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Download Date: 19 November 2018

## Construction

in Switzerland



# Table of contents

## Sector overview

- Trends, developments and prospects

## Legal framework

- Legislation
- Authorities

## Licensing

- Project licensing
- Professional licensing and qualification

## Project structures and relationships

- Project structures
- Relationship management

## Are there any special considerations for managing relationships with:

### Contracts and performance

- Standard contract forms
- Definition of 'construction work'
- Governing law
- Formalities
- Mandatory/prohibited provisions
- Implied terms
- Risk allocation
- Limitation of liability
- Liquidated damages
- Force majeure
- General performance obligations
- Project delays
- Contract variations
- Termination
- Remedies for breach

### Financing

- Types of financing
- Security

### Payment

- Methods and timing
- Non-payment

### Insolvency

- Contractor insolvency

### Insurance

- Coverage

### Tax issues

- Liability
- Incentives

### Environmental issues

- Environmental protection





- Authorisation/certification
- 'Green' regulations and incentives

**Employment issues**

- Employment and labour law
- Occupational health and safety
- Employment contracts
- Foreign workers

**Anti-corruption rules**

- Applicable rules
- Best practices

**Dispute resolution**

- Courts
- Common disputes
- Statute of limitations
- Mediation
- Arbitration

**Law stated date**

- Correct as of





## Contributors

### Switzerland



**Lenz & Staehelin**  
Cécile Berger Meyer  
cecile.berger@lenzstaehelin.com



**Lenz & Staehelin**  
Romaine Zürcher  
romaine.zuercher@lenzstaehelin.com

## Sector overview

### Trends, developments and prospects

#### What is the general state of the construction sector in your jurisdiction, including current trends, notable recent transactions/developments and future prospects?

Infrastructure is the type of project currently attracting the most investment in Switzerland (eg, the tramway, the railway and the transboundary railway Cornavin-Eaux-Vives-Annemasse). Commercial and residential property investments also continue to remain at high levels.

The biggest challenges presently facing the construction sector in Switzerland are the implementation of the new Federal Act on Land Allocation, which brings stricter conditions to zoning plans and building in non-buildable areas, as well as increasing pressure on prices in transboundary areas.

Future prospects in the sector include the increasing use of building information modelling (BIM). BIM may allow for improvements in surveying the different steps in construction procedures and standardising the information available to the different parties, but it will most likely raise questions regarding the intellectual property of the data collected.

## Legal framework

### Legislation

#### What primary and secondary legislation governs the construction sector in your jurisdiction?

The relevant legislation governing the construction sector results both from private and public law, and may be federal, cantonal and communal.

From a private law perspective, the main legal provisions applicable to construction projects are laid down in Articles 363 to 379 of the Code of Obligations concerning the contractor agreement, and in Articles 394 to 406 concerning the agent agreement. Most of these legal provisions are not mandatory and may be amended by contract between the parties. The Swiss Society of Engineers and Architects (SIA) Norms, which are regulations issued by the SIA concerning technical and legal standards for planning and construction, are often included in agreements by the parties as an integral part, corresponding to standard market practice.

From a public law perspective, the main legal provisions applicable to construction projects are laid down in the following legal areas:

- environment;
- zoning and planning;
- construction;
- housing;
- energy; and
- employment.

### Authorities

#### Which authorities regulate the construction sector and enforce construction law, and what is the extent of their powers?

Regarding private law, the parties to a construction contract benefit from a broad freedom to organise their contractual relationship, since most of the private provisions on construction projects are not mandatory. In the event that an issue arises between the parties, the ordinary civil law courts are the authorities entitled to deal with such litigation.

Regarding public law, specific federal, cantonal and communal authorities – depending on the area and on each canton – are competent to enforce public construction law by rendering decisions in the construction sector (eg, delivery of a construction permit, definition of 'new zone areas' and the issuance of neighbourhood plans). Where the parties, or to a certain extent interested third parties, do not agree with a decision, they may challenge it before the ordinary public courts.

