

# Construction 2022

Contributing editors  
Robert S Peckar and Michael S Zicherman



**Publisher**

Tom Barnes

tom.barnes@lbresearch.com

**Subscriptions**

Claire Bagnall

claire.bagnall@lbresearch.com

**Senior business development manager**

Adam Sargent

adam.sargent@gettingthedealthrough.com

**Published by**

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between May and June 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021

No photocopying without a CLA licence.

First published 2008

Fifteenth edition

ISBN 978-1-83862-638-9

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



---

# Construction 2022

**Contributing editors****Robert S Peckar and Michael S Zicherman****Peckar & Abramson PC**

---

Lexology Getting The Deal Through is delighted to publish the fifteenth edition of *Construction*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Iraq and Turkey.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Robert S Peckar and Michael S Zicherman of Peckar & Abramson PC, for their continued assistance with this volume.



London

June 2021

---

Reproduced with permission from Law Business Research Ltd

This article was first published in July 2021

For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

# Contents

<b>Global overview</b>	<b>3</b>	<b>Mexico</b>	<b>96</b>
Robert S Peckar and Michael S Zicherman Peckar & Abramson PC		Roberto Hernández García and Juan Pablo Sandoval Comad SC	
<b>Australia</b>	<b>4</b>	<b>Netherlands</b>	<b>102</b>
Troy Lewis, Tarin Olsen and Grace Power Holding Redlich		Jurriaan van der Stok, Ynze van der Tempel and Timo Huisman Loyens & Loeff	
<b>Austria</b>	<b>12</b>	<b>New Zealand</b>	<b>110</b>
Klaus Pfeiffer, Katharina Kitzberger and Daniela Witt-Döring Weber & Co		Christina Bryant, Helen Macfarlane and Nick Gillies Hesketh Henry	
<b>Brazil</b>	<b>19</b>	<b>Qatar</b>	<b>120</b>
Júlio César Bueno Pinheiro Neto Advogados		Claudia el Hage Al Marri & El Hage Law Office	
<b>Canada</b>	<b>31</b>	<b>South Africa</b>	<b>128</b>
Sharon Vogel and Bruce Reynolds Singleton Urquhart Reynolds Vogel LLP		Martin van der Schyf Tiefenthaler Attorneys Inc	
<b>China</b>	<b>37</b>	<b>Sweden</b>	<b>136</b>
Zhou Jigao JianLingChengDa Law Firm		Jacob Hamilton, Axel Rynning, Richard Sahlberg and Per Vestman Foyen Advokatfirma	
<b>Denmark</b>	<b>44</b>	<b>Switzerland</b>	<b>143</b>
Kristian Skovgaard Larsen and Lars Heiko Matzen DLA Piper		Christian Eichenberger, André Kuhn and Regula Fellner Walder Wyss Ltd	
<b>Germany</b>	<b>53</b>	<b>Turkey</b>	<b>150</b>
Stefan Osing Heuking Kühn Lüer Wojtek		Orcun Cetinkaya, Pelin Karan, Emre Dirik and Serra Kaya Cetinkaya	
<b>Iraq</b>	<b>60</b>	<b>United Arab Emirates</b>	<b>158</b>
Hadeel A Hasan Al Hadeel Al Hasan Law Firm		Mark Raymont, Jed Savager, Melissa McLaren, Luke Tapp, Rita Allan and Christopher Neal Pinsent Masons	
<b>Ireland</b>	<b>71</b>	<b>United Kingdom</b>	<b>168</b>
Rhona Henry, Kimberley Masuda and Nicola Dunleavy Matheson		Kimberly Roberts Bryan Cave Leighton Paisner LLP	
<b>Israel</b>	<b>80</b>	<b>United States</b>	<b>179</b>
Benjamin Sheffer and Lance Blumenthal S Horowitz & Co		Michael S Zicherman and Robert S Peckar Peckar & Abramson PC	
<b>Japan</b>	<b>89</b>		
Makoto Terazaki, Masahiro Yano and Mai Kato Anderson Mōri & Tomotsune			

# Switzerland

Christian Eichenberger, André Kuhn and Regula Fellner

Walder Wyss Ltd

## LOCAL MARKET

### Foreign pursuit of the local market

- 1 | If a foreign designer or contractor wanted to set up an operation to pursue the local market, what are the key concerns they should consider before taking such a step?

