

Construction and projects in Switzerland: overview

by Catrina Luchsinger Gaehwiler, Marcel R. Jung, Benjamin Dürig and Romina A. Brogini, MLL Meyerlustenberger Lachenal Froriep Ltd

Country Q&A | Law stated as at 01-Jul-2021 | Switzerland

A Q&A guide to construction and projects law in Switzerland.

The Q&A is part of the global guide to construction and projects. Areas covered include trends and significant deals, the main parties, procurement arrangements, transaction structures and corporate vehicles, financing projects, security and contractual protections required by funders, standard forms of contract, risk allocation, exclusion of liability, caps and force majeure. Also covered are material delays and variations, appointing and paying contractors, subcontractors, licences and consents, project insurance, labour laws, health and safety, environmental issues, corrupt business practices and bribery, bankruptcy and insolvency, public private partnerships (PPPs), dispute resolution, tax, the main construction organisations, and proposals for reform.

Overview of the Construction and Projects Sector

Procurement Arrangements

Transaction Structures

Finance

Security and Contractual Protections

Standard Forms of Contracts

Contractual Issues

Contractors' Risks

Excluding Liability

Caps on Liability

Force Majeure

Material Delays and Variations

Material Variations

Other Negotiated Provisions

Rights of Third Parties under Contracts

Architects, Engineers and Construction Professionals

Payment for Construction work

Subcontractors

Licensing

Projects Insurance

Employment laws

Health and Safety

Environmental Issues

Prohibiting Corrupt Practices

Bankruptcy/Insolvency

Public Private Partnerships

Dispute Resolution

Tax

Other Requirements for International Contractors

Developments and Reform

Contributor profiles

Catrina Luchsinger Gaehwiler, Partner

Marcel R. Jung, Tax Partner

Benjamin Dürig, Counsel

Romina A. Brogini, Senior Associate

Overview of the Construction and Projects Sector

1. What are the main trends in the local construction and projects market? What are the most significant deals?

Main Trends

The construction industry recorded significant growth and an increase in applications for construction permits for residential properties and operational buildings from 2018, due to historically low mortgage interest rates and negative bank interest rates, which encouraged investors to seek alternative investments in real estate. Investors were focussing on residential properties, aiming to buy and subsequently rent them out. The most popular investment properties were apartments and single-family homes in central locations or in other city areas or suburbs.

During the 2019 novel coronavirus disease (COVID-19) pandemic, which hit Switzerland in early 2020, the interest in real estate investments increased further. Residential properties, in particular, turned out to be crisis-resistant: Government recommendations and rules issued during the pandemic furthered the interest in comfortable and spacious residential properties and boosted their prices. The market then expanded to peripheral regions, slowing the ongoing trend in urbanisation. Also, a higher demand in homeownership, compared to rentals was seen.

While single-family houses, buildings for educational institutions and hospitals were booming, the issuance of building permits in the commercial sector declined massively. At the time of writing, the overall impact of the pandemic on the real estate sector is not yet clear. However, due to the lack of alternative investment opportunities,

the Swiss housing market is expected to continue to be attractive for investors, provided that interest rates remain low.

Major Projects

Major projects include:

