

Corporate liability in practice

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Article 102 SCC makes an undertaking liable for a felony or misdemeanour committed in the exercise of commercial activities if the offence cannot be attributed to a specific natural person because of inadequate organization (para. 1). For participation in a criminal organization, financing of terrorism, money laundering and bribery, the undertaking is liable irrespective of the liability of natural persons if it failed to take all reasonable organizational measures required to prevent the offence (para. 2). The fine can reach CHF 5 million and is assessed according to the seriousness of the offence, the organizational deficiencies, the loss or damage caused and the economic capacity of the undertaking (para. 3).¹ Chapter D.IV described the origins of the rule. The practice of the last decade has made it a real risk for banks.

In December 2021 the Criminal Chamber convicted Falcon Private Bank under Article 102 SCC and fined it CHF 3.5 million. On 28 June 2023 the Appeals Chamber acquitted the bank and its former chief executive (Chapter J.II).² On 27 June 2022 the Criminal Chamber convicted Credit Suisse of failing to prevent the laundering of assets belonging to a Bulgarian criminal organization that trafficked cocaine and laundered its proceeds between May 2005 and January 2009. The court imposed a fine of CHF 2 million and a compensatory claim of about CHF 19 million and confiscated about CHF 12 million from accounts of the organization. On 27 November 2024 the Appeals Chamber published its judgment acquitting the bank, by then merged into UBS. Because the former employee whose conduct was in question had died in April 2023, the Chamber held that it could not examine the bank's liability without violating her presumption of innocence.³ The Federal Supreme Court annulled the Appeals Chamber's separation of the proceedings in January 2025 and a further judgment of the Appeals Chamber in July 2025, remanding the case each time. In its new judgment of 3 March 2026 the Appeals Chamber discontinued the proceedings against the deceased employee, again acquitted UBS of the

charge under Article 102(2) SCC and lifted the financial sanctions, while it confirmed in part the convictions of two co-defendants. That judgment was open to appeal to the Federal Supreme Court. Chapter J.II follows the procedural course and the separate question of successor liability after the merger.⁴

For Lugano the most relevant case concerns PKB Privatbank, a Lugano bank. In January 2018 the OAG opened proceedings against it under Article 102 SCC in connection with the Petrobras and Odebrecht corruption complex, after a self-report by the bank.⁵ On 1 February 2018 FINMA had concluded its own enforcement proceedings, finding that the bank had maintained several dozen business relationships linked with the corruption scandal between 2010 and 2015 without adequate clarification, and ordered the disgorgement of CHF 1.3 million.⁶ By penalty order of 28 March 2024 the OAG convicted the bank under Article 102(2) SCC in conjunction with aggravated money laundering and imposed a fine of CHF 750,000. The order found that between 2011 and 2014 the bank had failed to take the organizational measures required to prevent the laundering of more than USD 20 million. The bank did not object and the order became final.⁷ Common misconception. It is often assumed that a bank in Lugano can be punished under Article 102 SCC only if one of its employees is first convicted of money laundering. The opposite is true for the offences listed in Article 102(2) SCC: the undertaking is liable irrespective of the liability of natural persons if it failed to take all reasonable organizational measures to prevent the offence. What must be proven is that an offence was committed within the undertaking and that a deficient organization made it possible. The acquittals of UBS as successor of Credit Suisse in 2024 and 2026 rested on a special situation: the employee whose offence would have founded the bank's liability had died, and the Appeals Chamber held that the bank's organization could not be judged without a finding against her. The PKB case of 2024 shows that the OAG can conclude such cases by penalty order without a trial.

1 Notes

1. Art. 102 SCC, <https://www.droit-bilingue.ch/en-de/3/31/311.0-102-133.html> (para. 2 as amended by the Federal Act of 25 September 2015, in force since 1 July 2016). ↩
2. "Banche elvetiche alla sbarra", RSI, February 2022, <https://www.rsi.ch/info/svizzera/Banche-elvetiche-alla-sbarra--1784445.html>; Federal Criminal Court, press release on judgment CA.2022.12, 3 July 2023,

<https://www.bstger.ch/de/media/comunicati-stampa/2023/2023-07-03/1351.html>. ↩

3. Federal Criminal Court, press release on judgment SK.2020.62, 27 June 2022, <https://www.bstger.ch/de/media/comunicati-stampa/2022/2022-06-27/1275.html>; Federal Criminal Court, press release on judgment CA.2025.17, 4 March 2026, <https://www.bstger.ch/de/media/comunicati-stampa/2026/2026-03-04/1543.html> (summarizing the judgment CA.2023.20 of 26 November 2024 and its reasoning); "Swiss court acquits UBS in Bulgarian mafia case", SWI swissinfo.ch, 27 November 2024, <https://swissinfo.ch/eng/banking-fintech/swiss-court-acquits-ubs-in-bulgarian-mafia-case/88350953>. ↩
4. Federal Criminal Court, press release on CA.2025.17 (above) (citing Federal Supreme Court judgments 7B_489/2024 of 6 January 2025 and 6B_227/2025 of 7 July 2025); "Swiss Prosecutor Revives CS Bulgarian Laundering Case", finews.asia, March 2025, <https://www.finews.asia/finance/43255-credit-suisse-ubs-money-laundering-bulgarian-drug-trafficking-gang-switzerland>. ↩
5. "PKB sotto la lente dell'MPC", RSI, 12 January 2018, <https://www.rsi.ch/info/ticino-grigioni-e-insubria/PKB-sotto-la-lente-dellMPC--1062659.html>. ↩
6. FINMA, "FINMA concludes proceedings against PKB Privatbank", press release, 1 February 2018, <https://www.finma.ch/en/news/2018/02/20180201-mm-pkb/>. ↩
7. "PKB Privatbank SA: unternehmensstrafrechtliche Verurteilung wegen schwerer Geldwäscherei", law.ch, April 2024, <https://law.ch/lawnews/2024/04/pkb-privatbank-sa-unternehmensstrafrechtliche-verurteilung-wegen-schwerer-geldwaescherei-etc/>. ↩

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