The Complex Commercial Litigation Law Review

Second Edition

Editor
Steven M Bierman

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THE Complex Commercial Litigation Law Review

Second Edition

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Steven M Bierman

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PREFACE

I am privileged, once again, to be the editor of *The Complex Commercial Litigation Law Review*, now in its second edition. This volume is published at a time when the world grows ever smaller and commercial relationships are the common currency that links countries and cultures across the globe. And, with apologies to the poet Robert Burns, because the best laid plans of commercial counterparties go oft awry, businesses and their legal counsel in every jurisdiction must be familiar not only with the law governing commerce but also must be keenly aware of the legal issues that most frequently arise in commercial disputes.

I have had the good fortune to practise law for many years as a litigation partner of a global law firm, Sidley Austin LLP, in New York City, one of the world's great commercial and financial centers, and a crossroads where many significant and complex disputes are litigated and tried, whether in our US federal or state courts or arbitrated under the auspices of pre-eminent ADR providers. I also have had the pleasure of working alongside, or opposite, some of the most accomplished disputes practitioners anywhere, whether down the street or halfway around the world, in matters both domestic and cross-border in nature. In serving our respective clients, I would like to think that we have learned from each other, and have become better and more effective for the education. I know I have.

It is with that spirit and intention that we have assembled a truly distinguished roster of leading practitioners to contribute to this second edition, which significantly expands the range of jurisdictions from those covered in the inaugural edition. The authors of this publication are from among the most widely respected law firms in their jurisdictions. Their practices run the gamut of complex commercial litigation experience, and the home jurisdictions about which they write span the world's geography. We hope you will find their experience invaluable and enlightening when dealing with issues arising in commercial litigation in your own experience or practice.

These authors practise in disparate legal systems under dissimilar procedural regimes. One of the great strengths and, we hope, utility, of this volume is that, notwithstanding these differences, we have asked the authors to report on core principles and recent developments in the law of their country concerning the same set of fundamentally important legal issues likely to feature in complex commercial disputes, wherever they may arise. These issues include contract formation and modification; contract interpretation; breach of contract; defences to enforcement; fraud, misrepresentation, and other claims impacting contracts; dispute resolution; and remedies. The emphasis is on the law and practice of each jurisdiction, but discussion of emerging or unsettled issues is included where appropriate.

Whether you are a corporate counsel, a business executive, a private practitioner, or a government official, and whether you are facing litigation or arbitration of a commercial

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dispute, negotiating a contract with an eye toward minimising litigation risk, or simply interested in learning more about this important area of law as related by seasoned and savvy practitioners, we hope you will find this volume informative, instructive, and enjoyable.

Steven M Bierman
Sidley Austin LLP
New York
November 2019

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Chapter 22

SWITZERLAND

Patrick Rohn and Carolina Keller Jupitz[1]

I OVERVIEW

Switzerland has a civil law system. The Swiss Federal Code of Obligations (CO) regulates the contractual relationships between legal subjects and is structured in five main chapters. The first chapter contains general provisions (Articles 1 to 183) that are valid for all types of contracts while the second chapter regulates the different types of contractual relationships (Articles 184 to 551). Chapter three to five regulate companies and cooperatives, the commercial register, business names, commercial accounting and negotiable securities.

The Swiss Civil Procedure Code (CPC) regulates civil proceedings. The Civil Procedure Code dates from 1 January 2011 and contains a set of rules that regulates civil proceedings comprehensively from filing the claim until the appeal in first cantonal instance. Switzerland has specialised commercial courts as well as a long and well-established tradition in commercial litigation and arbitration. As a result, Switzerland offers an effective and highly specialised judiciary and alternative dispute resolution system for commercial disputes which is the reason why many foreign parties subject their contractual relationship to Swiss law and jurisdiction of Swiss courts.

