

PANORAMIC **CONSTRUCTION**

Switzerland



 LEXOLOGY

Construction

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LOCAL MARKET

Foreign pursuit of the local market

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 Swiss 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 must 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 (also called 'consortium'). 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's Agreement on Government Procurement, Swiss public procurement at all levels has been harmonised.

On a more general basis, Switzerland has a federal legal system, which means that laws may be introduced at the federal, cantonal and municipal levels. As a consequence, taxes are typically also levied at all three levels (whereas certain types of taxes may not be levied at all levels; eg, VAT is only levied at the federal level). Therefore, legal requirements and taxation

may depend on the place in which 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.

Law stated - 29 April 2024

REGULATION AND COMPLIANCE

Licensing procedures

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 regulations on dispatching employees (eg, work permits, minimal wages and work safety). Moreover, there are certain licensing requirements for certain regulated professions. These requirements are set out in cantonal law only (there are no provisions at a federal level). This results in different licensing regimes being applicable. For example, the following seven of 26 cantons have specific licensing requirements for foreign architects and civil engineers in place: Geneva, Vaud, Neuchâtel, Fribourg, Valais, Ticino and Lucerne. In these cantons, certain licensing requirements apply when providing services in the relevant cantonal territory. For architects and civil engineers domiciled in an EU member state, there is a standardised (simplified) registration process, which needs to be undertaken before providing the relevant services in one of the regulated cantons.

Law stated - 29 April 2024

Competition

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 outside the scope of international treaties. In particular, foreign bidders are only permitted to submit a tender if their countries of origin grant reciprocal rights or if the contracting authority agrees (article 6, paragraph 2 of the Federal Act on Public Procurement (PPA) and article 6, paragraph 2 of the revised Intercantonal Convention on Public Procurement (rICCP)). Furthermore, in the case of contracts outside the scope of international treaties, legal protection is limited for non-Swiss bidders (article 52, paragraph 2, PPA and article 52, paragraph 3 of the rICCP).

Law stated - 29 April 2024

Competition protections

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 procurement law, procuring entities are now explicitly obliged to take measures against conflicts of interest, unlawful non-competition agreements and corruption (article 11, lit. b of the PPA/rICCP). In addition, bidding rounds – meaning pure price negotiations – are henceforth prohibited at the cantonal and federal levels (article 11, lit. d of the PPA/rICCP). 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 of the PPA/rICCP).

Law stated - 29 April 2024

Bribery

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 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 is in a position to successfully challenge the contract depends on the facts underlying the specific case.

Bribe-givers and bribe-takers are prosecuted and face imprisonment for up to five years or a monetary penalty (article 322-ter et seq of the Swiss Criminal Code, SCC). 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 monetary penalty (article 322-quinquies and article 322-sexies of the SCC). 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 required to prevent the relevant criminal offences (article 102, paragraph 2 of the SCC).

Law stated - 29 April 2024

Reporting bribery

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 in the private sector. Government employees, on the other hand, are required to report suspicion or knowledge of bribery of public officials.

Law stated - 29 April 2024

Political contributions

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. However, there are legal provisions (since October 2022) on the disclosure of financial support for political parties or candidates.

Law stated - 29 April 2024

Compliance

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 rules 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. Nevertheless, bribery of or by private individuals (ie, individuals not qualifying as public officials) is also a criminal offence, which may be punishable by imprisonment for up to three years or a monetary penalty (article 322-octies and article 322-novies of the SCC). However, the legal situation is different when private individuals fulfil official duties (which may be the case, for example, when an external project manager is called in by a public authority for the main preparation of tender documents and the evaluation of the bids in view of a public procurement). In this case, private individuals may be subject to the same provisions as public officials, which is the case, for example, with respect to the rules on bribery (article 322-decies, paragraph 2 of the SCC).

Law stated - 29 April 2024

Other international legal considerations

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 (see the Federal Act on the acquisition of real estate by persons abroad, Lex Koller). Non-commercial properties are defined as properties that are used for residential purposes. As such, foreign contractors will typically not be able to acquire properties they are developing unless these properties are used only commercially (eg, manufacturing premises, offices, shopping centres, retail premises and hotels). 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.

Law stated - 29 April 2024

CONTRACTS AND INSURANCE

Construction contracts

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 and also the standard form contracts 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 are regularly declared applicable.

Public entities typically use the standard forms established by the Coordination Conference of the Construction and Real Estate Agencies of the Public Principals (so-called Koordinationskonferenz der Bau- und Liegenschaftsorgane der öffentlichen Bauherren, KBOB).

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.

Law stated - 29 April 2024

Payment methods

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.