- **Infrastructure:**
 - northern bypass Zurich (*Nordumfahrung*): widening of the motorway to six lanes and new tunnel through Gubrist (cost: CHF1,55 billion);
 - renovation of A9 at Vennes-Chexbres, including bridges and tunnels (cost: CHF800 million);
 - renovation of A1 at Luterbach-Härkingen, including a new bridge over the Aare river (cost: CHF886 million);
 - renovation of A6 at Rubigen-Thun-Spiez in the Bernese highlands, including bridges and tunnels (cost: CHF700 million);
 - extensive works for the reuse of the breakdown lane between Wankdorf (Berne) and Muri b. Berne as traffic lines during peak times to reduce congestion problems, improve safety and reduce environmental pollution (cost: CHF130 million);
 - NEAT: 57 km railway tunnel completed; remaining stages of the new railway transalpine axis for freight transport and passenger services (total cost: CHF23.5 billion);
 - HGV: improving Switzerland's accessibility to the European high-speed transportation network (for example, Biel/Bienne-Belfort, Zurich-Munich and Basel-Mulhouse) (cost: CHF1.3 billion);
 - STEP AS 2035: strategic expansion of the Swiss railway network to increase the railway traffic on certain routes (cost: CHF12.89 billion);
 - Limmattalbahn: new railway infrastructure through Limmat Valley, in the Swiss cantons of Aargau and Zurich to the west of the city of Zurich (cost: CHF755 million).
- **Public buildings:**
 - Zurich university district: extension of University Hospital, Zurich University and Federal Institute of Zurich (ETH) (estimated cost: CHF4.5 billion);
 - Police and justice centre in Zurich: centralisation of the cantonal police force, crime enforcement authorities and remand prison on the old freight yard of Zurich until 2021 (cost: CHF570 million);
 - Sports: construction of a new ice hockey stadium for Zurich-based club ZSC Lions until 2022 (cost: CHF170 million).
- **Mixed-use projects:**
 - Grencity: construction of 740 apartments and 3000 workplaces in the south of Zurich (2000 Watt Society certificate) (cost: CHF900 million);

- Genève Pont-Rouge: construction of 600 apartments, offices, hotels and schools (real estate project of the Swiss Federal Railway) (cost: CHF670 million) (opening 2021);
 - Horw Mitte: construction of 520 apartments, 1700 workplaces, a railway square and a park (cost: CHF600 million);
 - klybeckplus: mixed-use area of 300,000 square metres in Basel-Stadt on a former chemical industrial area, including apartments, offices, leisure and culture facilities, green and open spaces and public transportation connections (cost: unknown);
 - Quai Vernets: 42,150 square metres mixed-use area in Geneva, including new apartments (1,500), commercial premises, public facilities and green areas (cost: unknown);
 - Leutschenbach residential area: mixed-use area in Zurich with 370 new apartments until 2024 (cost: CHF213 million).
- Chemical industry projects:
 - Roche Campus: Roche officially inaugurated the highest skyscraper in Switzerland (178 metres) in September 2015; the company plans additional construction projects over the next decade, such as a new research and development centre for about 1,900 employees, new office buildings for 1,700 workers (including a skyscraper of 205 metres) (cost: CHF3 billion);
 - Novartis Campus: the first stage of the campus is completed, but additional construction projects are planned until 2030 (cost: CHF2.5 billion).

Procurement Arrangements

2. Which are the most common procurement arrangements if the main parties are local? Are these arrangements different if some or all of the main parties are international contractors or consultants?

There are several types of procurement arrangements depending on the complexity of the project, regardless of whether the main parties are local or international:

- **Single contractors.** This model is mainly used for smaller projects. The owner or developer enters into several construction agreements with several partial contractors. The project is co-ordinated by the owner or developer. The responsibility of the partial contractors is limited to a specific part of the construction (for example, electricity).

- **General contractors.** This model is used for larger and complex projects. The owner enters into one agreement with the general contractor who is responsible for the execution of the owner's project for a fixed price. The general contractor usually enters into further agreements with subcontractors.
- **Total contractors.** This model is used for very large projects, where the total contractor is commissioned to design a project and to execute it. The total contractor therefore not only co-ordinates with architects and other planners but also executes the work performed by a general contractor.

Transaction Structures

3. What transaction structures and corporate vehicles are most commonly used in both local and international projects?

Local Projects

In commercial projects, Swiss investors often incorporate a Swiss real estate company in the legal form of a corporation or a limited liability company and use it as a special purpose vehicle (SPV) for this specific matter only. The company can be held by one single investor or a group of investors jointly which have a shareholder agreement between them.

