

The bribery of foreign public officials

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Swiss criminal law has prohibited the bribery of foreign public officials since 2000, when Switzerland implemented the Convention on Combating Bribery of Foreign Public Officials of the Organisation for Economic Co-operation and Development. Article 322septies of the Criminal Code punishes anyone who offers, promises or grants an undue advantage to a person acting for a foreign state or an international organisation, for that person or for a third party, in order to cause the person to carry out or fail to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion. The provision covers such a person acting as a member of a judicial or other authority, as an official, as an expert, translator or interpreter employed by an authority, as an arbitrator or as a member of the armed forces.¹ The offence is committed by the person who pays the bribe. Under the general rules on jurisdiction, it is punishable in Switzerland where the act was committed in Switzerland or where the perpetrator is Swiss or is found in Switzerland.

The officials of state-owned companies are, in many cases, public officials within the meaning of the provision. The managers of a national oil company or a state mining company, who decide on the allocation of cargoes and the terms of prepayments, are persons acting for a foreign state, so that payments to them to obtain cargoes or contracts fall within the offence. The cases against Gunvor, Glencore and Trafigura all concerned payments to officials of state-owned companies or government agencies in Africa.

1 Notes

1. Marc Thommen, lecture materials "Strafrecht III: Bestechung", University of Zurich, ius.uzh.ch: Art. 322septies StGB punishes the bribery of foreign public officials with a custodial sentence of up to five years or a monetary penalty; the offence entered into force on 1 May 2000 in implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. ↩

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