To set up Swiss operations, foreign designers and contractors may establish a fully owned Swiss legal entity. This entity will typically be a corporation or a limited liability company (LLC). To set up a corporation, a minimum share capital of 100,000 Swiss francs is required, whereas an LLC can be established with a minimum quota capital of 20,000 francs. All shares or quotas can be held by one single shareholder or by multiple shareholders. If handled properly, both types of legal entities provide for a limitation of liability in a way that their shareholders and owners are not liable personally towards third parties for any debt incurred by the relevant legal entity.

Both the corporation's and the LLC's supreme management body can be composed of foreign nationals. However, at least one person with single signature authority or two persons with signature authority by two need to be resident in Switzerland. These individuals do not necessarily need to be members of the supreme management body.

As an alternative to establishing a Swiss legal entity, foreign designers and contractors may tie up with Swiss designers or contractors on a project-by-project basis. This type of cooperation is quite common in the Swiss market. The parties to such a joint venture do not have to form a separate legal entity but may establish a simple partnership that constitutes a mere contractual arrangement. Even though the Swiss Code of Obligations (Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations)) (SR 220; CO) contains provisions that govern the rights and obligations of a partner in a simple partnership (see article 530 et seq CO), it is usually recommended that the members of the consortium enter into a partnership agreement that sets out the relationship among them in detail. In this context, the relevant provisions of the CO are mainly of a non-mandatory nature. Thus, the designers and contractors involved have a lot of flexibility when determining the rights and obligations of each consortium member.

Contractors and designers domiciled in a country belonging to the European Union are entitled to provide cross-border services under the bilateral treaty between the European Union and Switzerland on the free movement of persons, provided that the cross-border services do not exceed 90 days of actual work in a calendar year. However, Switzerland has established regulations on dispatching employees that foreign designers and contractors must observe (minimal requirements regarding wages and labour conditions, work permits for long-term projects, etc).

Swiss public procurement law was very fragmented owing to various international, federal and cantonal regulations. With the adjustments owing to the revision of the World Trade Organization Government

Procurement, Swiss public procurement of all levels has been harmonised. The revised Federal Act on Government Procurement entered into force on 1 January 2021. The revised Inter-cantonal Convention on Public Procurement (rICPP), which applies to procurements on the sub-federal level, has been approved by the cantons, but has not yet entered into force (the entry into force requires the accession of at least two cantons; all cantons are expected to join the rICPP within the coming two years).

On a more general basis, Switzerland has a federal legal system, which means that laws may be introduced on federal, cantonal and municipal levels. As a consequence, taxes are typically also levied on all three levels (whereas certain types of taxes may not be levied on all levels; eg, VAT is only levied on federal level). Therefore, legal requirements and taxation may depend on the place a foreign contractor or designer establishes its Swiss business or provides work.

Lastly, Switzerland is a multilingual country, with the main languages spoken being German, French and Italian. Thus, official languages may vary across geographical areas.

## REGULATION AND COMPLIANCE

### Licensing procedures

- 2 | Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences of working without a licence?

There is no general licensing requirement for contractors. However, foreign designers and contractors must observe Swiss regulation on dispatching employees (eg, work permits and minimal wages). Moreover, there are certain licensing requirements for architects. These requirements are set out in cantonal law only (there are no provisions on a federal level). This results in different licensing regimes being applicable. As at May 2021, only the following six of 26 cantons had specific licensing requirements for architects in place: Geneva, Vaud, Neuchâtel, Fribourg, Ticino and Lucerne. In these cantons, certain licensing requirements apply when providing services in the relevant cantonal territory. For architects domiciled in an EU member country, there is a standardised (simplified) registration process in place, which needs to be undertaken before providing the relevant services in one of the regulated cantons.