Apart from corporate SPVs, contractual structures are used to organise relationships between contractors as consortiums. It is very common in Switzerland to use consortiums for large projects, due to the joint liability of the members of the consortium for the realisation of the project towards a client.

Further, much Swiss real estate, including property, which is being developed, is held in investment vehicles, for example stock-listed investment companies, real estate investment funds, investment foundations for pension funds or directly owned by pension funds and insurance companies.

International Projects

Cross-border real estate investors use the same structures as Swiss investors for commercial projects in Switzerland.

Finance

4. How are projects financed? How do arrangements differ for major international projects?

In Switzerland, real estate projects of both Swiss and foreign investors, are usually financed through equity and debt. Banks and certain life insurance companies have historically granted mortgages against corresponding collaterals of 70% to 80% of the market value of the property. In 2019, the Swiss Bankers Association set out new guidelines for mortgage lending against residential real estate limiting the debt to 70% of the current market value of the property. In general, mortgages have in many cases dropped to around 60% to 70% of the property value. Real estate funds by law can only lend against one third of the assets, but exceptions can be made for funds open to qualified investors only.

In addition, large real estate companies often issue bonds. More complex financing instruments may be used depending on the complexity, size and type of the project.

The interest rates for mortgages in Swiss francs have been historically low. Based on the current situation on the market, a turnaround of interest rates is not to be expected in the foreseeable future, even though the interest rates have shown a tendency to increase in recent weeks due to the effect of the coronavirus pandemic on the markets.

Security and Contractual Protections

5. What forms of security and contractual protections do funders typically require to protect their investments?

Security

Typically, the funders will request a lien on the real property in the form of a mortgage certificate, which will allow them to foreclose on the property in the event of default.

Other securities that may be required include:

- Global assignment of receivables (for example, the rights to proceeds arising from the lease of the premises).
- Parent guarantee or surety.
- Pledge of shares (if the building owner is a stock company), bank accounts or other assets or intellectual property rights.

Contractual

Lender banks often require that the owner undertakes to hold all of its assets in accounts with them, which allows them to set off any claims out of the building loan against these assets, whereas they exclude a reciprocal set-off right of the customer.

In more complex project funding or in highly leveraged circumstances, funders often require a say in the purchase of new real estate for additional projects, have a set of financial covenants in the contract and define possibly target sales figures to monitor the **borrower's** ability to repay the loan amounts.

Standard Forms of Contracts

6. What standard forms of contracts are used for both local and international projects? Which organisations publish them?

Local Projects

The most frequently used standard forms of contracts are those published by the Swiss Society of Engineers and Architects (SIA). They cover a large range of different contractual relationships, including contracts between building owners and contractors, architects and engineers.

In addition, even when the parties do not use standard forms of contracts, they commonly refer to specific SIA norms and include them into their agreements. SIA norms embody the current state-of-the-art for different aspects of planning and construction.

International Projects

Although Switzerland is one of the founding members of the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*) (FIDIC), which has its offices in Geneva, the FIDIC forms are not used in Switzerland, not even for international projects. For most international projects, the same templates and norms are used as for local projects (*see above, Local projects*).

Contractual Issues

Contractors' Risks

7. What risks are typically allocated to the contractor? How are these risks offset or managed?

Under Swiss statutory law, a contractor usually has the same duties of care as an employee in an employment relationship, that is, the contractor must either:

- Carry out the work in person.
- Have the work carried out under his or her personal supervision.

Under statutory law, the contractor is liable for any defects of the work (including but not limited to fitness for purpose warranties, design liability and so on). Other risks such as ground condition risk and change in law risk can be contractually allocated to the contractor. If the work is defective to the extent that the customer has no use for it or cannot equitably be expected to accept it, the contractor is at fault and the customer can seek damages.

The risk of destruction of the work before completion or delivery usually lies with the contractor. As a result, the contractor is not entitled to payment for any unfinished work and must, provided that reconstruction is possible, re-do the work at its own cost, unless the reason for the destruction is attributable to the customer.