II CONTRACT FORMATION

The Swiss Code of Obligations is based on the principle of contractual freedom. Part of the freedom of content is also freedom of types. Freedom of types means that the parties are not bound to the contract types regulated in the special part of the Code of Obligations (Articles 184 to 530), but have the freedom to deviate from them and to mix them or to invent completely new contract types (innominate contracts).[2]

The conclusion of a contract requires a mutual expression of intent by the parties. The expression of intent may be express or implied. According to the chronological sequence of the declarations, the first is referred to as the offer, the second as acceptance. The offer is a declaration of intent, which needs to be received by the other party and the conclusion of a

1 Patrick Rohn is a partner, and Carolina Keller Jupitz is a counsel at Thouvenin Rechtsanwälte KLG.

2 Zellweger-Gutknecht/Bucheri, *Basler Kommentar - Obligationenrecht I Art. 1 - 529 OR Sixth Edition*, preface Article 1 - 40f Paragraph 12 et seq.

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contract depends on a simple agreement of the receiving party.[3] The offer must be sufficiently determined or at least determinable with regard to the type of contract to be concluded, the essential elements of the contract (*essentialia negotii*) and the contracting parties.[4]

As a rule, contract negotiations precede the conclusion of a contract. The parties are generally not bound by contract in this phase of their relationship. Nonetheless, pre-contractual duties arise during this period, which differ from those that are non-contractual duties. If these pre-contractual duties are violated, this may lead to liability for *culpa in contrahendo*. The liability for the breach of pre-contractual duties (*culpa in contrahendo*) is not regulated in the Code of Obligations but originates from case law.[5]

III CONTRACT INTERPRETATION

The law chosen by the parties governs the contract (Article 116 Paragraph 1 of the Code on International Private Law), whereby the choice of law must be express or clearly result from the contract or the circumstances. A choice of law may also be tacitly agreed upon.[6] The law chosen is, in principle, relevant to all substantive and formal questions relating to the contract (principle of the uniform contract statute). In other words, the *lex causae* determines the existence, content and effect of the main contract.[7]

If it is certain that a contract has been concluded between the parties, the parties may nevertheless have different understandings of the relevant contractual content. In this case, the court must seek to determine the actual and mutual intentions of the parties (Article 18 Paragraph 1 CO). In order to determine the real intention of the parties, the wording of the contract and the context in which it is used is the starting point of any interpretation and plays a predominant role in the process of contractual interpretation.[8] Additional factors are to be considered to determine whether or not the meaning of the wording is consistent with the extrinsic evidence regarding the intentions of the parties. Such additional factors are, for example, the purpose of the contract and the parties' interest in its performance, the parties' conduct before and after execution the contract, and relevant trade customs in the parties' specific industry or field of commerce. The party claiming that there is a discrepancy between the wording and the real intent of the parties bears the burden of proof to show that the mutual real intent of the parties was different from the actual wording of the contract.[9]

If the actual and mutual intentions of the parties cannot be established, the court has to resort to an 'objective' interpretation of the contract based on the 'principle of reliance'.[10] The test for objectivity is how a reasonable party, considering all circumstances, could and should have understood a specific contract clause in good faith. The starting point of the objective interpretation and the predominant factor is again the contractual wording.[11] In addition

3 Schwenzer, *Schweizerisches Obligationenrecht Allgemeiner Teil, Seventh Edition*, Paragraph 28.05.

4 Zellweger-Gutknecht/Bucheri, *Basler Kommentar - Obligationenrecht I Art. 1 - 529 OR Sixth Edition*, preface Article 1 Paragraph 15 f.

5 BGE 140 III 200 consid. 5.2; BGE 124 III 363 consid. II.5.b; BGE 116 II 695 consid. 2 et seq.

6 Amstutz/Wang, *Basler Kommentar, Internationales Privatrecht Third Edition*, Article 116 Paragraph 39; BGE 131 III 511, 516.