### Competition

- 3 | Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

No. Particularly with respect to public procurements, the relevant cantonal and federal law as well as international treaties establish that all bidders must be treated equally. However, there are certain restrictions for foreign bidders on non-treaty procurements. In

particular, foreign suppliers are only admitted to the tender if their country of origin grants reciprocal rights or with the consent of the contracting authority (article 6, paragraph 2 of the Federal Act on Public Procurement (PPA)). Furthermore, on the federal level, legal protection is limited for non-Swiss suppliers (article 52, paragraph 2 of the PPA and article 53, paragraph 3 of the revised Intercantonal Convention on Public Procurement (rICCP)).

### Competition protections

- 4 | What legal protections exist to ensure fair and open competition to secure contracts with public entities, and to prevent bid rigging or other anticompetitive behaviour?

Legal protection in relation to public entities' behaviour with regard to fair and open competition is mainly granted by public procurement rules. Essentially, any violation may be subject to an appeal; for example, unfair tender conditions, bid rigging and unequal treatment of competitors. Contractors must be aware that they have to object to some violations immediately (eg, in the case of unfair tender conditions). Under the revised PPA, which entered into force on 1 January 2021, procuring entities are now explicitly obliged to take measures against conflicts of interest, unlawful non-compete agreements and corruption (article 11, lit. b, PPA). In addition, bidding rounds – that is, pure price negotiations – are henceforth prohibited at the cantonal and federal level (article 11, lit. d, PPA). Finally, the violation of corruption provisions may lead to the exclusion of a supplier from future tenders by procuring entities for a maximum duration of five years and to revocation of an award (article 44, paragraph 1, lit. e in conjunction with article 45, paragraph 1, PPA).

### Bribery

- 5 | If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?

Contracts with an unlawful or immoral content are null and void under Swiss law. As a consequence, contracts covering the payment of bribes do not have any legal effects at all. Contracts with lawful content obtained through an act of corruption, on the other hand, are not automatically void (Supreme Court Decision 129 III 320). Nevertheless, these contracts may be voided by one of the contracting parties by claiming a fundamental error when entering into the contract or fraudulent behaviour by the other party. Whether a contracting party will be able to successfully challenge the contract will depend on the facts underlying the specific case.

Bribe-givers and bribe-takers are prosecuted and face up to five years' imprisonment or a fine. Facilitation payments are also criminal offences for which both the public official and the persons acting on behalf of the contractor may be sentenced to a maximum of three years' imprisonment or a fine. In addition to the individuals giving bribes or making facilitation payments, the company employing or commissioning these individuals may be prosecuted if it has failed to take all reasonable organisational measures that are required to prevent the relevant criminal offences.

### Reporting bribery

- 6 | Under local law, must employees of the project team members report suspicion or knowledge of bribery of government employees and, if so, what are the penalties for failure to report?

No, there is no such obligation. Government employees, on the other hand, are required to report suspicion or knowledge of bribery of public officials.

### Political contributions

- 7 | Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

The making of political contributions is not part of doing business. Even if political contributions are made, there are no laws in Switzerland that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties.

### Compliance

- 8 | Is a construction manager or other construction professional acting as a public entity's representative or agent on a project (and its employees) subject to the same anti-corruption and compliance as government employees?

A construction manager or other construction professional acting as a public entity's representative or agent will usually not be subject to the same anti-corruption and compliance provisions as a public official. However, bribery of private individuals (ie, individuals not qualifying as public officials) is also a criminal offence, which is prosecuted upon the lodging of a criminal complaint by a person affected by the bribe.

### Other international legal considerations

- 9 | Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

There are restrictions in Switzerland when it comes to acquiring non-commercial real estate by foreign individuals, foreign legal entities or Swiss legal entities under foreign control. As such, foreign contractors will typically not be able to acquire the properties they are developing unless these properties are used only commercially. Of course, this restriction does not prevent a foreign contractor from developing a non-commercial property owned by a Swiss investor.

As Switzerland is a civil law country, contractors from common law countries should be aware that the rules governing contract interpretation may differ from common law. As such, Swiss courts will establish the real and common intention of the contracting parties in the case of a dispute by interpreting not only the wording of the contract but also considering evidence outside the contract.