Where the parties have agreed on a lump sum for the work, the contractor must carry out the work for the fixed price, even in cases where its expenses are higher than contemplated. The only exception to this rule applies in the case of extraordinary circumstances that were unforeseeable or excluded under the contract. In practice, however, the Swiss courts have discretion to qualify additional work as extra performance under the agreement, therefore approving the price increase by the contractor.

Since all these rules are non-mandatory, the statutory regime can be contractually modified in favour of the client or the contractor.

Excluding Liability

8. How can liability be excluded or restricted under local law?

Contractual liability can be excluded, restricted or modified at will under Swiss law,, except liability for damages caused by wilful intent or gross negligence.

Under statutory law, the contractor can also exclude its liability for acts carried out by its auxiliaries, including its subcontractors.

In any event, excluding liability for physical injury is not possible.

Caps on Liability

9. Do the parties usually agree to a cap on liability? If yes, how is this usually fixed? What liabilities, if any, are typically not capped?

Caps on liability take various forms in contractual practice in Switzerland (for example, caps on the amount of insurance coverage or multiples of the compensation). However, such caps do not apply to cases of liability due to gross negligence or wilful intent.

Force Majeure

10. Are force majeure exclusions available and enforceable?

Under Swiss law, a force majeure event can break the causation link between an act/omission and the damage, and therefore exclude the liability of the contractor.

The Swiss Society of Engineers and Architects' Norm 118 (SIA Norm 118), which is often included in contracts, provides that the contractor is entitled to an extension of the contractually agreed deadline and to equitable compensation if the work is delayed due to a force majeure event.

Any delays in construction work resulting from the measures ordered by the Federal Council in connection with the fight against the COVID-19 crisis could potentially qualify as such a force majeure event (even though construction sites were not closed down during the lockdown in March to May 2020 and subsequent lockdowns). However, if the contractor is responsible for not being able to continue the work, for example, if the contractor does not comply with the prescribed hygiene measures, and the construction site as a result must be closed, the contractor would not be entitled to an extension of the contractually agreed deadline and/or an equitable compensation.

Material Delays and Variations

11. What contractual provisions are typically negotiated to cover material delays to the project?

Statutory law provides that the customer is entitled to withdraw from the contract before the agreed delivery date if the contractor either:

- Fails to commence the work on time or delays its performance in breach of contract.

- Falls so far behind schedule that there is no longer any prospect of completing the work on time, provided that the customer is not at fault.

As the above provision is vague and incomplete, the parties often agree on contractual penalties applicable in the case of delays. These penalties often consist of a percentage of the price depending on the importance of the delay, based on a clearly defined construction schedule.

Material Variations

12. What contractual provisions are typically negotiated to cover variations to the works?

Under statutory law, the customer can refuse acceptance and, if the contractor is at fault, seek damages if the work is so defective or deviates from the contractual terms to such an extent that the customer has no use for it or cannot equitably be expected to accept it (rescission).

In the case of minor defects or minor deviations from the contractual terms, the customer can either:

- Reduce the price in proportion to the decrease in value of the works (reduction).
- Require the contractor to rectify the work at its own expense and to pay damages if it was at fault, provided that rectification is possible without excessive costs to the contractor (repair).

In the case of works carried out on the customer's land or property which, by its nature, cannot be removed without disproportionate detriment to the contractor, the customer can only request a reduction of the price or repair.

This regime is often contractually modified so that the customer must first seek repair before other options are available.

In any case, the rights of the customer for defects in the work are forfeited if he or she is at fault for these defects due to having given instructions concerning performance of the work that were contrary to the express warnings of the contractor, or for any other reason.

Other Negotiated Provisions

13. What other contractual provisions are usually heavily negotiated by the parties?

Provisions relating to price, quality, performance securities, the definition of additional services and the construction schedule are usually heavily negotiated.