7 Amstutz/Wang, *Basler Kommentar, Internationales Privatrecht Third Edition*, Article 116 Paragraph 52.

8 BGE 128 III 265, 267 consid. 3a.

9 BGE 121 III 118, consid. 4 b/aa.

10 BGE 129 III 118, 122 consid. 2.5.

11 BGE 128 III 265, 267 consid. 3a.

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to the wording of the contract and the additional interpretative factors described above, there are a number of well-established principles governing the 'objective' interpretation of contracts, such as interpretation in accordance with good faith, interpretation *ex tunc*, and interpretation of the contract as a whole.

The parties may lay down their own rules of interpretation in their contract, such as definitions of terms.

IV DISPUTE RESOLUTION

i Jurisdiction

The Swiss Code of Civil Procedure regulates territorial jurisdiction and the procedure on a federal level, while the cantons regulate material and functional jurisdiction and the organisation of courts and conciliatory authorities. In international disputes, territorial jurisdiction is not governed by the Swiss Code of Civil Procedure, but by the International Private Law Act. However, international treaties have priority over the International Private Law Act, such as the so-called Lugano Convention (Convention on jurisdiction and the enforcement of judgments in civil and commercial matters). This Convention has established a comprehensive jurisdiction system regarding contractual and commercial disputes within the EU and EFTA States that have ratified this Convention. The Lugano Convention serves to extend the jurisdiction and recognition regime of the Brussels Regulation to EFTA member states, including Switzerland.

The competence of Swiss courts depends on the amount in dispute and the nature of the dispute.[12] The cantons may designate a specialised court for commercial disputes and disputes relating to intellectual property rights and unfair competition. There are currently four such specialised commercial courts in Switzerland, in Zurich, St. Gallen, Bern and Aargau. A dispute is deemed to be a commercial dispute if the business activities of at least one party are involved, the amount in dispute is at least 30,000 Swiss francs and the parties are entered in the Swiss Commercial Register or in a comparable foreign register.[13]

In most cantons, pecuniary claims up to a value of 30,000 Swiss francs are heard by a single judge, and claims of 30,001 Swiss francs or more are heard and decided by a court composed of three judges. The parties may establish the jurisdiction of a court either by an agreement on jurisdiction or by appearance.

ii Conciliatory procedure

In Switzerland, dispute resolution by conciliatory authorities has a long tradition. The task of the conciliation authority is to try to reconcile the parties in the conciliation procedure, and to settle the dispute amicably. If a settlement cannot be reached, the conciliation authority issues the plaintiff a permission to bring an action.[14]

12 Wey, *Kommentar zur Schweizerischen Zivilprozessordnung (ZPO) Third Edition*, Article 4 Paragraph 6 et seq.

13 Vock/Nater, *Basler Kommentar - Schweizerische Zivilprozessordnung Third Edition*, Article 6 Paragraph 7 et seq.

14 Baumgartner/Dolge/Markus/Spühler, *Schweizerisches Zivilprozessrecht - mit Grundzügen des internationalen Zivilprozessrechts Tenth Edition*, 2018, Section 48 Paragraph 2 et seq.

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Apart from actions that have to be filed with the commercial court, the conciliation procedure which precedes the court proceedings is generally mandatory. Under certain conditions, it is permissible for one or both parties to waive the conciliation procedure.[15]

iii Court procedure

Civil proceedings begin either with the submission of a request for conciliation or with the direct filing of an action with the court. In both cases, the filing of the submission has the effect of meeting the deadline for legal action and establishes the *lis pendens*.[16]

There are different types of proceedings depending on the type of dispute, namely the ordinary procedure, the simplified procedure, and the summary procedure. Apart from the nature of the dispute also the amount in dispute is relevant for determining which type of proceedings is applicable. Amounts in dispute over 30,000 Swiss francs are dealt with in ordinary proceedings. The ordinary procedure is the basic type of judicial procedure at first instance and the most common for commercial disputes.

