportunities for Swiss companies to win foreign contracts and reinforcing the integrity of Switzerland's own private sector.

Annex 1: How sharing agreements with affected states could be designed

This Annex outlines possible models for sharing agreements relating to the profits of foreign bribery paid to Switzerland in past and future cases (in line with the options presented in Sections 2.1 and 3.1).

It is important to highlight from the outset that the negotiation and execution of any such agreements would not be a judicial process (e.g. to enforce a court order or pay compensation). It would instead be an administrative process and consequently there would be a significant amount of flexibility regarding the measures and terms that could be included in the agreement.

Nonetheless, this paper proposes that each agreement should still have the same **primary aims**. Namely, in view of the harm caused by each case of foreign bribery, the objective of any such agreement should be to:

- **mitigate any harm** caused by the relevant foreign bribery act; and
- ensure that any transmitted funds are repurposed efficiently to **benefit the population** of the relevant affected state (either through the prevention and deterrence of future corruption or through general development).

How could an agreement be designed?

Switzerland already has a significant amount of experience in negotiating agreements along these lines in other corruption contexts which could be drawn upon for the design of agreements discussed in this Annex.

Specifically, this paper proposes that sharing agreements stemming from foreign bribery cases could be based on two designs, depending on the circumstances:

- **Model 1:** An agreement with an affected state that includes a direct transmission of some or all of the illicit profits to an affected state in a particular case **to directly mitigate a clearly calculable harm** caused by the foreign bribery act to that state. For example, if the facts of a case clearly demonstrated that a state asset was sold below market price as a result of a bribe, this model could be used and funds could be transmitted to cover the shortfall in price. A transmission of this kind would be unconditional and would be comparable to a traditional payment of compensation. It should be noted though that an agreement of this kind may not be appropriate if there is a high risk that the relevant funds will be stolen through additional corruption.

- **Model 2:** An agreement with the affected state and/or third party where illicit profits are repurposed to indirectly mitigate the harm caused by the foreign bribery act via jointly or independently administered channels:

  → **Model 2.1:** As a first option, Switzerland could sign a **direct agreement with the affected state** under which the illicit profits are used to fund anti-corruption or other development programmes **administered largely by that affected state** (with a monitoring mechanism). This would emulate a 2020 trilateral restitution agreement signed with Luxembourg and Peru in which confiscated funds totalling USD 16.3 million were *"allocated to three programmes set up by the Peruvian government with the aim of strengthening institutions in the country that protect the rule of law, combat corruption and money laundering, seize assets and fight organised crime".*[66]

  → **Model 2.2:** Alternatively, Switzerland could instead sign a **multiparty agreement with both an affected state and an independent organisation** through which illicit profits could be used to fund anti-corruption or other development programmes administered by this independent organisation. This could be based along the lines of a 2022 agreement Switzerland signed with Uzbekistan for the restitution of USD 131 million in confiscated funds that will be put towards development projects that "benefit the population of Uzbekistan" via a specifically established United Nations-administered fund.[67]

How could Model 2 agreements indirectly mitigate harm and benefit affected state populations?

While Model 1 agreements would directly mitigate calculable harm caused by acts of foreign bribery through a direct transmission of funds, Model 2 agreements would instead seek to indirectly mitigate the intangible harm caused by these acts.

To achieve this, Model 2 agreements could repurpose the illicit profits in question by using them to finance jointly or independently administered initiatives that prioritise:

1) preventing and deterring future cases of foreign bribery and corruption in the affected state; and

2) promoting the general development in the affected state.

66 *A Dynamic Swiss Policy on Restitution of Illicit Assets*, Federal Department of Foreign Affairs, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/newsuebersicht/2020/12/abkommen-peru.html.

67 *Restitution of Illicit Assets: Switzerland and Uzbekistan Sign Agreement*, the Federal Council, accessed at https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-89949.html.