Subject to certain mandatory provisions, the parties are free to agree on all aspects of their contractual relationship.

Rights of Third Parties under Contracts

14. Does a third party who has or acquires an interest in the project, such as a funder, have any rights against those responsible for designing and constructing the works? Can a third party enforce the terms of a contract to which it is not a party?

Whether a third party who has acquired an interest in a project has contractual rights against those responsible for designing and constructing the works depends on the wording of the underlying construction contract and the specific contract the third party has concluded with the other parties involved in the project. A third party is only entitled to enforce the terms of the underlying contract if, by virtue of those contracts, it is:

- Made a party to or the beneficiary of the underlying construction contract.
- Given the right to enter into the underlying contract.

Architects, Engineers and Construction Professionals

15. How are construction professionals usually selected? Following selection, how are they then formally appointed?

For the realisation of a project of a certain size, the developer and/or the land owner, or the construction manager, generally invite several contractors to submit their offer for the works to be performed. Based on the offers received, the developer selects the most suitable offer and appoints the respective contractor, provided that it does not make a counter-offer which triggers further negotiations. This appointment is not subject to formal requirements, and can be made orally or in writing, or result from conclusive actions.

In the private sector, it is not mandatory to conduct a selection process through a tender process, whereas in the public sector the tender proceeding rules must be observed by public entities if certain thresholds for the work to be performed are reached or exceeded.

International treaties provide for such thresholds, which have been implemented in Switzerland on a federal, cantonal and even communal level. These national regulations set out the applicable formal procedure that guarantees equal treatment of the participating contractors and grants the contractor a right to appeal in certain cases.

16. What provisions of construction professionals' appointments are most heavily negotiated? Are liabilities commonly limited or capped in construction professionals' appointments?

Negotiated Provisions

See [Question 13](#).

Liability

See [Question 8](#).

Developers usually seek to exclude liability to the extent possible under mandatory Swiss law. Contractors, who are often in a weaker position, are frequently presented with a "take it or leave it" offer, resulting in the acceptance of unfavourable liability rules for them.

Certain contractual relationships, such as construction management agreements, are deemed to be agency contracts (*mandate, Auftrag*). Other agreements involve agency contract components, such as mixed agreements containing planning and management obligations. Under Swiss law, agency contracts can be terminated at any time by both the service provider and the principal. This provision is considered to be mandatory by the Federal Supreme Court and also applies to mixed agreements. However, if the mandate is terminated at an "inappropriate moment", the terminating party must indemnify the other party. This right of termination cannot be circumvented or hindered through contractual provisions (for example, notice periods or contractual penalties).

Payment for Construction work

17. What are the usual methods of payment for construction work? Are there ways for the contractor and consultants to secure payment or mitigate risks of non-payment under local law?

Methods of Payment

Under Swiss statutory law, payment for construction work is due on completion or delivery, unless the work is delivered in parts and payment by instalments has been agreed upon (in which case the amount due for each stage of the work is payable on delivery).

Parties often agree on monthly advance payments or payments on account in line with the progress of the work.

The Swiss Society of Engineers and Architects' Norm 118, which is frequently used in practice, provides for a sophisticated payment regime:

- Management services are invoiced monthly on a time-spent basis.
- Services delivered at fixed unit prices are invoiced monthly per delivered unit.
- Final accounting must be delivered, at the latest, two months after approval of the work, checked by the construction manager within 30 days, and paid within another 30 days.
- If the owner of the building is contractually entitled to retain a percentage of the monthly invoices, this amount is released on:
 - approval of the work;
 - receipt of final accounts and expiration of examination period; or
 - the granting of a joint and several surety or guarantee for the guarantee period (if applicable).

Securing Payment

A builder's lien over the property can be registered in the land register by any contractor and subcontractor that has supplied labour and materials (or labour alone) for construction work, demolition work, scaffolding work, work for securing the construction pit or other similar work. A builder's lien can be registered with the land register in Switzerland regardless of whether the debtor is the owner of the property, the general contractor, a tradesman, a tenant or any other person with rights over the property. However, where the debtor is a tenant or another person with rights over the property, the lien can only be registered if the owner has consented to the work.