## CONTRACTS AND INSURANCE

### Construction contracts

- 10 | What standard contract forms are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

In Swiss construction and design contracts, the standard terms issued by the Swiss Society of Engineers and Architects (SIA) are widely used. There are different rules for different types of work. For instance, the SIA Standard 118 is relevant for construction contracts. For contracts with architects or construction engineers, on the other hand, SIA regulations 102 and 103 respectively are used.

Public entities typically use the standard forms established by the Coordination Conference of the Construction and Real Estate Agencies of the Public Principals (see [www.kbob.admin.ch/kbob/de/home/publikationen/beschaffungs--und-vertragswesen.html](http://www.kbob.admin.ch/kbob/de/home/publikationen/beschaffungs--und-vertragswesen.html)).

Contracts are typically drafted in the local language spoken at the place of performance (ie, German, French or Italian) or in English. However, the contract parties may opt for any other language as there are no relevant restrictions under Swiss law. If a non-local language is used, the parties need to be aware that the contract and its schedules may have to be translated if a dispute is brought before a Swiss state court.

There are no restrictions on the choice of law or the venue for dispute resolution.

### Payment methods

- 11 | How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

Contractors, subcontractors, vendors and workers are typically paid electronically. Cheques are rarely used and cash payments would also be rather unusual.

Payments to contractors and subcontractors are either made in accordance with a pre-agreed payment schedule (typically linked to the completion of certain milestones) or – mainly in cases of smaller contract values – upon completion of the works. Vendors are usually paid within 30 days of delivery of the products ordered. Workers (employees) are paid a monthly salary, which usually becomes due around the 25th day of the month.

### Contractual matrix of international projects

- 12 | What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

In a major project, the owner typically enters into a total contractor agreement or a general contractor agreement. The relevant total contractor or general contractor then retains its subcontractors as it deems necessary. These subcontractors, however, do not have a contractual relationship with the owner.

Moreover, the owner will regularly appoint an independent consultant who represents it on the construction site when dealing with the total contractor or general contractor.

### PPP and PFI

- 13 | Is there a formal statutory and regulatory framework for PPP and PFI contracts?

Cooperation between the public and private sectors has a long tradition in Switzerland. However, formalised forms of cooperation have not yet been established. Accordingly, there is no formal statutory and regulatory framework for PPP or PFI.

### Joint ventures

- 14 | Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

A consortium under Swiss law usually has the form of a simple partnership (article 530 et seq of the Swiss Code of Obligations (CO)). As such, it constitutes a contractual relationship and is not itself a legal entity. Absent any agreement to the contrary, members of the consortium are jointly and severally liable and responsible for obligations of the consortium in relation to third parties contracted jointly or through representatives (article 544(3) CO). The members of the consortium may allocate liability differently. However, third parties are not bound to this allocation unless agreed otherwise.

If a legal entity (corporation or limited liability company) is set up to form a joint venture, the relevant entity alone will be liable towards third parties.

### Tort claims and indemnity

- 15 | Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

Generally, a contracting party is liable for any damage caused to the other contracting party owing to its non-performance or improper performance, unless it can demonstrate that it has not acted wilfully or negligently (article 97 CO). If the injured party has acted with negligence, the damaging party's liability will not be forfeit but the competent court has the right to reduce the compensation owed to the injured party as it deems appropriate.

### Liability to third parties

- 16 | Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

If a building is sold after its construction, the purchaser will typically ask for the seller's warranty claims against the contractor to be assigned. Consequently, the contractor may become directly responsible towards the purchaser of the building. In addition, if construction defects cause injuries, the contractor may be held liable under criminal law or tort law. Under certain conditions, these claims may be made even if the injured person has no contractual relationship with the contractor.

### Insurance

- 17 | To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards. Does the local law limit contractors' liability for damages?

All of these insurance products are available. The law does not provide for a statutory limit of the contractor's liability for damages. However, contractually, such limitations may be agreed, though they do not apply to third parties or in cases of wilful misconduct or gross negligence.