Priority 1: Prevention and deterrence

Where possible, the agreement should repurpose the illicit profits to finance initiatives that will prevent and deter future foreign bribery taking place in the affected state. Such initiatives could, for example, focus on strengthening the public institutions responsible for the prevention, detection and enforcement of corruption offences, including those institutions responsible for procurement processes.

Repurposing funds in this manner will mitigate the harm caused to an affected state by directly reducing the prevalence of future foreign bribery and corruption in that state and reinforcing the rule of the law. This will not only assist the state to avoid future harm of this kind but will also serve to reverse the erosion of public trust in the state's institutions that was caused by past corrupt acts, including foreign bribery. Arguably, this will lead to a positive economic impact on the state (e.g. through the reinforcement of transparent markets and the encouragement of foreign investment).

It should be noted that tailoring agreements to include this priority would be in line with Switzerland's current domestic and foreign policy objectives and would assist Switzerland to fulfil its commitments under international instruments.

For example, an agreement of this kind would comply with the thematic priorities and objectives of Switzerland's *Foreign Policy Strategy 2024–27*, which seeks to achieve:

- enhanced "democracy and governance" through promoting the "reinforcement of the rule of law"[68]; and
- "prosperity and competitiveness" by "bolstering the public institutions that shape economic life" and by "fostering the responsible use of state resources, anti-corruption measures, reliable economic and trade policies, and a favourable environment for high-quality investments".[69]

Agreements including these priorities would also be in line with Goal 10, Measure 38 of Switzerland's *Anti-Corruption Strategy 2021–2024* which states that Switzerland "will comply with" the *GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases*, including with Principle 6 of this document stating that "…in the end use of confiscated proceeds, consideration should also be given to encouraging actions which

68 *Foreign Policy Strategy 2024-27*, Federal Department of Foreign Affairs, p.35, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Aussenpolitische-Strategie-2024-2027.html.

69 Ibid., p.32.

fulfil UNCAC principles of combating corruption, repairing the damage done by corruption, and achieving development goals."[70]

Furthermore, tailoring agreements to include prevention and deterrence of future foreign bribery would enhance Switzerland's compliance to the OECD Anti-Bribery Convention. Specifically, it would contribute to Switzerland's compliance with Article XII of the 2021 Anti-Bribery Recommendation, which encourages OECD member states to "*undertake coordinated actions with other member and non-member countries, with a view to engaging with the host country on addressing the solicitation and acceptance of bribes*".[71]

Finally, it would also enhance Switzerland's compliance with the UNCAC (e.g. Article 60 requiring States to afford one another technical assistance, including material support and training).

<u>Priority 2: Development</u>

In the event that:

- the specific circumstances of an affected state preclude the prioritisation of initiatives focused on the prevention and deterrence of foreign bribery; or
- an affected state had specific needs that required urgent monetary assistance (e.g. such as a health crisis),

...an agreement could instead repurpose any relevant illicit profits through financing general development-focused projects or programmes.

The agreement could finance initiatives aligned with the Sustainable Development Goals, or alternatively, with Objectives 20, 24 and 25 of Switzerland's *Foreign Policy Strategy 2024–27* regarding the implementation of programmes that advance the provision of basic services, the promotion of democratic institutions and the protection of human rights.[72]

As noted above, the allocation and management of funds under any such agreements could be administered by an independent organisation if necessary, and emulate similar agreements Switzerland made with Uzbekistan in 2022 (involving the United Nations)[73] and Nigeria in 2017 (involving the World Bank).[74]

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70 *The Federal Council's Anti-Corruption Strategy 2021-2024*, Federal Department of Foreign Affairs, p.13, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Strategie_BR_gegen_Korruption_2021-2024; GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases, Principle 6, accessed at https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf.

71 *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD, accessed at https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378.

72 *Foreign Policy Strategy 2024-27*, Federal Department of Foreign Affairs, pp.32, 35-36, accessed at https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/Aussenpolitische-Strategie-2024-2027.html.