The proceedings are mainly in writing. After the first exchange of written submissions, the courts sometimes summon the parties to a settlement hearing. Before commercial courts, such settlement hearings are a common practice. In this hearing, the court gives a preliminary non-binding legal assessment of the dispute on the basis of the file before it, and the court actively tries to facilitate a settlement. If no settlement can be reached, the parties submit the written reply, which is then followed by the written rejoinder. The pleading phase is followed by the evidence taking phase in which the court may order disclosure, hear witnesses and examine the parties or appoint and instruct an independent expert, or both. In contrast to common law jurisdictions, cross-examination is not common in Switzerland. Consequently, documents are the most important evidence before the court. In particular, the commercial courts often decide a case based on the files submitted (i.e., without hearing any witnesses).

iv Court fees and party indemnity

Plaintiffs must pay an advance on court costs, which is usually dependent on the amount in dispute. In addition and upon defendant's request, foreign plaintiffs are required to provide security for defendant's legal cost if the plaintiff is domiciled in a country that is not a signatory to the relevant Hague Conventions.

The costs are determined in the court's decision and usually the losing party must pay the costs and compensate the winning party (costs follow the event). If no party is entirely successful, the costs are allocated in proportion to the outcome of the case.[17]

v Alternative dispute resolution (arbitration, mediation)

Switzerland offers excellent conditions for international arbitration proceedings. Swiss arbitration law combines the autonomy of the parties in the organisation of proceedings with the guarantee of a judicially secured framework. Arbitration is widespread, especially for the settlement of disputes between associations and their members (association arbitration,

15 Gloor/Umbricht, *Kurzkommentar Schweizerische Zivilprozessordnung Second Edition*, Article 199 Paragraph 1 et seq.

16 Sutter-Somm/Hedinger, *Kommentar zur Schweizerischen Zivilprozessordnung (ZPO) Third Edition*, Article 62 Paragraph 9 et seq.

17 Article 106 Paragraph 2 of the Civil Procedure Code.

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especially in sports law) and in international commercial contracts (international commercial arbitration). The third part of the Civil Procedure Code (Article 353 et seq.) regulates domestic arbitration, while international arbitration falls within the scope of Chapter 12 of the International Private Law (Article 176 et seq.).[18]

The parties may agree to conduct mediation at any time in judicial proceedings. Mediation is a matter of private law both among the parties and between them and the mediator. Neither the conciliation authority nor the court are responsible for the organisation and conduct of the mediation. Mediation is completely independent of conciliation or judicial proceedings.[19]

V BREACH OF CONTRACT CLAIMS

The Swiss Code of Obligations distinguishes between the following forms of default: non-performance (impossibility), delay in performance (default) and defective performance (breach of contract).[20]

i Non-performance (impossibility)

Non-performance occurs when the performance to be rendered by the debtor can no longer be rendered because it has become impossible. In such situations, pursuant to Article 97 Paragraph 1 CO the debtor has to compensate the other party for the damage arising from the non-performance, unless the debtor proves that no fault is attributable to him. To the extent that a debtor's performance has become impossible because of circumstances for which he is not responsible, the obligation is deemed to be extinguished (Article 119 CO).

ii Delay in performance (default)

Default on the part of the debtor applies if the debtor does not fulfil his obligation to perform on time. The prerequisites for debtor's default are non-performance despite the possibility of performance, maturity and, as a rule, a formal reminder of the creditor.[21]

The debtor is liable for damages if he does not prove that he is not responsible for the delay.[22] Damage compensation means compensation for the damage caused by the delay, (i.e., the financial loss caused by the delay).[23] He is also liable for accidental damage.

If the debtor is in default with a payment, he shall generally pay default interest. This legal consequence occurs irrespective of whether the debtor is responsible for the default and whether the creditor has suffered a loss as a result of the late payment.[24]

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18 Baumgartner/Dolge/Markus/Spühler, *Schweizerisches Zivilprozessrecht - mit Grundzügen des internationalen Zivilprozessrechts Tenth Edition*, 2018, Section 61 Paragraph 5 et seq.