## LABOUR AND CLOSURE OF OPERATIONS

### Labour requirements

- 18 | Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

No. However, foreign companies must observe the requirements on dispatching employees. These requirements are set out in cantonal law only (there are no provisions on a federal level). This results in different licensing regimes being applicable. As at May 2021, only the following six of 26 cantons had specific licensing requirements for architects in place: Geneva, Vaud, Neuchâtel, Fribourg, Ticino and Lucerne. In these cantons, certain licensing requirements apply when providing services in the relevant cantonal territory. For architects domiciled in an EU member country, there is a standardised (simplified) registration process in place, which needs to be undertaken before providing the relevant services in one of the regulated cantons.

## Local labour law

- 19 | If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

Hiring of local labour is governed by Swiss employment law (article 319 et seq of the Swiss Code of Obligations). If the employment is not limited in time, contractors must observe the mandatory requirements in relation to notice periods. Specific provisions apply for temporary work and for freelancers.

## Labour and human rights

- 20 | What laws apply to the treatment of foreign construction workers and what rights do they have? What are the local law consequences for failure to follow those laws?

Swiss public law provides the general rights and duties of construction workers, including maximum working times and the remuneration of night work. These provisions also apply for foreign workers irrespective of which law governs their employment contracts.

Swiss public employment law (eg, the Federal Act on Labour Law, SR 821.11) primarily aims to protect the health and safety of employees and to ensure decent working conditions.

Construction sites are regularly inspected by the authorities, in particular to prevent undeclared work. In the event of breaches of the regulations, the authority can stop construction and impose administrative fines. Constructors must be aware that they may also be liable for violations by their subcontractors.

## Close of operations

- 21 | If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

If a foreign contractor decides to dissolve its Swiss legal entity by means of voluntary liquidation, statutory rules must be observed. In addition, notice periods must be respected if employment agreements are terminated (typically, three months). If the Swiss entity has more than 20 employees, special provisions governing mass redundancies must be complied with. Further, pension funds legislation may be of relevance.

## PAYMENT

### Payment rights

- 22 | How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

According to article 839 et seq of the Swiss Civil Code (SR 210), building contractors that have supplied labour and materials, or labour alone, for construction or other works may register legal liens on the property. This right is granted to all contractors, even if they are not in a direct contractual relationship with the principal or property owner (eg, subcontractors of a general contractor).

Furthermore, if the owner does not comply with its payment obligations, the contractor could claim default interest of 5 per cent per annum in addition to damages for non-performance (article 102 et seq of the Swiss Code of Obligations (CO)). Other options would be to simply stop the works and insist on payment before continuing in accordance with article 82 of the CO or withdraw from the contract altogether (article 107 CO).

## 'Pay if paid' and 'pay when paid'

- 23 | Does local law prohibit construction contracts from containing terms that make a subcontractor's right to payment contingent on the general contractor's receipt of payment from the owner, thereby causing the subcontractor to bear the risk of the owner's non-payment or late payment?

Parties are free to agree on 'pay if paid' or 'pay when paid' provisions. However, the right of subcontractors to register contractor's lien is mandatory and may not be validly waived under subcontractor agreements.

## Contracting with government entities

- 24 | Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

No, government agencies may not assert sovereign immunity in court proceedings or, as the case may be, in an arbitration. However, as regards enforcement of a court judgment or an arbitral award, specific rules may apply if the assets against which enforcement is made serve public interests.

## Statutory payment protection

- 25 | Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

If contractors and subcontractors are not paid, they are protected by their right to register contractor's liens on the property on which they have performed work.

## FORCE MAJEURE

### Force majeure and acts of God

- 26 | Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

Article 376 of the Swiss Code of Obligations provides that if the work is destroyed prior to delivery by a force majeure event the contractor can, in principle, not demand compensation for its labour nor restitution of its expenditures. In practice, however, this non-mandatory rule is often contracted away.

## DISPUTES

### Courts and tribunals

- 27 | Are there any specialised tribunals that are dedicated to resolving construction disputes?