## Licensing

## Project licensing

### What licensing requirements and procedures apply to construction projects in your jurisdiction (eg, planning consents)?

Works cannot usually be initiated before delivery and entry into force of a construction permit.

During work, a complementary construction permit may be required if changes are made to the initial construction project and, in the absence of any changes, compliance with the permit as well as with regulations for construction works is required (eg, schedules, work during week days and no night work except if authorised).

After completion of the work, delivery of an occupancy permit or certification by an architect is required. If the construction project does not comply with the construction permit, the non-authorised part of the project could be subject to a demolition order and/or to a fine.

## Professional licensing and qualification

### What licensing requirements and procedures apply to construction professionals, including any required qualifications?

The licensing requirement and procedures applying to construction professionals depend on each canton. Construction professions are not regulated at federal level; however, various formations, studies, certifications and licences exist. Professionals may be part of various federal, cantonal and communal associations and be entered in professional registers. Any party can declare itself to be a general or total contractor, implying the need to run detailed checks on a case-by-case basis before executing these types of contract.

### Do any special rules and restrictions apply to foreign construction professionals?

There are no specific rules and restrictions that apply to foreign construction professionals, except for those rules applicable to the hiring of foreign workers.

## Project structures and relationships

### Project structures

### What corporate/formal structures are available for construction projects in your jurisdiction? What are the advantages and disadvantages of each? Are any structures explicitly prohibited?

The architect agreement and the general or total contractor agreement are the most frequently used structures for construction projects. Where several contractors come together to carry out a construction project, they generally form a single partnership within the meaning of Articles 530 ff of the Code of Obligations.

The constitution of a company exclusively dedicated to a construction project (a so-called 'special purpose vehicle' (SPV)) in the form of a public limited liability company (within the meaning of Articles 620 ff of the code) is also frequently used in practice. An SPV allows the parties to limit their personal liability to their shares in the company. The disadvantage of such a structure is the costs related to the SPV's constitution and management.

With respect to major construction projects implying public and private entities, public-private partnerships (PPP) become increasingly popular. Public bodies are subject to special mandatory rules, the provisions of which must be carefully reviewed and considered when putting a PPP in place.

No structures are explicitly prohibited under Swiss law, except where such structures aim at circumventing the requirements of the Federal Statute on the Acquisition of Real Estate by Foreigners.

## Relationship management

### Are there any special considerations for managing relationships with:

#### (a) Joint venture partners (where applicable)?

Where applicable, the joint venture agreement may exclude joint and several liability of the partners, or, on the contrary, provide for such liability.

#### (b) Contracting government entities in public-private partnerships (or other construction projects with a public element)?

Public bodies are subject to special mandatory rules (ie, procurement rules), implying a competitive call where the amount of the construction project exceeds a fixed threshold. Specific rules for PPP exist in that context, with no clean boundaries, triggering in-depth analysis requirements.

### (c) Subcontractors?

In order to have a certain control over subcontractors, the construction contract should specify that any subcontracting requires the prior written consent of the employer. The contractor should further commit to include in the contracts with its subcontractors any and all relevant provisions of the main construction contract. Further, any payment by the employer to the contractor should ideally only occur provided that the contractor certifies having paid all subcontractors, in order to avoid a registration by the subcontractor of a construction lien (ie, a 'tradesman's or building contractor's lien' within the meaning of Articles 839 ff of the Civil Code on the property on which the construction project is erected).

### (d) Architects, designers, engineers and any other related professionals?

In construction projects involving numerous professionals, it is important to clearly define the services attributed to each professional involved in order to avoid some services being attributed and paid twice. For example, in a general or total contractor agreement, the contractor is usually entrusted with some of the architect's standard services (eg, the works direction) – these services will accordingly not be attributed to the architect in charge of the other planning services.

