



CORPORATE FINANCIAL CRIMES

 **lecocq**associate

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The purpose of this analysis is to compare the different limitation periods applicable to the various offences relating to corporate financial crimes within companies in Switzerland, Malta and the United Arab Emirates, as well as the periods after the expiration of which the entry of the offence in the criminal record can be deleted.

Corporate financial crimes are offences committed by a member of a company with the aim of conferring an advantage on himself or the entity, including, but not limited to, a pecuniary advantage in which he works.

These three jurisdictions condemn offences related to mismanagement, fraudulent bankruptcy as well as market abuse or distortion of competition.

SWITZERLAND

Crimes	Statute of Limitation Period	Statute of Limitation Period Legislation	Source of Statute of Limitation Period	Time period to be able to clean criminal record	Purge of Criminal Record Legislation	Source of Purge of Criminal Record Legislation
Criminal mismanagement – article 158 of the Swiss Criminal Code ¹	10 years	Article 97 (1) (c) and Article 98 of the Swiss Criminal Code	Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html	The duration of an entry in the criminal record varies according to the severity of the sentence pronounced	Article 369(1) (b) of the Swiss Criminal Code.	Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html
Mismanagement – Article 165 of the Swiss Criminal Code	15 years	Article 97(1) (b) and Article 98 of the Swiss Criminal Code.	Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html	The duration of an entry in the criminal record varies according to the severity of the sentence pronounced. mentioned deadlines, the entries are removed ex efficio and automatically.	Article 369(1) (b) of the Swiss Criminal Code.	Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html
Distortion of competition – Article 23 of the Swiss Law against Unfair Competition	10 years	Article 97(1) (c), Article 98 and Article 333 (1) of the Swiss Criminal Code.	Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html Swiss law against unfair competition : https://www.admin.ch/opc/fr/classified-compilation/19860391/index.html	The duration of an entry in the criminal record varies according to the severity of the sentence pronounced.	Article 369(1)(b) Swiss Criminal Code.	Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html

¹ Aggravating circumstances – Article 158(1) hypothesis 3 or (2) of the Swiss Criminal Code:
The sentence can be adjusted to 5 years. In this case, the statute limitation is now up to 15 years (Article 97(1)(b) of the Swiss Criminal Code).

Crimes	Statute of Limitation Period	Statute of Limitation Period Legislation	Source of Statute of Limitation Period	Time period to be able to clean criminal record	Purge of Criminal Record Legislation	Source of Purge of Criminal Record Legislation	Comments
Market abuse (market price manipulation) – Article 155 of the Swiss Financial Market Infrastructure Act	10 years for the basic offense and 15 years for the aggravated offense	Article 97(1) (c) and Article 98 and Article 333 (1) of the Swiss Criminal Code.	<p>Weber Philippe, pp. 10-12, 09/2013, https://www.nkf.ch/app/uploads/2018/04/New-Swiss-Rules-on-Insider-Dealing-and-Market-Manipulation-2013-05.pdf</p> <p>Financial Market Infrastructure Act : https://www.admin.ch/opc/en/classified-compilation/20141779/index.html</p> <p>Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html</p>	The duration of an entry in the criminal record varies according to the severity of the sentence pronounced.	Article 369 (1) (b) of the Swiss Criminal Code.	Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html	Aggravating circumstances – Article 155 (2) of the Swiss Financial Market Infrastructure Act where the accused person gains a pecuniary advantage of more than one million and is liable to a custodial sentence not exceeding five years or a monetary penalty.
Fraudulent bankruptcy and fraud against seizure – article 163 of the Swiss Criminal Code	15 years for the basic offense and 10 years for the mitigated offense	Article 97(1) (b) and Article 98(a) of the Swiss Criminal Code.	Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html	The duration of an entry in the criminal record varies according to the severity of the sentence pronounced.	Article 369(1) (b) of the Swiss Criminal Code	Swiss Criminal Code : https://www.admin.ch/opc/en/classified-compilation/19370083/index.html	Mitigating circumstances – Article 163 (2) of the Swiss Criminal Code: Where the accused person is not the debtor of the company but a third party. In this case, the accused person is liable to a custodial sentence not exceeding three years.