On the private side, the Swiss Society of Engineers and Architects (SIA) has published rules of arbitration that are dedicated to resolving construction disputes (see [www.sia.ch](http://www.sia.ch)). On the official side, some cantons have established specialised commercial courts and construction courts in which not only lawyers, but also experienced businesspeople from the construction industry, sit as judges. Therefore, these specialised courts are noted for their professional expertise, as well as for the commercial common sense they apply when they strive for – and often find by way of settlement – quick and efficient solutions to construction disputes.

### Dispute review boards

28 | Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

Dispute review boards have been used in only a few domestic infrastructure projects over the past few years. However, Swiss engineers engaged in international projects encounter them more often.

### Mediation

29 | Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

Switzerland is a country with a rich tradition of mediation and neutrality. Since 2011, the Swiss Civil Procedure Code (SR 272; CPC) has recognised mediation as a form of judicial proceedings at a national level in most civil and commercial cases. There are several leading associations that provide mediation services at a domestic level. These associations also furnish lists of certified mediators for civil and commercial mediations. In the field of construction disputes, it is again the SIA that plays a key role; it promotes mediation in its contract templates (see [www.sia.ch](http://www.sia.ch)). Notwithstanding the foregoing, professionally organised mediation has not yet gained a lot of acceptance, maybe because of the good reputation of state courts and arbitration tribunals when it comes to resolving construction disputes by way of settlement.

### Confidentiality in mediation

30 | Are statements made in mediation confidential?

If all the parties request it, the conciliation proceedings provided for in the CPC shall be replaced by mediation. In this scenario, mediation is confidential according to article 205 of the CPC. Other than that, there is no statutory federal law on confidentiality in mediation.

### Arbitration of private disputes

31 | What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

In many cases, arbitration of construction disputes is considered as more expensive than litigation in the local courts. Therefore, parties to a domestic dispute tend to prefer litigation over arbitration. However, quite often, parties agree to obtain an expert's opinion on a limited specific question of a construction dispute. In addition, in international construction disputes, arbitration is popular and widely used.

### Governing law and arbitration providers

32 | If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

The International Chamber of Commerce rules of arbitration are well known in Switzerland and widely used in connection with Swiss substantive law in international disputes.

### Dispute resolution with government entities

33 | May government agencies participate in private arbitration and be bound by the arbitrators' award?

Yes.

### Arbitral award

34 | Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

The Swiss Federal Act on International Private Law and the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Switzerland is a member state, considerably limit the grounds on which enforcement can be refused. These grounds could, for example, be non-compliance with the principle of equal treatment of the parties or non-observance of their right to be heard in an adversary procedure. An arbitral award can also be set aside if it is considered to be incompatible with Swiss public policy.

### Limitation periods

35 | Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

Yes. On the one hand, the Swiss Code of Obligations (CO) provides limitation periods (of five and 10 years, respectively; see article 127 et seq and article 371 CO). On the other hand, contractual or statutory notice requirements that may impose a much shorter time limit on a party that wishes to assert a claim has to be observed. In particular, according to article 370 of the CO, the principal has to notify hidden defects immediately upon their discovery. The parties may, however, provide for other notice requirements in their contracts.

## ENVIRONMENTAL REGULATION

### International environmental law

36 | Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Yes, Switzerland is party to the Stockholm Declaration of 1972. Moreover, it has enacted a multitude of laws and regulations in relation to the protection of the environment. The basic provisions are set forth in the Federal Act on Environmental Protection (SR 814.01; EPA), which is followed by various detailed regulations, for example, on air pollution, noise protection and hazardous waste.

The EPA provides for mandatory studies to be prepared to assess the impact of major projects on the environment.

### Local environmental responsibility

37 | What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

Swiss federal environmental law is very detailed and aims to protect humans, animals and the environment against all types of pollution. Contractors are responsible for compliance with all these regulations. In the event of non-compliance, the entrepreneur must not only bear all costs for the restoration of the legal status, but may also be subject to administrative fines and criminal prosecution.



## CROSS-BORDER ISSUES

### International treaties

- 38 | Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Switzerland is a signatory to the International Centre for Settlement of Investment Disputes (ICSID) Convention and has one of the largest bilateral investment protection treaty (BIT) networks, with over 100 BITs worldwide.