The contracts concluded between the architects, designers and engineers, among others, and the employer, generally qualify (at least partially) as a mandate (within the meaning of Articles 394 to 406 of the Code of Obligations). The contract may accordingly be terminated by either party at any time, pursuant to Article 404 of the code (which is mandatory). However, in case the termination is executed at an inopportune juncture, the party doing so must pay compensation to the other party for any resulting damage. This does not apply to contractor agreements, which generally cannot be terminated at any time as they include a liability on the result.

### (e) Any other relevant parties typically involved in construction projects?

Parties generally engage consultants. In particular, if the construction works are voluminous, it is common for the employer to appoint a third party as project manager to:

- assist with the construction works (as decision support);
- follow the progress of the construction works; and
- represent the employer during the works with the contractors and agents (eg, architect and engineers).

The employer concludes an employer's assistant agreement or employer's representative agreement with an assistant to the contracting authority, which is a mandate within the meaning of Articles 394 to 406 of the Code of Obligations. The contract may accordingly be terminated by each party at any time, pursuant to Article 404 of the code. However, if the termination is executed at an inopportune juncture, the party doing so must pay compensation to the other party for any resulting damage.

## Contracts and performance

### Standard contract forms

### What standard contract forms are used for construction projects in your jurisdiction? To what extent do parties deviate from these standard forms?

The standard form regulations issued by the Swiss Society of Engineers and Architects (SIA) ([www.sia.ch](http://www.sia.ch)) are the most popular standard forms of contract used in practice, particularly by architects, engineers and contractors.

The blanks of the standard forms and multiple-choice questions must first be completed by the parties, so the standard form can be adjusted to the relevant construction project.

In view of the multiple types and characteristics of construction projects, the standard forms are usually amended by the parties in order to fit the actual construction project or to balance out standard clauses that may be deemed too favourable to architects, engineers and contractors.

The forms and terms issued by the International Federation of Consulting Engineers are also commonly used for the works of international organisations typically located in Geneva.

### Definition of 'construction work'

## How is 'construction work' legally defined?

Swiss legislation contains no legal definition of 'construction work'.

However, SIA Norm 118 (ie, the SIA norm regarding the general conditions applicable to construction work performance) – which is included in most contractor agreements by the parties – states that:

one executing work of construction erects a work according to Art. 363 of the Swiss Code of Obligation (OR); his work is either a complete work of construction (surface or engineering construction) or only part of a work of construction (e.g. masonry or plastering, sanitary installations).

Article 1(2) of SIA Norm 119 specifies that a "work is also the result of repairs, structural alteration or demolition".

### Governing law

## Are there any rules or restrictions on the governing law of construction contracts?

There are no mandatory restrictions regarding the governing law applicable to construction contracts, the parties being free to agree on the governing law of their choice. Generally, the parties agree that the construction contract be subject to and governed by Swiss law to the exclusion of its principles on conflicts of law and the United Nations Convention on Contracts for the International Sale of Goods.

### Formalities

## Are construction contracts subject to any formal requirements?

There is no formal requirement applying to construction contracts, except where the construction agreement concerns both the performance of construction works and the sale of the property (ie, a turnkey sale). In such a case, some of the provisions regarding the construction work are subject to the authentic form (ie, before a public notary). Architect agreements and pure construction agreements can be tacitly concluded.

### Mandatory/prohibited provisions

## Are there any mandatory or prohibited provisions in relation to construction contracts?

Most of the legal provisions applicable to construction contracts are not mandatory and may accordingly be freely amended by the parties, within the limits of general legal principles such as Article 27(2) of the Civil Code which prohibits any party from undertaking a commitment surrendering its freedom or restricting its use to a degree that violates the law or public morals.

Further, public bodies are subject to special and mandatory rules, implying, under certain conditions, a competitive call.

### Implied terms

## Can any terms be implied in construction contracts?

The common law concept of 'implied terms' does not exist under Swiss law. In case parties have not regulated certain issues in their contract, the legal provisions on the contractor's contract will apply (ie, Articles 363 to 379 of the Code of Obligations).