MALTA

Crimes	Statute of Limitation Period	Statute of Limitation Period Legislation	Source of Statute of Limitation Period	Time period to be able to clean criminal record	Purge of Criminal Record Legislation	Source of Purge of Criminal Record Legislation
Fraud by officers of companies subsequently dissolved	10 years	Criminal Code, Chapter 9 of the Laws of Malta, Article 688(c)	https://legislation.mt/eli/cap/9/eng/pdf	Three years (<i>for a sentence for a period exceeding one year but not five years</i>)	Conduct Certificates Ordinance, Chapter 77 of the Laws of Malta, Article 6, Second Schedule	https://legislation.mt/eli/cap/77/eng/pdf
Responsibility for fraudulent trading ²	10 years	Criminal Code, Chapter 9 of the Laws of Malta, Article 688(c)	https://legislation.mt/eli/cap/9/eng/pdf	Three years (<i>for a sentence for a period exceeding one year but not five years</i>)	Conduct Certificates Ordinance, Chapter 77 of the Laws of Malta, Article 6, Second Schedule	https://legislation.mt/eli/cap/77/eng/pdf
Fraudulent and Wrongful Trading ³	10 years	Criminal Code, Chapter 9 of the Laws of Malta, Article 688(c)	https://legislation.mt/eli/cap/9/eng/pdf	Three years (<i>for a sentence for a period exceeding one year but not five years</i>)	Conduct Certificates Ordinance, Chapter 77 of the Laws of Malta, Article 6, Second Schedule	https://legislation.mt/eli/cap/77/eng/pdf
Fraud in anticipation of dissolution	10 years	Criminal Code, Chapter 9 of the Laws of Malta, Article 688(c)	https://legislation.mt/eli/cap/9/eng/pdf	Three years (<i>for a sentence for a period exceeding one year but not five years</i>)	Conduct Certificates Ordinance, Chapter 77 of the Laws of Malta, Article 6, Second Schedule	https://legislation.mt/eli/cap/77/eng/pdf
Fraud by officers of companies being wound up ⁴	10 years	Criminal Code, Chapter 9 of the Laws of Malta, Article 688(c)	https://legislation.mt/eli/cap/9/eng/pdf	Three years (<i>for a sentence for a period exceeding one year but not five years</i>)	Conduct Certificates Ordinance, Chapter 77 of the Laws of Malta, Article 6, Second Schedule	https://legislation.mt/eli/cap/77/eng/pdf
Fraudulent bankruptcy (trader and broker)	5 years	Criminal Code, Chapter 9 of the Laws of Malta, Article 688(d)	https://legislation.mt/eli/cap/9/eng/pdf	Three years (<i>sentence for a period exceeding one year but not five years</i>)	Conduct Certificates Ordinance, Chapter 77 of the Laws of Malta, Article 6, Second Schedule	https://legislation.mt/eli/cap/77/eng/pdf

² This offence is in relation to when the business of a company in course of winding up is carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose Companies Act, Chapter 386 of the Laws of Malta, Article 315

³ Fraudulent trading offence relates to when during the company recovery procedure, it appears that any business of the company has been carried out with intent to defraud creditors of the company or for any other fraudulent trading. Wrongful trading is related to when such company recovery procedure is in force a director of the company had knowledge that the company was unable to pay its debts or was imminently likely to become unable to pay its debts, please see Companies Act, Chapter 318 of the Laws of Malta, Article 329B(8) – (9).

⁴ Companies Act, Chapter 386 of the Laws of Malta, Article 308.

UAE

Crimes	Statute of Limitation Period	Statute of Limitation Period Legislation	Source of Statute of Limitation Period	Time period to be able to clean criminal record	Purge of Criminal Record Legislation	Source of Purge of Criminal Record Legislation
Bankruptcy-related fraud	5 years if a misdemeanour or 20 years if a felony as from the date of perpetration	Article 20 of the Criminal Procedural Code	https://www.lexis-middleeast.com	3 years from the execution of the sentence, the pardon thereof or its prescription by time upon submitting an application to the court that issued the bankruptcy and liquidation judgement provided that the debtor has paid all debts (original amount, interests, and expenses) or settled with the creditors, there are no objections from the Public Prosecutor or creditors, and/or there are no suspensions for a determination due to a separate criminal lawsuits related to the bankruptcy crimes.	Articles 220, 223 - 229 of the Federal Decree-Law No 9 of 2016 on Bankruptcy (the "Bankruptcy Law")	https://www.lexis-middleeast.com
Market abuse (includes market manipulation and insider dealing)	5 years if a misdemeanour or 20 years if a felony as from the date of perpetration	Article 20 of the Criminal Procedural Code	https://www.lexis-middleeast.com	1 year if qualifying as a misdemeanour or 2 years if qualifying as a felony from the date of termination of the execution and upon submitting a petition for rehabilitation to the public prosecutor in the jurisdiction of residence, provided that the UAE Prerequisite Conditions are met.	Articles 4 et seq. of the Rehabilitation Law	https://www.lexis-middleeast.com



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