There is no publicly available BIT model. Arbitration (typically under UNCITRAL or ICSID rules) will be available to the investor in most instances. ICSID arbitration is available in the event of a breach of protection granted in a BIT (eg, discrimination against or expropriation of a foreign contractor). A mere contract violation will only exceptionally qualify as a treaty breach sufficient to establish jurisdiction of the ICSID arbitral tribunal.

### Tax treaties

- 39 | Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Switzerland has entered into various tax treaties to prevent double taxation. These tax treaties usually also provide for a mechanism to claim back all or part of the withholding tax levied on dividends, interests and royalties. A list of Switzerland's double taxation treaties can be downloaded from the website of the Federal State Secretariat for International Finance SIF ([www.sif.admin.ch](http://www.sif.admin.ch)).

### Currency controls

- 40 | Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

No, there are no currency controls in Switzerland.

### Removal of revenues, profits and investment

- 41 | Are there any controls or laws that restrict removal of revenues, profits or investments from your jurisdiction?

Any dividends distributed by a Swiss legal entity are subject to 35 per cent withholding tax. This tax may be refunded in full or in part under the protection of a double taxation treaty. However, the application of a double taxation treaty requires that the foreign shareholder of the Swiss entity qualifies as the beneficial owner of the dividend received and has not only artificially been interposed to benefit from a favourable tax treaty.

## UPDATE AND TRENDS

### Emerging trends

- 42 | Are there any emerging trends or hot topics in construction regulation in your jurisdiction?

According to the Swiss Code of Obligations (CO), the employer is to inspect the quality of the work after delivery and inform the contractor of any defects. If the employer fails to carry out the inspection, the employer may implicitly approve certain defects. The deadline within which defects are to be notified is not explicitly defined by law. The law only states that employers have to report defects to the contractor

## walderwyss attorneys at law

### Christian Eichenberger

[christian.eichenberger@walderwyss.com](mailto:christian.eichenberger@walderwyss.com)

### André Kuhn

[andre.kuhn@walderwyss.com](mailto:andre.kuhn@walderwyss.com)

### Regula Fellner

[regula.fellner@walderwyss.com](mailto:regula.fellner@walderwyss.com)

Seefeldstrasse 123  
PO Box  
8034 Zurich  
Switzerland  
Tel: +41 58 658 58 58  
Fax: +41 58 658 59 59

Christoffelgasse 6  
PO Box  
3001 Berne  
Switzerland  
Tel: +41 58 658 20 00  
Fax: +41 58 658 59 59

[www.walderwyss.com](http://www.walderwyss.com)

'immediately' after their discovery. According to case law, 'immediately' means 'a few days' (ie, regularly approximately seven days). This short period of notice and the harsh consequences of its non-compliance (remedies are rescinded) are considered by the Swiss government as neither practicable nor objectively justified for employers. Therefore, the government proposed in 2020 that the CO is amended in such a way that a new deadline of 60 days for the notification of defects in immovable works shall apply. According to the government, such a period of notice should not only apply to contracts for work and services but also to contracts for the sale of real estate. Also, the government suggested that the amended provisions of the CO should be non-mandatory so that the parties could continue to deviate from it contractually. It remains to be seen whether or not such change in the legislation will be approved by the Swiss parliament; in any case, there will be plenty to discuss.

### Coronavirus

- 43 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

As a consequence of the covid-19 pandemic, considerable attention is being paid to hygiene and distance regulations that leads to delays and higher costs. Construction was stopped for certain periods of time by emergency legislation in certain cantons (eg, in the canton of Geneva). Similarly, some employers – for example, the Swiss Federal Railways – have suspended construction projects to conserve liquidity. In such cases, the best practice advisable for clients is to talk to each other

in order to find an amicable solution for all parties involved, taking into consideration the specific circumstances of each individual case. Construction projects are resuming now; however, general financial insecurity among investors is still there. Nevertheless, demand for land ownership has increased, in particular, in the residential market possibly because having space and nature around has become more attractive since the covid-19 pandemic.

## Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)