Further, given that no formal requirements apply to construction contracts, some terms may be implied if they correspond to the real willingness of the parties. In practice, the real willingness of the parties regarding implied terms may be difficult to prove.

### Risk allocation

## How are risks typically allocated between parties to construction contracts?

The contractor is responsible for carrying out the construction work without defect, according to the technical description and plans of the work, within the schedule and price agreed between the parties. The employer is responsible for paying the contractor pursuant to a payment schedule agreed between the parties. The following events generally allow the contractor to seek for a deadline extension and an increase in price:

- exceptional circumstances (ie, force majeure and adverse weather conditions); and

- a variation order regarding the contractual construction work to be performed.

With respect to force majeure events, the parties are free to allocate the related risks in the contract. If they do not regulate this topic in the contract, some legal provisions of the Code of Obligations apply. For example, Article 376 of the code provides that if the work is destroyed by accident prior to completion or delivery, the contractor is not entitled to payment for work done or expenses incurred. Article 378 states that where completion of the work is rendered impossible by an occurrence affecting the employer, the contractor is entitled to payment for the work already completed and for expenses incurred that were not included in the price. The contractor may further claim for compensation if such impossibility is due to the employer's fault. Further, pursuant to Article 373(2), in case of lump-sum contracts, force majeure events may be grounds for increasing the price or for termination.

#### Limitation of liability

### How and to what extent can parties to construction projects contractually limit or exclude their liability?

Parties may exclude or limit liability, but provisions limiting liability for unlawful intent or gross negligence in advance are void (Article 100(1) of the Code of Obligations). A further potential limitation to the contractual allocation of risks lies in Article 27(2) of the code, which prohibits any party from undertaking a commitment surrendering its freedom or restricting its use to a degree which violates the law or public morals.

#### Liquidated damages

### How are liquidated damages typically calculated and to which liabilities are they usually applied?

Liquidation damages in construction contracts usually apply to the contractor's liability for delay. It is common practice for the parties to provide for an amount per day, week or month of delay due by the contractor to the employer as liquidated damages in case of delay with respect to the agreed delivery date (or intermediate stages of the construction work). The amount of liquidated damages may be a lump sum set in relation to the total price of the work, or it may correspond to the estimated rental losses. Such provisions – which constitute a contractual limitation of liability to the agreed amount of liquidated damages – are upheld by the courts to the extent that they are reasonable. Failing penalty language, general principles of the Code of Obligations apply, with the damaged party bearing the burden of proof of its damage.

#### Force majeure

### How are force majeure clauses treated in your jurisdiction? Is there a legal definition of force majeure events?

A force majeure event entitles the parties first to adapt the price of the construction works. Termination of the construction agreement is possible in such cases only if the court rules so (ie, when, even with a price adaptation, the execution of the contract cannot be reasonably required).

Swiss legislation contains no legal definition of 'force majeure'. However, SIA Norm 118 (ie, the SIA norm regarding the general conditions applicable to construction work performance) sets forth some examples of force majeure (eg, war, insurrection and natural disaster).

The parties usually include a definition of 'force majeure' in the construction contract, which often refers to a list of events considered to be force majeure events and their consequences.

#### General performance obligations

### What are the general performance obligations of contractors and employers?

Pursuant to Article 363 of the Code of Obligations, a contractor agreement is a contract whereby the contractor undertakes to carry out work and the employer undertakes to pay the contractor for that work.

The contractor's main obligation is to carry out the work:

- with due care;
- in person or under its personal supervision (unless the nature of the work is such that personal involvement of the contractor is not required);
- without defect (ie, as agreed between the parties);

- within the time set; and
- within the agreed, announced or estimated price.

The contractor must supply the resources, tools and machinery necessary for performance of the work at its own expense, unless otherwise required by agreement or custom.

The employer's main obligation is to pay the contractor for the performed work at completion or delivery of the work, or according to a payment schedule agreed between the parties.