Builder's liens are by far the most efficient way for contractors to secure payment claims and are widely used in practice, as the provisional registration of a builder's lien can easily be obtained through a summary judicial procedure.

Subcontractors

18. How do the parties typically manage their relationships with subcontractors?

Under statutory law, a contractor must carry out the work in person or have the work carried out under its personal supervision, unless the nature of the work does not require its personal involvement.

It is advisable to explicitly agree on the appointment of subcontractors in the construction agreement. The Swiss Society of Engineers and Architects' Norm 118 provides that, as a default rule, the appointment of subcontractors requires the prior consent of the building owner/customer.

The subcontractor is an auxiliary of the contractor and does not have a direct contractual relationship with the building owner/customer. The contractor is responsible for the actions of the subcontractor, unless its liability has been contractually excluded (see [Question 8](#)).

Licensing

19. What licences and other consents must contractors and construction professionals have to carry out local construction work? Are there any specific licensing requirements for international contractors and construction professionals?

There are no federal licensing requirements, for either national or international contractors and construction professionals. However, certain cantons (mainly the French and Italian speaking cantons) impose such requirements on engineers and architects, who are active in these cantons:

- In the cantons of Vaud, Fribourg, Geneva, Neuchâtel and Ticino, engineers and architects must be registered or authorised in the canton or at least fulfil certain qualifications to carry out certain categories of work. The scope of such works varies, but always includes the planning and/or submission of a building permit application.
- In the canton of Lucerne, engineers and architects must undertake specific professional education and training.

In all other cantons, access to the private and public construction sectors does not require a specific licence, either for national or for international contractors and construction professionals, unless tender conditions require certain qualifications. Some cantonal construction laws require that building owners hire authorised land surveyors.

In the majority of cantons where access to the construction sector is free for Swiss construction professionals, access is also free for international contractors and construction professionals.

20. What licences and other consents must a project obtain?

Before

Every construction in Switzerland requires a building permit. The requirements to obtain a permit are set out in the:

- Federal Statute on Zoning and Planning.
- Zoning and construction statutes enacted by the cantons and the communes.

Federal infrastructure projects are governed by specific federal statutes and are subject to a distinct authorisation procedure.

Complex projects require various authorisations in addition to a building permit. The issuance of such authorisations must be co-ordinated both procedurally and in substance.

During

Once a building permit has been granted, the construction must start within a certain deadline, otherwise the validity of the permit will lapse. A building permit will also lapse in the case of interruptions of the work for lengthy periods.

During the construction work period, the local construction supervisory authorities supervise and inspect the construction site to ensure that the building, the building pit and the scaffolding comply with the building permit and the applicable construction laws.

On Completion

On completion, the authorities inspect the building to verify compliance with the building permit and the applicable construction laws. In certain cantons, the authorities deliver a permit to use the building once these verifications are completed.

Projects Insurance

21. What types of insurance must be maintained by law? Are other non-compulsory types of insurance maintained under contract?

Compulsory Insurance

In most cantons, it is compulsory to take out insurance covering fire and elementary damages during the construction works.

Non-Compulsory Insurance

The building owner often takes out a civil liability insurance covering damages caused to third parties. In addition, it is common for the owner, contractor and other parties involved to take out insurance covering damages to the building during the construction process.

Contractors often take out, and owners often request, insurance to guarantee the performance of the works by the contractor (performance guarantee insurance) as well as insurance covering claims of the building owner for defects that appear during the warranty period.

Employment laws

22. What are the main requirements for hiring local and foreign workers?

Local Workers

Apart from the provisions in collective agreements (*see Question 23*) there are no requirements for hiring local workers.