73 *Restitution of Illicit Assets: Switzerland and Uzbekistan Sign Agreement*, the Federal Council, accessed at https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-89949.html. 2023 *Ishonch Fund Annual Report*, Uzbekistan Vision 2030 Fund, accessed at https://mptf.undp.org/fund/uzb00.

74 In 2017 Switzerland signed a tripartite agreement with Nigeria and the World Bank through which approximately USD 321 million in confiscated proceeds of corruption were returned to Nigeria via a project aimed at *"strengthening social security for the poorest sections of the Nigerian population, see: Restitution of USD 321 Million by Switzerland to Nigeria under World Bank Oversight: Signing of a Tripartite Agreement*, the Federal Council, accessed at https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-69088.html.

A model including independent administration would have a couple of key advantages. First, it would somewhat depoliticise the repurposing of funds by granting decision-making authority over the specific use of funds to a separate, multilaterally run organisation. Second it would enable Switzerland to more easily repurpose funds in affected states where it does not already have a significant administrative presence (for instance, in states where the Swiss Agency for Development and Cooperation does not currently have a permanent representative).

Repurposing illicit funds for social purposes is in line with existing Swiss practice

Model 2 style agreements would be an innovative solution to repurposing the profits of foreign bribery. They would also be in line with existing Swiss practice.

In Switzerland, the social reuse of criminal profits is already an established concept. In 2001, the cantons of Geneva, Fribourg and Vaud were already repurposing assets confiscated in connection with drug trafficking to advance social causes such as combating addiction and international development cooperation.[75]

While the specific repurposing of the confiscated profits of foreign bribery for social causes is a much less established concept, there are Swiss precedents where funds have been used in this way. For example:

- In the 2017 case against KBA-NotaSys SA, the compensatory claim amount (based on the total profits obtained during the bribery scheme) was reduced by CHF 5 million on the basis that KBA-NotaSys SA would use this amount to set up an "Integrity Fund".[76] This fund, however, was not set up to specifically benefit the populations of the affected states involved in the case, but instead to "promote ethical conduct, transparency and compliance, in particular in the security and banknote printing industry."[77] Funds were used to support a total of 44 projects that developed products such as business guidelines on due diligence and good governance, as well as studies into the prevalence of foreign bribery and how to address it.[78]
- In the 2011 Alstom Network Schweiz SA case, the company committed to paying CHF 1 million in "reparations".[79] These funds were distributed to the Red Cross branches in each of the affected countries involved in the case.[80]

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75 *FF 2002 423 Message concernant la loi sur le partage des valeurs patrimoniales confisquées, 24 October 2001*, Federal Council, at 1.3.4.2, accessed at https://www.fedlex.admin.ch/eli/fga/2002/69/fr; Parliamentary Question 24.7691, 18 September 2024, accessed at https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20247691.

76 See summary penalty order SV.15.0584-MAD.

77 *Integrity Fund*, Koenig and Bauer, accessed at https://banknote-solutions.koenig-bauer.com/en/integrity-fund/.

78 An example is the study mentioned in footnote 34.

79 See summary penalty order EAII.04.0325-LEN.

80 *Criminal Proceedings Against Alstom Entities are Brought to a Close*, Office of the Attorney General of Switzerland, accessed at https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/nsb_medienmitteilungen.msg-id-42300.html.

There are similar precedents globally as well. The most well-known example is the Siemens Integrity Initiative, through which USD 100 million has been allocated by Siemens to various anti-corruption and business integrity projects as part of a settlement in a foreign bribery case.[81]

State-led efforts along these lines, however, are largely non-existent. Consequently, if Switzerland did negotiate and implement agreements along these lines they would firmly establish themselves as a global pioneer in the fight against corruption.

81 Siemens launches US$100-million initiative for anti-corruption, Siemens, 2009, accessed at https://press.siemens.com/global/en/pressrelease/siemens-launches-us100-million-initiative-anti-corruption-non-profit-organizations-can.