### Project delays

#### How are project delays typically handled? Do any set rules, restrictions or procedures apply in this regard?

It is common practice for the parties to provide for liquidated damages (ie, penalty amount per day, week or month of delay) owed by the contractor in case of delay in the final delivery of construction work. Such liquidated damages sometimes apply to delays in the delivery of intermediate stages of work.

For the surplus, the standard provisions of the Code of Obligations regarding default of the debtor apply (ie, Articles 102 ff).

### Contract variations

#### To what extent can the parties make variations to the contract? Do any set rules, restrictions or procedures apply in this regard?

The parties are not usually allowed to make unilateral variations to the contract without the agreement of the other parties. Such variation – which mostly consists of a variation of the contractual work to be performed – requires the execution of a written amendment between the parties detailing price, schedule and other terms and conditions applicable to the variation.

Either party may seek a judicial adaptation of the contract in case of an extraordinary change of circumstances (*clausula rebus sic stantibus*), it being specified that such judicial adaptation is very restively admitted by Swiss courts.

### Termination

#### What are acceptable grounds for the termination of a contract?

The employer may withdraw from a contractor agreement at any time before the work is completed, provided that it pays for work already completed and indemnifies the contractor in full (loss of gain indemnity). The employer may also withdraw from the contract before or after completion if an agreed estimate is exceeded by a disproportionate amount through no fault of the employer. However, such withdrawal is very restrictively admitted by Swiss courts. Extraordinary circumstances (eg, force majeure) entitle the parties to first adapt the price. Termination is possible in such cases only if the court rules so (ie, when even with a price adaptation, the execution of the contract cannot be reasonably required).

Further, it is common practice for the parties to contractually agree on a list of events qualifying as acceptable grounds, which entitle each party to the possibility of an early termination of the contract, such as insolvency or bankruptcy of a party, repeated and serious breach of the contract or a major delay in the delivery of the work.

### Remedies for breach

#### What remedies are available for the breach of construction contracts?

Either party may claim for damages before the civil court in the event of a breach of construction contract. The damages due to a breach of contract are calculated by comparing the injured party's hypothetical financial situation if the contract had been properly fulfilled, with the injured party's actual financial situation. The difference constitutes the damage to be compensated by the party in breach of the contract, which may include lost profits. Regarding the contractor's liability for defects of the works, Swiss legislation provides for a special liability regime, which also includes lost profits if the contractor is at fault (Article 368 of the Code of Obligations). It is standard practice for the parties to contractually exclude recovery of lost profits, as Article 368 of the code is not mandatory. However, liability cannot be excluded in cases of unlawful intent or gross negligence (Article 100(1)).

### Financing

## Types of financing

### What types of financing are used for construction projects in your jurisdiction? Which are the most common? Are there any restrictions on available financing methods?

Construction projects are generally financed by construction loans (or mortgage loans) granted by banks or insurance companies and secured by a mortgage encumbering the property on which the project is erected.

Some restrictions apply to financing methods for construction projects, in particular pursuant to legal or regulatory provisions regarding bank and insurance loans (eg, minimal amount of equity to be brought by the employer) or pursuant to the Federal Statute on the Acquisition of Real Estate by Foreigners (known as 'Lex Koller') which limits the possibility of financing a construction project through foreign funding.

#### Security

### What forms of security are used in construction project financing?

Construction loans granted by banks or insurance companies are usually secured by a mortgage note encumbering the property on which the project is erected, and/or with the assignment of rent proceeds once the construction loan is consolidated into a standard mortgage loan.

#### Payment

##### Methods and timing

### What are the typical methods and timing of payment for construction work? Are there any restrictions on 'pay when paid' and 'pay if paid' provisions? Do any other rules, restrictions or procedures apply?