19 Baumgartner/Dolge/Markus/Spühler, *Schweizerisches Zivilprozessrecht - mit Grundzügen des internationalen Zivilprozessrechts Tenth Edition*, 2018, Section 48 Paragraph 24 et seq.

20 Schwenzer, *Schweizerisches Obligationenrecht - Allgemeiner Teil Seventh Edition*, Paragraph 60.02; Wiegand, *Basler Kommentar - Obligationenrecht I, Art. 1 - 529 OR Sixth Edition*, preface Article 97-109 Paragraph 1.

21 Wiegand, *Basler Kommentar - Obligationenrecht I, Art. 1 - 529 OR Sixth Edition*, Article 97 Paragraph 3 et seq.

22 Schwenzer, *Schweizerisches Obligationenrecht - Allgemeiner Teil Seventh Edition*, Paragraph 66.03 et seq.

23 BGer 4C.11/2003 (19.5.2003) consid. 5.2.; BGE 123 III 241 consid. 4b.

24 BGE 130 III 159 consid. 3.

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Pursuant to Article 107 Paragraph 1 CO, the creditor may set the debtor a reasonable time limit for subsequent performance. Such a grace period is necessary if the creditor wishes to exercise a remedy that is different from specific performance.[25] If the debtor fails to perform within the grace period set, the creditor has three options under Article 107 Paragraph 2 CO:

a the creditor may continue requesting performance of the contract and compensation for the damage caused by the delay;

b the creditor may waive performance and claim expectation damages for non-performance instead; or

c the creditor may withdraw from the contract and claim restitution damages.[26]

iii Defective performance and warranties

If the performance provided does not correspond to the one the parties contractually agreed upon, the creditor may claim damages. Whether he is also entitled to repair or replacement or other remedies depends on the type of contract. The laws on sales and contracts for work and services stipulate warranty claims. The purchaser or customer can report defects and have them remedied within a certain period of time.

The legal consequences of defective performance are often regulated specifically for the individual contract types. In addition, Article 97 Paragraph 1 CO deals with defective performance in general terms and provides for damages as the general remedy. In some cases, the creditor may also withdraw from the contract.

In an action for damages, the creditor must prove the damage, the breach of contract and the causal link between the breach of contract and the damage incurred. The debtor's fault is presumed.[27]

VI DEFENCES TO ENFORCEMENT

Swiss law knows several defences to enforcement of a claim; some are directed against the existence of the claim as such and are to be considered by the court *ex officio* (e.g., impossibility). Other defences only prevent the enforceability of the claim and are thus only considered by the court if they are raised by the party (e.g., objection of limitation). Some common examples of defenses to enforcement of a claim are discussed below:

i Illegality, immorality

Freedom of content exists only within the limits of the law. A contract is unlawful and therefore not enforceable if it violates mandatory private or public law provisions of Swiss law.[28] The unlawfulness may result from the object of the contract, the content agreed upon

25 Schwenzer, *Schweizerisches Obligationenrecht - Allgemeiner Teil Seventh Edition*, Paragraph 66.15 et seq.; Wiegand, *Basler Kommentar - Obligationenrecht I, Art. 1 - 529 OR Sixth Edition*, Article 107 Paragraph 6 et seq.

26 Wiegand, *Basler Kommentar - Obligationenrecht I, Art. 1 - 529 OR Sixth Edition*, Article 107 Paragraph 6 et seq.

27 BGer 4A_472/2010 (26.11.19) consid. 3.2.

28 Huguenin/Meise, *Basler Kommentar - Obligationenrecht I, Art. 1 - 529 OR Sixth Edition*, Article 19/20 Paragraph 15 et seq.

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or the indirect contractual purpose.[29] Further limits with regard to freedom of content are good morals and personal freedom (i.e., no one may deprive himself of his freedom or restrict his use to an extent that violates the law or morality).