Annex 2: Brief overview of finalised Swiss foreign bribery cases

The following table provides a brief description of the 14 finalised foreign bribery cases resolved in Switzerland (at the Federal level) between 2011 and 2024 through non-trial resolutions with companies. As highlighted in footnote 16, please note that the orders issued under these cases are anonymised. Therefore, the company names in the table below have been assumed based on a comparison of the details in these orders and other circumstantial sources including Swiss Government press releases, international organisation reports and other media releases.

August 2024: Claim against Glencore International AG for USD 150 million (SV.20.0632-RAM)[82]
A compensatory claim of **USD 150 million** and a fine of **CHF 2 million** was issued against **Glencore International AG** for failing to prevent the bribery of a public official in the Democratic Republic of Congo. The bribe resulted in the acquisition of a minority stake in a state-owned mining company. The amount reflected the total estimated illicit gain received by Glencore through this scheme (i.e. the difference between the undervalued sum Glencore paid for the stake as a result of the bribery and the actual purchase price that could have been achieved in a standard sale).
March 2024: Claim against Gunvor SA for CHF 82.3 million (SV.21.0600-ROH)[83]
A compensatory claim of **CHF 82.3 million** and a fine of **CHF 4.3 million** was issued against **Gunvor SA** after its employees were found to have paid bribes to public officials in Ecuador in relation to oil sales contracts. The amount paid to the Swiss treasury reflected a portion of the USD 384 million in profits obtained by Gunvor through the bribery scheme and was offset from the total amount Gunvor was liable to pay to the US treasury under a plea agreement it made with US authorities. An equal offset amount was also likely paid to Ecuadorian authorities.
Sep 2023: Claim against Glencore International AG for USD 29,694,819 (SV.20.0632-RAM)[84]
As part of a plea deal with the US, **Glencore International AG** were ordered to pay **USD 29.7 million** to the Swiss State in an abandonment order after being found to have paid bribes to public officials in Nigeria, Cameroon, Côte d'Ivoire, Equatorial Guinea, the Democratic Republic of the Congo, Brazil and Venezuela for the purposes of obtaining improper advantages from state-owned oil entities.

82 *Office of the Attorney General closes its criminal investigation against Glencore International AG with a summary penalty order and an abandonment order*, Office of the Attorney General of Switzerland, accessed at https://www.news.admin.ch/en/nsb?id=101995; United States v. Glencore International AG, Docket No: 22-CR-297, accessed at https://www.justice.gov/criminal/criminal-fraud/united-states-v-glencore-international-ag.

83 *GUNVOR SA held criminally liable for acts of corruption in Ecuador*, Office of the Attorney General of Switzerland, accessed at https://www.news.admin.ch/en/nsb?id=100264.

84 *Office of the Attorney General closes its criminal investigation against Glencore International AG with a summary penalty order and an abandonment order*, Office of the Attorney General of Switzerland, accessed at https://www.news.admin.ch/en/nsb?id=101995; United States v. Glencore International AG, Docket No: 22-CR-297, accessed at https://www.justice.gov/criminal/criminal-fraud/united-states-v-glencore-international-ag.

April 2023: Claim against SICPA SA for CHF 80 million (SV.14.1681-KOU)[85]

A compensatory claim of **CHF 80 million** and a fine of **CHF 1 million** was issued against **SICPA SA** after its employees bribed foreign public officials in Brazil, Columbia and Venezuela.

The amount paid to the Swiss treasury reflected a portion of the USD 222 million in illicit profits SICPA had obtained (a separate amount of USD 142 million was paid by SICPA to Brazil through a separate settlement).

Dec 2022: Case against ABB Management Services AG (SV.19.0984-POM)[86]

A fine of **CHF 4 million** was issued against **ABB Management Services AG** after it was found to have bribed officials of South Africa's state-owned energy company to secure inflated contracts. No compensatory claim was made in this case as the company returned the benefits of the crime with a 40% surcharge to the relevant country, South Africa. Settlements were also made with authorities in the US and Germany.