As typical methods and timing of payment for construction work, the parties generally provide for a payment schedule either set forth in the core of the construction contract or attached to the construction contract as an appendix forming an integral part of the contract. The payment schedule usually provides for down-payments due according to the actual advancement of work, specifying that it is common practice to provide for a first down-payment when executing the contract. Further, a holdback amount of 5% to 10% usually applies, either on each down-payment or on the last down-payment in order to secure the reparation of defects affecting the work at delivery – such an amount is retained until the defects are duly repaired.

'Pay-when-paid' and 'pay-if-paid' provisions are permitted, but are not commonly used in practice.

#### Non-payment

### How can the contractor secure itself against non-payment by the employer? Under what circumstances can the contractor suspend work for non-payment?

At the beginning of the work, the contractor may secure itself against non-payment by the employer by requiring a formal confirmation or warranty from the employer, stating that the employer benefits from appropriate and sufficient funding during the entire construction project. A payment schedule providing a first down-payment at execution of the construction contract and then down-payments according to the actual advancement of construction work allow for the funds to be well managed and reduce the risk of non-payment by the employer. A bank guarantee is rarely required from the employer.

Unless otherwise contractually agreed between the parties (according to Article 82 of the Code of Obligations), either party may withhold the performance of its own obligations if the other party has failed to perform its corresponding obligation. In other words, the contractor may suspend work if the employer has not paid the down-payments according to the terms of the contract.

Further, in the event that it has not been paid, the contractor may register a construction lien (ie, a 'tradesman's or building contractor's lien' within the meaning of Articles 839 ff of the Civil Code) on the property on which the construction work is carried out.

### How can subcontractors secure themselves against non-payment by the contractor? Under what circumstances can subcontractors suspend work for non-payment?

Unless otherwise contractually agreed between the parties (according to Article 82 of the Code of Obligations), either party may withhold the performance of its own obligations if the other party has failed to perform its

corresponding obligation. In other words, the subcontractor may suspend work if the contractor has not paid the due payments according to the terms of the contract.

Further, in the event that it has not been paid, the subcontractor may register a construction lien (ie, a 'tradesman's or building contractor's lien' within the meaning of Articles 839 ff of the Civil Code) on the property on which the construction work is carried out.

## On what grounds can payments be withheld?

Unless otherwise contractually agreed between the parties (according to Article 82 of the Code of Obligations), either party may withhold the performance of its own obligations if the other party has failed to perform its corresponding obligation. In other words, the employer may withhold payment if the contractor has not fulfilled its own obligations under the contract.

In addition, it is common practice for the parties to set forth conditions to be fulfilled (ie, achievement of a work stage, confirmation that all subcontractors have been duly paid and that no construction lien is registered in the property) before the payment is made by the employer. In such cases, payments may be withheld until the conditions have been met.

## Insolvency

### Contractor insolvency

## What recourse is available to employers in the event of the contractor's insolvency?

In the event of the contractor's insolvency, the construction contract generally grants the employer the right to terminate the construction contract early and to take over the agreements with the subcontractors.

## Insurance

### Coverage

## What mandatory insurance coverage applies to parties involved in construction projects? Is any additional coverage recommended?

The following insurances are usually contractually required from the parties involved in construction projects:

- The employer should hold employer's civil liability insurance, as well as construction works insurance; and
- The contractor should hold contractor's civil liability insurance, building insurance, fire and elementary damages insurance, as well as insurance for materials and tools brought onto the worksite by the contractor.

Such insurance must be in place during the performance of works.

Ground-up insurance is sometimes put in place in long construction sites.

Additional and specific coverage may be recommended, depending on the specificities of the work, site or project.

## Tax issues

### Liability

## What tax liabilities arise in relation to construction projects?

Value added tax (VAT) is levied on construction works. VAT is generally paid by the employer on top of the construction work's price. Currently, the legal rate of the VAT is 7.7%.

### Incentives

## Are there any tax incentive schemes to promote construction and development in certain areas?

There are no tax incentive schemes to promote construction and development in certain areas.