If the parties provide for the application of a foreign law in their contract, the provisions of that foreign law are not applied and enforced by a Swiss court if it would lead to a result which is incompatible with Swiss public policy. The threshold of public policy however is high and it happens very rarely that a Swiss court refuses to apply foreign law based on that ground.

ii Impossibility

The doctrine of impossibility applies if the debtor is unable or no longer able to perform his obligations.

According to Article 20 Paragraph 1 CO, a contract that has impossible content is null and void and therefore not enforceable. However, this only includes the initial, objective and permanent impossibility, meaning an impossibility that already existed at the time the contract was concluded (initial) and that is comprehensive in the sense that nobody would be able to perform (objective). All other cases of impossibility are cases of non-performance (see above).[30]

iii Limitation of liability

In accordance with the principle of contractual freedom, the debtor can exclude or limit his liability. Such a limitation of liability, however, requires in any case a contractual agreement.[31] According to Article 100 Paragraph 1 CO, the exclusion of liability for intent and gross negligence is inadmissible. An agreement according to which liability for wilful intent or gross negligence is excluded or limited is null and void and not enforceable. On the other hand, according to Article 101 Paragraph 2 CO the parties to an agreement may limit or completely exclude their liability for auxiliary persons, such as employees.

iv Limitation

Claims that are time-barred cannot be enforced if the debtor raises an objection of limitation.

The regular limitation period is ten years. It applies to all claims for which the law does not expressly provide otherwise. Article 128 CO establishes a five-year limitation period for certain claims that are regularly settled fast, namely rental, lease, capital interest as well as other periodic payments. Actions for breach of a seller's warranty become time-barred two years after delivery of the object to the buyer, even if the buyer does not discover the defects until later, unless the seller has assumed liability under warranty for a longer period.

VII FRAUD, MISREPRESENTATION AND OTHER CLAIMS

Failure of intent regarding contracts can be distinguished into two major groups: the cases in which the declaration does not correspond to the (correctly) formed will (error of explanation); and cases in which the intent to make a certain declaration was formed incorrectly, whether as

29 BGE 134 III 438 consid. 2.2; BGE 119 II 222, 224.

30 Schwenzer, *Schweizerisches Obligationenrecht - Allgemeiner Teil Seventh Edition*, Paragraph 64.01 et seq.

31 BGE 111 II 471, 480.

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a result of error (error of motive, fundamental error) or caused by the other contracting party or a third party (fraud, duress). A party acting under error, fraud or duress is entitled to annul the contract and seek restitution. This has to be done within one year from the time that the error or the fraud was discovered or from the time that the duress ended.

An error is a misconception of the facts.[32] There is no error in the actual sense if the declarant had no notion of the facts. The error is always unconscious. If there are doubts about the correctness of one's own notion, an error is excluded.[33] An error is fundamental if, according to the circumstances, it can be assumed that the person acting under error would not have made the declaration or would not have made it with this content if he had known the true facts.[34]

A fraudulent behaviour consists in the pretence of false facts or the non-disclosure of existing facts.[35] The fraud must cause or perpetuate an error on the part of the person deceived. This in turn must have been causal for the declaration of intent. This is not the case if the person deceived has recognised the true facts of the case or if he would have made the declaration of intent even if he had known the true facts.[36]

Fraud, misrepresentation, deception and other unlawful interference may also give rise to claims in tort and damages. If the trust of the other party is abused in the course of contract negotiations, this may lead to a liability for *culpa in contrahendo* and also give rise to claims for damages.

VIII REMEDIES

If a contract has been breached, the entitled party has, as a rule, the possibility to either demand specific performance or to sue for damages. Depending on the type of contract and breach, the party may also have the right to terminate or rescind the contract, to enforce warranty rights (e.g., repair or subsequent delivery), or to seek injunctive or other relief.