Law stated - 29 April 2024

Contractual matrix of international projects

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:

- **Total Contractor Model:** In the total contractor model, the employer contracts with one contractor that assumes full responsibility for the planning and realisation of the construction project.
- **General Contractor Model:** In the general contractor model, separate contracts are concluded for construction planning and construction execution. For the planning of the construction work the employer commissions an architect and an engineering team. The employer either enters into a single planning contract with a consortium of planners or designers (often in the form of a simple partnership) or concludes individual contracts with each architect or engineer involved. For the execution of the construction work, the owner enters into a contract with a contractor who, in turn, uses subcontractors.

The relevant total contractor or general contractor retains its subcontractors as it deems necessary. These subcontractors, however, do not have a contractual relationship with the owner.

For smaller construction projects, a single contractor model can also be chosen as an alternative to the total or general contractor model. In the single contractor model, the employer concludes various contracts with individual contractors, whose work must be coordinated by the employer or by an appointed construction manager (eg, project or development manager, generally an architect).

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

Law stated - 29 April 2024

PPP and PFI

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.

Law stated - 29 April 2024

Joint ventures

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 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.

Law stated - 29 April 2024

Tort claims and indemnity

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 forfeited but the competent court has the right to reduce the compensation owed to the injured party as it deems appropriate.

Law stated - 29 April 2024

Liability to third parties

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.

Law stated - 29 April 2024

Insurance

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. Swiss law does not provide for a statutory limit on the contractor's liability for damages. However, contractually, such limitations may be agreed, although they do not apply to third parties or in cases of wilful misconduct or gross negligence.

Law stated - 29 April 2024

LABOUR AND CLOSURE OF OPERATIONS

Labour requirements

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. In addition, the following seven out of 26 cantons have specific licensing requirements for architects and civil engineers in place: Geneva, Vaud, Neuchâtel, Fribourg, Valais, Ticino and Lucerne. In these cantons, certain licensing requirements apply for architects and civil engineers providing services in the relevant cantonal territory. For architects and civil engineers 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.

Law stated - 29 April 2024

Local labour law

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?

The hiring of local labour is governed by Swiss employment law (article 319 et seq CO). 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.

Law stated - 29 April 2024

Labour and human rights

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 minimum wages, maximum working times and the remuneration of night work. These provisions apply to all, even foreign workers, carrying out construction work in Switzerland, 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.

Law stated - 29 April 2024

Close of operations

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, one to three months). If the Swiss entity has more than 10 employees, special provisions governing mass redundancies must be complied with. Further, pension funds legislation may be of relevance.

Law stated - 29 April 2024

PAYMENT

Payment rights

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 CC, 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 total or 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 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).

Law stated - 29 April 2024

'Pay if paid' and 'pay when paid'

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 (sub)contractors to register a contractor's lien is mandatory and may not be validly waived under subcontractor agreements.

Law stated - 29 April 2024

Contracting with government entities

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.

Law stated - 29 April 2024

Statutory payment protection

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. However, if a contract has already been concluded at the time of the waiver of performance and/or if the contractor has started to carry out the work, the ordered services can generally only be waived against full indemnification of the contractor (article 377 CO).

Law stated - 29 April 2024

FORCE MAJEURE

Force majeure and acts of God

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

Article 376 CO provides that if the work is destroyed prior to delivery by a force majeure event the contractor cannot, in principle, demand compensation for its labour nor restitution of its expenditures.

Apart from the aforementioned regulation, the Swiss Code of Obligations does not expressly regulate force majeure, but this principle is nevertheless recognised in case law and is subsumed under article 119 CO. If performance has become impossible due to circumstances for which the debtor is not responsible, the claim is considered extinguished under Swiss law in accordance with article 119 CO. The debtor must no longer perform.

As part of the contractual freedom prevailing in Swiss private law, the parties involved may contractually extend or restrict the statutory scope of the application of force majeure. Such clauses chosen by the contracting parties generally override the subsidiary provisions in article 376 and article 119 CO. Many contracts and general terms and conditions contain a force majeure clause, according to which, for example, pandemics, official restrictions or other unexpected occurrences are to be qualified (or not) as force majeure.

Law stated - 29 April 2024

DISPUTES

Courts and tribunals

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 (SIA Rule 150:2018). On the official side, some cantons have established specialised commercial courts and construction courts in which not only lawyers, but also experienced business people from the construction industry, sit as judges (eg, the Commercial Court of the Canton of Zurich or the Construction Appeals Court of the Canton of Zurich). 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.

Law stated - 29 April 2024

Dispute review boards

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 face them more often. In Switzerland, only state courts and arbitration tribunals can issue final and binding decisions. The decisions of the dispute boards only have (under certain conditions) a contractual binding effect on the parties. Although the courts are, in principle, bound by binding decisions of the dispute boards, they can carry out a review of the content as well as a procedural review and, in the event of violations, determine that the decision of the dispute boards is not binding. Since the decisions of dispute boards have a purely contractual binding effect, they are not directly enforceable in Switzerland (instead, a corresponding court decision must be obtained).