## Environmental issues

### Environmental protection

## What environmental protection legislation and regulations apply to construction projects in your jurisdiction?

The following main environmental protection provisions apply to construction projects:

- the Federal Law on Environment Protection, its ordinances (particularly the Protection Against Noise Ordinance) and the cantonal implementing provisions; and
- the Federal Law on Energy, its ordinances and the cantonal implementing provisions.

### Authorisation/certification

## What environmental authorisations and certifications are required for construction projects and how are they obtained?

All new buildings must comply with the legal requirements on environment protection, which correspond to the minimal requirements.

Some recognised certification may be obtained by construction projects which fulfil higher performance levels regarding environment protection. The most popular certifications are the Minergy Certificate, the High Energy Performance Label and the Swiss Standard for Sustainable Construction. The parties (ie, either the contractor or employer, depending on the agreement) may apply for certification and demonstrate that the construction project meets the required criteria. The parties must further pay for the delivery of the certification.

### 'Green' regulations and incentives

## Are there any regulations or incentive schemes in place to promote the construction of energy-efficient and low-carbon buildings?

Some cantons promote the construction of energy-efficient and low-carbon buildings by granting additional building rights to construction projects which comply with some high energy standards, (eg, the Minergy Certificate or the High Energy Performance Label).

Further, construction projects which fulfil certain energy performance criteria (eg, projects using photovoltaic panels) may be granted with federal, cantonal or communal subsidies under certain conditions depending on the type and situation of the construction project.

## Employment issues

### Employment and labour law

## What employment and labour legislation applies to construction projects in your jurisdiction? What rights and protections are provided to construction workers?

Standard employment and labour legislation applies to construction projects. The main provisions are laid down in Articles 319 to 362 of the Code of Obligations concerning the employment contract. The Federal Labour Law further contains some additional rules, which are specified in various ordinances addressing specific topics. Regarding the construction sector, the main relevant provisions are set out in:

- Ordinance 3 on Health Protection;
- Ordinance 4 on Industrial Companies;
- the Ordinance on Accidents Prevention; and
- the Ordinance on Safety and Health Protection of Employees in Construction Works.

Further, the contractor must comply with general principles, including:

- equality of treatment;
- non-discrimination;
- rules applicable to foreign workers;
- pension funds; and
- social insurances.

Moreover, several collective labour agreements are in force in the construction sector and define the minimal

conditions (eg, salary, duration of work and holiday entitlement) to be complied with by employers with respect to their employees.

### Occupational health and safety

#### What occupational health and safety regulations apply to construction projects?

The main regulations regarding health and safety of construction workers are found in the following legislation:

- Ordinance 3 of the Federal Labour Law on Health Protection of Employees;
- the Ordinance on Accidents Prevention; and
- the Ordinance on Safety and Health Protection of Employees in Construction Works.

Further, the following Swiss Society of Engineers and Architects (SIA) norms (ie, regulations issued by the SIA) provide for some additional provisions on health and safety applicable to construction projects:

- SIA Norm 465 regarding safety of works and facilities; and
- Articles 103 to 113 of SIA Norm 118 (ie, the SIA norm regarding the general conditions applicable to construction work performance).

Environment legislation (eg, the Federal Law on Environment Protection) contains some specific provisions regarding health and safety in cases where construction workers are in contact with or must manipulate asbestos, polychlorinated biphenyls, leaded paints and other hazardous substances (ie, a duty to report, paper trail and special equipment to be used by the workers).

Further, some collective labour agreements, if applicable to the project at stake, may set forth some regulations on health and safety.

### Employment contracts

#### What types of employment contract are typically used for constructions work? Are there any mandatory or prohibited provisions in relation to employment contracts?

There is no specific employment contract used for construction work; the standard rules of employment contracts apply to construction employment contracts. However, piece-work contracts and short fixed-term contracts (as opposed to contracts of unlimited duration) are often used in the construction sector.