Foreign Workers

Switzerland has entered into the Agreement on the Free Movement of Persons with the EU that allows EU citizens to take up residence in Switzerland, provided that they have signed an employment agreement with a Swiss employer.

Swiss employers that want to hire third country citizens must show that they were not able to find suitable workforce within Switzerland and the EU. Work permits for these workers are subject to quotas.

Foreign companies based in the EU that want to assign workers to work on projects in Switzerland can do so for a maximum duration of 90 days per calendar year through a simple online registration. However, by registering its employees, a company undertakes to grant them Swiss market standard salaries and working conditions for the duration of the assignment (subject to sanctions in the case of non-compliance). In the construction sector, they must also comply with the applicable collective agreements (*see Question 23*).

Assignments by EU companies exceeding 90 days or assignments by third country companies for any period require regular work permits for the assigned employees. Such permits are only granted if all of the following conditions are met:

- The employees benefit from Swiss market standard salaries and working conditions during the assignment. In the construction sector, these are set out in applicable collective agreements (*see Question 23*).
- Quotas are available.
- The project is in the general interest of the Swiss economy.

The same rules as for EU citizens apply to citizens of European Free Trade Association member states.

23. Which employment laws are relevant to projects?

Most construction workers in Switzerland are bound by collective agreements. The most important agreement is the collective agreement for the construction industry. These agreements contain specific rules that differ from the statutory labour law. For example, collective agreements contain minimum wage provisions, whereas Swiss statutory law does not.

24. Must an employer pay statutory redundancy or other payments at the end of a project? Are all employees eligible?

If employees become redundant at the end of a project, the employer can terminate their employment agreements. Unless the parties have agreed otherwise, the statutory notice period does not exceed three months. Collective agreements in the construction sector provide for notice periods of up to six months.

However, in certain circumstances (depending on the size of the company and the number of employees to be terminated), the employer has a statutory obligation to consult the employees and to provide a "social plan". The purpose of such a plan is to avoid the termination of employment agreements or reduce the number of terminations, and to mitigate their consequences. A social plan can include redundancy payments. If the parties cannot agree on a social plan, a federal instance or an arbitration court will decide on the plan.

Health and Safety

25. Which health and safety laws apply to projects?

The following health and safety laws apply to projects:

- Ordinance regarding the safety and health of construction workers of 29 June 2005 (Construction Works Ordinance).
- Ordinance regarding the avoidance of accidents of 19 December 1983.

- Ordinance No. 3 to the Labour Act of 18 August 1993.

The Construction Works Ordinance requires contractors to carefully plan construction works with regard to workers' health and safety and contains comprehensive regulations on the necessary measures a contractor must take for this purpose. The Swiss Accident Insurance Fund, a public law insurance institution, has issued an extensive online planning tool allowing contractors to customise their health and safety plan according to the construction works in question.

Under Swiss criminal law, any person engaged in the management or execution of construction or demolition work that wilfully disregards the accepted rules of construction and, as a result, knowingly or by negligence endangers the life and limb of others, is liable to a custodial sentence of up to three years and/or to a monetary penalty.

Depending on the circumstances of the case, the prosecution authorities can press further charges if the violation of health and safety rules causes (among others):

- Injury to a worker.
- The death of a worker.
- A conflagration.
- Flooding.
- The collapse of a building.
- A landslide.
- An explosion.

Environmental Issues

26. Which local laws regulate projects' effects on the environment?

To be authorised, all construction and infrastructure projects must comply with the requirements of the Spatial Planning Law and all relevant environmental regulations. The planning authorities must also integrate the requirements of environmental regulations into their zoning and planning instruments. These requirements are reviewed by the authorities that deliver building permits and are integrated in such permits.

Air

Air pollution is regulated by the Federal Environmental Protection Act (EPA) and the Ordinance on Air Pollution Control of 1985 (OAPC). As a general rule, air emissions must be limited at their respective source using state-of-the-art technology, provided that the costs of doing so are not excessive.