Nov 2021: Claim against SBM Offshore subsidiaries for CHF 2,813,819 (SV.20.1217-MGR)[87]

A compensatory claim of just over **CHF 2,813,819** and a fine of **CHF 4.2 million** was issued against three Swiss subsidiaries of SBM Offshore, namely **SBM Holding Inc. SA, Single Buoy Moorings Inc.** and **SBM Production Contractors Inc. SA**, after they were found to have bribed public officials in Angola, Equatorial Guinea and Nigeria to secure oil and gas contracts.

The amount paid reflected the estimated proceeds obtained by these companies in relation to their bribery scheme in Nigeria (the proceeds obtained through schemes in Angola and Equatorial Guinea were disgorged under related agreements SBM Offshore made with the US, the Netherlands and Brazil).

Nov 2019: Claim against Andrade Gutierrez Engenharia SA for CHF 16,603,730 (SV.15.0787-BECY)[88]

A compensatory claim of **CHF 16,603,730** and a fine of **CHF 2 million** was issued against **Andrade Gutierrez Engenharia SA**. The publicly available information for this case is limited and the basis for this figure has not been confirmed by the author of this report.

Oct 2019: Claim against Gunvor International BV for CHF 89,665,378 (SV.18.0958-SAG)[89]

A compensatory claim of **CHF 89,665,378** and a fine of **CHF 4 million** was issued against **Gunvor International BV** and **Gunvor Ltd** after the company was found to have bribed public officials in Côte d'Ivoire and the Democratic Republic of the Congo in order to obtain petroleum sales contracts.

The amount paid was based on a calculation of the total profit Gunvor had obtained through their bribery scheme.

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85 *SICPA SA convicted of corporate criminal liability in connection with acts of corruption*, Office of the Attorney General of Switzerland, accessed at https://www.news.admin.ch/en/nsb?id=94544.

86 *The Office of the Attorney General of Switzerland resolves criminal investigation against ABB*, Office of the Attorney General of Switzerland, accessed at https://www.news.admin.ch/en/nsb?id=92020.

87 *Three Swiss subsidiaries of the oil-related group SBM Offshore convicted of corruption offences*, Office of the Attorney General of Switzerland, accessed at https://www.news.admin.ch/en/nsb?id=86009.

88 *Le MPC condamne le group brésilien Andrade pour corruption*, Gotham City, 9 January 2020, accessed at https://gothamcity.ch/2020/01/09/le-mpc-condamne-le-groupe-bresilien-andrade-pour-corruption/. This Gotham City article is specifically referred to in the description provided by Switzerland of SV.150787 in the following report it submitted to the OECD: *Implementing the OECD Anti-Bribery Convention Phase 4 Two-Year Follow-Up Report Switzerland*, OECD, p.31, accessed at https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/10/implementing-the-oecd-anti-bribery-convention-phase-4-follow-up-report-switzerland_bcf5e566/43f40e39-en.pdf.

89 *Commodities trader Gunvor held criminally liable for acts of corruption*, Office of the Attorney General of Switzerland, accessed at https://www.news.admin.ch/en/nsb?id=76725.

May 2017: Claim against Dredging International Services Ltd for CHF 36,741,473 (SV.14.0177-DCA)[90]

A compensatory claim of **CHF 36,741,473** and a fine of **CHF 1 million** was issued against **Dredging International Services Ltd** after the company was found to have used Swiss bank accounts to bribe officials in Nigeria in relation to dredging contracts.

The amount paid was based on a calculation of the total profits obtained by the company through the relevant dredging contracts.

March 2017: Claim against KBA-NotaSys SA for CHF 35 million (SV.15.0584-MAD)[91]

A compensatory claim of **CHF 35 million** and a symbolic fine of **CHF 1** was issued against **KBA-NotaSys SA** after it was found to have engaged in bribery in Brazil, Morocco, Nigeria and Kazakhstan in order to obtain business related to their banknote printing press manufacturing. According to the Summary Penalty Order, CHF 5 million was deducted from the compensatory claim amount to be used to establish a fund to strengthen compliance standards in the banknote industry, making the total payable amount to the Swiss State **CHF 30 million**.