The Code of Obligations and the Labour Law provide for mandatory provisions which cannot be waived or amended through an employment contract (eg, rules on work duration and holiday entitlement). Where applicable, collective labour agreements are mandatory for employers. Such agreements contain some minimal conditions to be complied with, particularly regarding salary and work duration.

### Foreign workers

#### What rules, restrictions and considerations apply to the hiring of foreign workers?

Regarding the hiring of foreign workers in the construction sector, a notification obligation applies to nationals of an EU-27 or European Free Trade Association (EFTA) member state wishing to work in Switzerland for 90 days or fewer per civil year. The notification can be executed by the employer or the independent worker by filling out a notification form online at least eight days before labour activity begins. This notification procedure applies to EU-27 and EFTA nationals who have been hired by a company based in Switzerland and to posted workers of a company based in an EU-27 and EFTA state. Third-state nationals require a work authorisation or can be admitted under the notification procedure if they already have a work visa from an EU or EFTA state. A work authorisation is also necessary for periods of more than 90 days.

In addition, EU-27 and EFTA state-based companies cannot post workers in Switzerland for more than 90 days per civil year, regardless of the number of workers posted on each day.

Restrictions apply to workers from Croatia through transitory provisions.

### Anti-corruption rules

#### Applicable rules

#### What regulations and procedures are in place to combat corruption, bribery, fraud,

## collusion and other dishonest practices in the construction sector in your jurisdiction?

No specific regulations or procedures against corruption, bribery, fraud, collusion and other dishonest practices apply to the construction sector solely. The standard anti-corruption and bribery Swiss regulations apply.

### Best practices

#### What best practices are advised to ensure compliance with the relevant anti-corruption rules?

Construction contracts generally include a commitment by the contractor to put in place, maintain and enforce where appropriate its own policies and procedures to ensure compliance with anti-corruption laws. Further, the contractor usually commits to report to the employer any request or demand for, or offer of, any bribe received in connection with the contract, and to disclose any breach of anti-corruption rules to the employer.

### Dispute resolution

#### Courts

#### What courts are empowered to hear construction disputes in your jurisdiction? Are there any specialist construction courts?

Construction disputes are filed before ordinary courts – civil law ordinary courts and public law ordinary courts, depending on the topic of the litigation. There is no specialist construction court in Switzerland.

#### Common disputes

#### What issues are commonly the subject of construction disputes?

With respect to public law, the most common construction disputes relate to construction permits (eg, validity, charges, conditions and compliance with the applicable legal provisions).

In civil law, the most common disputes involve the price and any defects in a construction work.

#### Statute of limitations

#### What is the statute of limitations for filing construction-related claims?

There are no specific rules or limits on the commencement of disputes, but such are generally dictated or limited by the rules on time-barring periods, which a defendant can raise. The right of the employer to bring claims due to defects in the work is generally limited to two years from acceptance of the work if the Swiss Society of Engineers and Architects (SIA) norms are integrated and five years in a standard contractor's agreement if SIA norms are not integrated. Under the standard Code of Obligations, a claim for defect is valid only if the notice for defect was made immediately (ie, within 24 to 48 hours of noticing the defect).

#### Mediation

#### Is pre-litigation mediation required or advised for construction disputes?

Pre-litigation mediation is not legally required for construction disputes, but may be advised in certain construction projects (eg, a confidential project or a project with many parties).

The parties may contractually agree that mediation will be conducted before filing any judicial claim.

#### Arbitration

#### How often is arbitration used to resolve construction disputes? What arbitration forms and institutions are typically used?

Arbitration is available (different ad hoc bodies have developed) to resolve construction disputes, but the number of cases resolved in this way remains limited due to the high costs associated.

Construction and engineering disputes in a domestic context are mostly resolved via litigation before ordinary courts.

SIA Nom 150 relates to arbitration and sets forth rules regarding arbitration proceedings in the construction sector.



**Law stated date**

Correct as of

**Please state the date of which the law stated here is accurate.**

September 2018.

