

Article 102 of the Criminal Code

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Article 102 of the Criminal Code, which came into force in 2003, establishes the criminal liability of the enterprise.¹ It distinguishes two forms of liability. Subsidiary liability, provided for in paragraph 1, applies to any felony or misdemeanour committed within an enterprise in the exercise of commercial activities in accordance with its objects, where the offence cannot be attributed to any specific natural person on account of the enterprise's lack of organisation. Primary liability, provided for in paragraph 2, applies irrespective of the criminal liability of natural persons, for a limited catalogue of offences — including participation in a criminal organisation, the financing of terrorism, money laundering and the bribery of Swiss and foreign public officials — where the enterprise is to be blamed for having failed to take all the reasonable and necessary organisational measures to prevent the offence.²

The penalty incurred by the enterprise is a fine of no more than CHF 5 million.³ This ceiling, modest in relation to the turnover of the large houses, is supplemented by the compensatory claim. This confiscation measure allows the State to claim the equivalent of the profits made by means of the offence where the assets themselves are no longer available.⁴ It is this claim that gave the convictions of Gunvor, Glencore and Trafigura their financial weight: from several tens to several hundreds of millions of francs or dollars.

Liability under paragraph 2 rests on a charge of organisational failure. The enterprise is punished because it did not put in place the measures that would have made it possible to prevent the offence: a code of conduct, a compliance programme, procedures for vetting intermediaries, control of payments, training and internal audit. This charge turns compliance into a legal obligation whose breach is punishable under criminal law, well beyond mere good practice. One legal scholar described the conviction of Gunvor as a textbook case of the application of Article 102: deficiencies in

Article 102 of the Criminal Code

compliance allowed bribes, which passed through the Swiss financial centre, to be paid to foreign public officials.⁵

Element	Content
Subsidiary liability (para. 1)	offence committed within the enterprise, not attributable to a natural person on account of a lack of organisation
Primary liability (para. 2)	catalogue of offences, including the bribery of foreign public officials and money laundering, and failure to take organisational measures
Penalty	fine of no more than CHF 5 million
Compensatory claim	equivalent of the profits made by means of the offence
Prosecuting authority	Office of the Attorney General of Switzerland for the bribery of foreign public officials

Key points. Article 102 of the Criminal Code makes it possible to convict an enterprise that has failed to take all the reasonable and necessary organisational measures to prevent the bribery of foreign public officials or money laundering. The fine is capped at CHF 5 million, but the compensatory claim, which absorbs the profits of the offence, runs to tens or hundreds of millions.

1 Notes

1. Criminal liability of the enterprise introduced in Art. 100quater SCC, in force since 1 October 2003 (AS 2003 3043), which became Art. 102 SCC with the revised general part of the Criminal Code; Jeanneret, Yvan, *La responsabilité pénale de l'entreprise* (art. 102 CP), presentation, University of Zurich, ius.uzh.ch (accessed September 2026). ↩
2. Art. 102 SCC: subsidiary liability of the enterprise (para. 1) where a felony or misdemeanour committed within it in the exercise of commercial activities cannot be attributed to any specific natural person on account of a lack of organisation, and primary liability (para. 2) for the listed offences, including bribery and money laundering, where the enterprise has failed to take all the reasonable and necessary organisational measures; fine of no more than CHF 5 million; Haute école Arc, “Responsabilité pénale subsidiaire de l'entreprise : peut-on faire juste en faisant faux ?”, he-arc.ch (accessed September 2026). ↩

3. RTS, “L’entreprise Trafigura écope d’une amende et certains accusés de prison ferme pour corruption en Angola”, 31 January 2025, which recalls that the Office of the Attorney General of Switzerland had sought the maximum amount of five million provided for by law. ↩
4. Art. 71 SCC (droit-bilingue.ch), para. 1: “Where the assets to be confiscated are no longer available, the court shall order their replacement by a compensatory claim of the State in an equivalent amount”; para. 2: “The court may waive the compensatory claim in whole or in part if it is likely to be unrecoverable or would seriously hinder the rehabilitation of the person concerned”; para. 3: seizure of assets with a view to the enforcement of the compensatory claim; application to enterprises: Gunvor (compensatory claim of CHF 90 million, summary penalty order of 17 October 2019) and Glencore (USD 150 million, summary penalty order of 5 August 2024). ↩
5. Villard, Katia, “La responsabilité pénale de l’entreprise au regard de l’affaire Gunvor”, plaidoyer, 3 February 2020. ↩

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