The amount was based on the profits obtained by the company during the periods of bribery in the respective countries. The symbolic fine amount was due to the fact that the company self-reported the matter to authorities.

Dec 2016: Claim against Odebrecht SA and Constructa Norberto Odebrecht SA for 117 million (SV.16.1280-LEN)[92]

Dec 2016: Abandonment order requiring Braskem SA to pay CHF 94.5 million (SV.16.1280-LEN)[93]

A series of payments were made by several companies relating to the "Odebrecht-Petrobas" affair after they were found to have paid bribes to government officials in Brazil and 11 other countries in order to win contracts with Petrobras and other state-controlled entities. Specifically, a compensatory claim of **CHF 117 million** was jointly made against **Odebrecht SA** and **Constructa Norberto Odebrecht SA** (CNO), and a fine of **CHF 4.5 million** was issued to CNO. An abandonment order was also issued involving **Braskem SA** (majority owned by Odebrecht SA) which required the company to pay an amount of **CHF 94.5 million**.

These amounts were ordered in parallel to similar settlements involving the USA and Brazil and reflected a fraction of the billions of dollars in profits obtained by these companies through their bribery schemes.

May 2016: Claim against Nitrochem Distributions AG for CHF 73,345.50 (SV.12.0120-DCA)[94]

A compensatory claim of **CHF 73,345.50** and a fine of **CHF 750,000** was issued against **Nitrochem Distributions AG** after they were found to have been involved in a scheme to assist another Norwegian company, Yara International ASA to bribe a Libyan state-owned oil company.

The amount was based on the gain the company received through taking part in the bribery scheme.

Nov 2011: Claim against Alstom Network Schweiz AG for CHF 36.4 million (EAII.04.0325-LEN)[95]

A compensatory claim of **CHF 36.4 million** and a fine of **CHF 2.5 million** was issued against **Alstom Network Schweiz AG** after it was found to have bribed public officials in Latvia, Tunisia and Malaysia.

90 *Corporate Criminal Liability*, Transparency International Switzerland, 2021, accessed at https://transparency.ch/wp-content/uploads/2021/02/Corporate_Criminal_Liability_Report.pdf; *Four Ex-Nigerian Officials Named in Swiss Bribery Scandal*, OCCRP, accessed at https://www.occrp.org/en/news/four-ex-nigerian-officials-named-in-swiss-bribery-scandal.

91 *Corporate Criminal Liability*, Transparency International Switzerland, 2021, accessed at https://transparency.ch/wp-content/uploads/2021/02/Corporate_Criminal_Liability_Report.pdf; *CHF 35 million corruption settlement for printing press firm*, Swissinfo.ch, 24 February 2017, accessed at https://www.swissinfo.ch/eng/business/kba-notasys_chf35-million-corruption-fine-for-printing-press-firm/42986930.

92 *Petrobas – Odebrecht Affair: The Office of the Attorney General of Switzerland convicts Brazilian companies and demands payment of over CHF 200 million*, Office of the Attorney General of Switzerland, accessed at https://www.news.admin.ch/en/nsb?id=65077.

93 Ibid.

94 *Corporate Criminal Liability*, Transparency International Switzerland, 2021, accessed at https://transparency.ch/wp-content/uploads/2021/02/Corporate_Criminal_Liability_Report.pdf; *Une multinationale Suisse condamnée pour corruption sous Kadhafi*, RTS, 19 September 2016, accessed at https://www.rts.ch/info/economie/8027589-une-multinationale-suisse-condamnee-pour-corruption-sous-kadhafi.html.

95 *Criminal proceedings against Alstom entities are brought to a close*, Office of the Attorney General of Switzerland, accessed at https://www.news.admin.ch/en/nsb?id=42300.