

CORPORATE CRIME IN SWITZERLAND – THE OFFICE OF THE ATTORNEY GENERAL OF SWITZERLAND WILL NO LONGER ISSUE SIDE LETTERS

The Supervisory Authority for the Office of the Attorney General of Switzerland (SA-OAG) ends the practice of so-called "side letters" issued by the Office of the Attorney General of Switzerland (OAG) in the ambit of corporate criminal liability proceedings where companies would be convicted under art. 102 of the Swiss Criminal Code through a summary penalty order. Such side letters, issued by the OAG alongside summary penalty orders, served to clarify the scope of corporate liability, acknowledge cooperation efforts, and outline remedial measures. They provided companies with an official document to share with regulators and stakeholders, contextualising the negotiated criminal resolution. The abandonment of such a practice will require companies operating in Switzerland and potentially facing criminal prosecution to include in their compliance and crisis management strategies specific communications to stakeholders without expecting side letters or formal recognition of cooperation from the OAG and assess how Swiss criminal resolutions may interact with proceedings in jurisdictions offering negotiated outcomes like DPAs.

The 2025 activity report of the SA-OAG marks the official end of the practice of issuing side letters by the OAG in parallel with a summary penalty order (*ordonnance pénale, Strafbefehl*) convicting companies under art. 102 of the Swiss Criminal Code (SCC).

Summary penalty orders have become, in practice, the most common form of criminal conviction for companies in Switzerland. This procedural mechanism enables the resolution of corporate criminal liability without the need for a full public trial before a court, thereby allowing companies to avoid lengthy and potentially reputation-damaging court proceedings. However, summary penalty orders nonetheless amount to formal criminal convictions, which may have negative impacts on companies' operations. In this context, side letters were issued by the OAG at the request of companies to present an overview of the legal situation alongside the summary penalty order. They clarified, for instance, the scope of the company's liability, acknowledged cooperation efforts, or outlined the remedial measures undertaken. In substance, side letters served as a practical tool to showcase the negotiated nature of the criminal resolution and the convicted company's good cooperation in achieving this result. Side letters provided companies with an official document that could be shared with regulators, business partners, lenders and other stakeholders to explain the context of the resolution, the extent of the company's cooperation and the remedial measures implemented.

The SA-OAG had already examined the issue of side letters as early as 2023 in connection with the side letter issued to a multinational company headquartered in Switzerland. The SA-OAG noted at the time that the wording used in this side letter was problematic, as it stated that the company had already remedied the organisational deficiency that led to the summary penalty order and that the summary penalty order itself did not constitute an admission of guilt or a court judgment. Such statements were either not relevant from a legal standpoint or sought to undermine the legal effect of the summary penalty order, or both.

Since then, the side letters issued by the OAG have used more conservative wording. However, the purpose of these side letters has always been to mitigate the condemnatory effect of a penalty order for a multinational company. Indeed, it is established that the criminal conviction of a company can have tangible and adverse consequences for the entity, such as exclusion from public procurement tenders, a fall in stock value for listed entities, and/or a loss of trust from business and financial partners (banks, investors, suppliers, clients, etc.).

As the Attorney General of Switzerland, Stefan Blättler, recalls in the SA-OAG 2025 activity report, the OAG found itself compelled to use this side letter mechanism because the Swiss legal framework does not have a criminal resolution tool such as the deferred prosecution agreement (DPA) for dealing efficiently with corporate crime cases. Such a mechanism consists of an extrajudicial agreement deferring any conviction for a period during which the company must abide by the conditions set out in the agreement (payment of a sum, remediation of organisational defects, etc.). If the requirements are met, the criminal proceedings are discontinued. The purpose of these agreements is to protect and encourage spontaneous self-reporting and cooperation by companies with the criminal prosecution authorities.

That being said, the OAG, as well as the parties who resorted to the use of side letters, were aware that this mechanism had no legal basis and was a purely practical tool arising from negotiations between the OAG and the parties.

The SA-OAG therefore took a foreseeable decision and sealed the fate of side letters by definitively instructing the OAG to abandon this practice. The discontinuation of side letters may be perceived by companies as reducing one of the few available mechanisms through which their cooperation and remediation

efforts could be formally acknowledged in the context of a corporate criminal resolution.

Following the OAG's decision in 2017 to cease the use of art. 53 SCC for transnational corruption cases involving multinational companies, it seems that the OAG can no longer offer a formal solution to mitigate the effects of a company being convicted through a summary penalty order. The company may still issue a press release in coordination with the OAG containing the same message as the side letter. However, this would not have the same effect as a formal letter issued by the prosecuting authority.

As the Attorney General of Switzerland advocates in the 2025 activity report of the SA-OAG, the most viable solution emerging for Swiss criminal prosecution authorities to remain efficient and relevant in prosecuting international corporate crime is the adoption of a DPA-like tool in the Swiss legal framework.

Discussions regarding the adoption of such a mechanism in Switzerland are ongoing, as illustrated by postulate 25.3028, adopted by the Swiss Council of States on 16 June 2025, instructing the Federal Council to examine the possibility of introducing a deferred prosecution instrument into Swiss law. It is fair to assume that the recent decision of the SA-OAG to abandon the use of side letters will be yet another building block in favour of its adoption. In the absence of both a formal deferred prosecution mechanism and the possibility of obtaining a side letter, the debate on how cooperation and remediation efforts should be recognised in corporate criminal proceedings is likely to gain further importance.

With the end of the OAG's side letter practice and the earlier abandonment of art. 53 SCC, Switzerland now offers no formal mechanism to acknowledge a company's cooperation or mitigate the reputational and operational consequences of a criminal conviction by summary penalty order. Unlike jurisdictions equipped with DPAs, the Swiss framework provides no structured path for negotiated corporate criminal resolutions. Companies facing potential liability in Switzerland should factor this gap into their compliance and crisis management strategies. In practical terms, this means preparing stakeholder communication plans that cannot rely on formal acknowledgment from the prosecuting authority and assessing how a Swiss criminal resolution may interact with proceedings in other jurisdictions that do offer negotiated outcomes.



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