The most frequent consequence of breach of contract is damages. As a basic principal under Swiss law, damage is understood to be every involuntarily and therefore unintentional loss which consist in either a decrease of assets, an increase of liabilities, or a loss of profit. The purpose of damages is compensatory rather than punitive. The aggrieved party, as a rule, has a claim for damages in an amount that equals the difference between its actual economic situation and the hypothetical economic situation it would be in had the contract been fully and properly performed (expectation damages). Considering this, the aggrieved party is entitled to recover any actual financial loss, including any indirect and consequential damage such as loss of profit. The burden of proof however lies with the aggrieved party which has to establish that such profit would in all likelihood have been realised in the ordinary course of business. When determining the lost profits, a court will have regard to the ordinary course of events and assume that the claimant would not have missed reasonable business opportunities available under the specific circumstances, and that such ordinary profits would not have been diminished by unexpected adverse circumstances. The remedy of expectation damages is usually available in cases of non-performance or defective performance (see above).

32 Schwenzer, *Schweizerisches Obligationenrecht - Allgemeiner Teil Seventh Edition*, Paragraph 36.01 et seq.

33 BGE 95 II 407 consid. 1.

34 BGE 103 II 129.

35 BGE 136 III 528 consid. 3.4.2; BGE 132 II 161 consid. 4.1.

36 BGer 4C.226/2001 (21.11.2001) consid. 6; BGer 4C.225/2004 (11.1.2005) consid. 3.2.

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On the other hand, restitution damages are usually owed if a party's trust in the validity of a contract is disappointed, for example in cases of liability for *culpa in contrahendo* or if the contract is rescinded because of error, fraud or duress. If restitution damages are due, the aggrieved party must be placed in the position as if he or she had never been involved in the negotiations and the transaction. In particular, all useless expenses incurred in connection with the contract are reimbursable. In exceptional circumstances, lost profit may also be eligible for compensation.[37]

IX CONCLUSIONS

Swiss contract and commercial law has a long tradition and usually gives the parties great freedom to design their contractual relations. Its basic legal principles have not changed in years, and no major changes are planned for the foreseeable future. This contributes to legal certainty and predictability for the parties.

The civil and commercial courts in Switzerland are usually specialised and endeavour to settle disputes in a competent, pragmatic and efficient manner. In addition, international commercial arbitration is very widespread and efficient in Switzerland. Due to Switzerland's independence and stability of the legal system as well as its high level of contractual freedom, international parties often choose Swiss law as the applicable law of their contracts and they provide for jurisdiction in Switzerland.

37 Schwenzer, *Schweizerisches Obligationenrecht - Allgemeiner Teil Seventh Edition*, Paragraph 14.31.

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Appendix 1

ABOUT THE AUTHORS

PATRICK ROHN

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Patrick Rohn is a partner at Thouvenin Rechtsanwälte, and specialises in domestic and international commercial litigation and arbitration, with a particular focus on disputes relating to distribution, licensing, commercial and corporate transactions and relations. Patrick has advised and acted as counsel for companies from various sectors, including life sciences, technology, financial services, real estate, and trade sectors. He frequently represents parties in complex contractual and corporate disputes (including M&A, joint venture, and insolvency-related matters), and he has considerable expertise related to cross-border asset tracing and recovery and the enforcement of foreign judgments and arbitral awards. *Legal 500: EMEA* recommends Patrick for litigation ('brilliant mind', 'exceptional analyst and tactician'), and *Who's Who Legal: Litigation* recognises Patrick for his work as a 'Future Leader' in the partner category ('strong analytical and strategic skills', 'very thorough indeed and has a complete grasp of the law involved'). Leaders League recommends Patrick for both commercial litigation and international arbitration. Patrick is also listed by the International Distribution Institute and the Swiss Chambers' Arbitration Institution as an arbitrator with specific experience in the field of distribution (IDArb list of specialised arbitrators).

CAROLINA KELLER JUPITZ

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Carolina Keller Jupitz is an experienced litigator; she advises and acts as counsel for national and international clients in domestic and international commercial litigation with regard to contract and corporate law, as well as debt enforcement and bankruptcy law. Her additional expertise is white-collar crime and international mutual legal assistance in criminal matters. She has a proven track record in cross-border cases of money laundering and corruption.

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