Law stated - 29 April 2024

Mediation

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 provide 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). Notwithstanding the foregoing, professionally organised mediation has not yet gained a lot of acceptance, possibly because of the good reputation of state courts and arbitration tribunals when it comes to resolving construction disputes by way of settlement.

Law stated - 29 April 2024

Confidentiality in mediation

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 (article 213 of the CPC). 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.

Law stated - 29 April 2024

Arbitration of private disputes

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

While construction disputes can often be resolved more efficiently with arbitration, in many cases, arbitration of construction disputes is considered to be 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 specific question of a construction dispute. Furthermore, arbitration is popular and widely used in international construction disputes.

Law stated - 29 April 2024

Governing law and arbitration providers

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 rules of arbitration of the International Chamber of Commerce are well known in Switzerland and widely used in connection with Swiss substantive law in international disputes. The arbitration rules issued by the Swiss Society of Engineers and Architects (SIA) may also be applicable (SIA Rule 150:2018)

Law stated - 29 April 2024

Dispute resolution with government entities

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

Yes, in principle, government agencies may also participate in private arbitration. In this constellation, too, the arbitrators' award has the effect of a legally binding and enforceable judicial decision (article 387 of the CPC). The tendency, however, is that government agencies tend to prefer state courts for dispute resolution.

Law stated - 29 April 2024

Arbitral award

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.

Law stated - 29 April 2024

Limitation periods

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 of the 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 must be observed. According to the CO, the client is generally obliged to inspect the quality of the work and to report any defects immediately (ie, within a few days) upon their discovery. A planned revision of the CO provides that a new deadline of 60 days shall apply to the notification of defects in immovable works. The parties may, however, provide for other notice requirements in their contracts.

Law stated - 29 April 2024

ENVIRONMENTAL REGULATION

International environmental law

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.

All infrastructure and building projects must comply with the relevant environmental regulations. The EPA provides for mandatory studies to be prepared to assess the impact of major construction projects on the environment (environmental impact assessment).

Law stated - 29 April 2024

Local environmental responsibility

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 human beings, animals and the environment against all types of pollution. In particular, there are special regulations for the disposal or reuse of contaminated sites or building materials, which must be observed during construction planning and construction work. Contractors but also landowners or employers are responsible for compliance with all these regulations. In the event of

non-compliance, they must not only bear all costs for the restoration of the legal status but may also be subject to administrative fines and criminal prosecution.

Law stated - 29 April 2024

CROSS-BORDER ISSUES

International treaties

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 110 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 (e.g., 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.

Law stated - 29 April 2024

Tax treaties

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](#).

Law stated - 29 April 2024

Currency controls

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

In general, there are no currency controls in Switzerland. However, [specific rules](#) apply under the Russia-Ukraine measures that have been implemented recently.

Law stated - 29 April 2024

Removal of revenues, profits and investment

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.

Furthermore, [specific rules](#) may apply under the Russia-Ukraine measures that have been implemented recently.

Law stated - 29 April 2024

UPDATE AND TRENDS

Emerging trends

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

In October 2022, based on various motions and after conducting a consultation process for the revision of construction contract law, the Swiss Federal Council adopted the dispatch on the revised Code of Obligations (CO).

In particular, the draft of the revised CO provides for a period of 60 days for complaints about defects in immovable works. In the Swiss parliament, it is currently being discussed whether this period should even be further extended (see, for example, the [media release of the Swiss Parliament dated September 25, 2023](#)). This notice period should not only apply to work contracts, but also to property purchase contracts. However, the regulation should remain discretionary law. The contracting parties are therefore free to contractually shorten or extend the notice period. Unless otherwise agreed, the revision draft mitigates the current severity of the short notice period in combination with the forfeiture of defect rights.

In addition, the draft contains provisions that the existing right to rectify construction defects can no longer be excluded by law if the construction serves personal or family purposes. This is intended to put an end to the widespread practice in which, on the one hand, the liability of sellers of new houses or contractors for defects is excluded and, on the other hand, the rights for defects against subcontractors are assigned to the buyer or builder.

Finally, the Federal Council also wants to improve the situation of the landowner or builder with regard to contractor's liens. The construction company is entitled to such a lien on the owner's property if claims remain unsatisfied. Under current law, craftsmen and entrepreneurs who have provided work (and material) for a building on a property are entitled to a statutory mortgage on that property for their claim. The landowner can prevent a corresponding entry of the property lien in the land register by providing sufficient security (substitute security) for the claim. In the future, such a security shall have to cover the default interest for 10 years and not for an unlimited period as before. This is intended to make it easier for the builder to provide substitute security.

The aforementioned proposed changes are currently being debated in the Swiss parliament.

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