Existing and new facilities must comply with the emissions limitation standards provided under the OAPC and/or the construction and operating permits. If emissions due to combined sources of air pollution exceed exposition thresholds, the competent authorities will order stricter abatement measures.

Water

The Water Protection Act, supplemented by ordinances, applies to all public and private surface and underground waters. The Federal Fishing Act of 1991 includes further water protection provisions. Activities that may pose a risk to waters are subject to a permit issued by the competent cantonal authorities, for example, constructing and converting buildings and installations in areas that are particularly vulnerable (including operations such as excavations, earthworks and similar works).

Waste

Waste is any movable material disposed of by its holder, or the disposal of which is required in the public interest. Disposal of waste is governed by the EPA, which is complemented by several ordinances and rules, including the:

- Ordinance on Control and Disposal of Waste of 2015.
- Ordinance on Movement of Waste of 2005.
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989.

Construction waste, in particular polluted excavated material, must be disposed of according to the specific provisions applicable to hazardous waste.

Environmental Impact Assessments (EIAs)

Construction or planning projects for facility or transport infrastructure that may substantially impact the environment are subject to an EIA. EIAs are regulated by the EPA and the Federal Ordinance on Environmental Impact Assessment of 1988, which contains a list of projects that are subject to an EIA. The aim of an EIA is to assess the project's compliance with all relevant statutory provisions, as well as cantonal and municipal regulations.

The competent authority must assess the project's environmental impact based on the:

- Environmental report.
- Recommendations and observations of any other relevant cantonal or federal authorities (such as the federal or cantonal office for the environment, or the Federal Office of Energy).
- Observations and oppositions filed by any interested party.

The authority can impose all necessary additional measures or conditions to ensure compliance with the environmental regulations. The EIA is not a licence but is part of the general authorisation to build or a part of the planning procedure. The final decision (that includes the EIA) is published.

Sustainable Development

According to the Swiss Federal Office of Energy, about 50% of Switzerland's primary energy consumption is currently attributable to buildings. There is a very large potential for enhancing energy efficiency in the construction sector. Under Article 89 of the Federal Constitution and the Federal Energy Act of 2016, the cantons are responsible for enacting and implementing provisions on the efficient use of energy in the construction sector. They have adopted common energy standards (*Modèle de prescriptions énergétiques des cantons*) (MoPEC 2014, as amended in 2018), some of which are based on the norms of the Swiss Society of Engineers and Architects and which cover a large range of issues (including building shell, heating system and isolation). The cantons must integrate these standards in their own statutes.

27. Do new buildings need to meet carbon emissions or climate change targets?

Switzerland is a party to the UN Framework on Climate Change (UNFCCC) and the Kyoto Protocol. The legal framework for the implementation of the Kyoto Protocol is set out in the Federal Act on the Reduction of CO₂ Emissions of 2011 (CO₂ Act) and the Ordinance for the Reduction of CO₂ Emissions (CO₂ Ordinance). The CO₂ Act sets a reduction target for CO₂ emissions until 2020 of 20% compared to the CO₂ emissions in 1990 and a further reduction of 1.5% in 2021.

One of the measures under the CO₂ Act for the reduction of CO₂ emissions is a levy on CO₂ emissions. One-third of the revenue from the CO₂ levy is used for the federal and cantonal buildings programme. This programme promotes the renovation of building shells as well as investments in renewable energies, waste, heat recovery and building utilities.

The cantons must define standards for the continuous reduction of CO₂ emissions in both new and older buildings (*Article 9, CO₂ Act*). The cantons' common energy standards (*Modèle de prescriptions énergétiques des cantons*) (MoPEC 2014, as amended in 2018) set out technical standards in this respect, which the cantons need to implement. Since 2018, the cantons have been reporting to the federal government on the "impact of climate and energy policy in the cantons". The reports present the energy consumption on CO₂ emissions from buildings per canton and estimate the impact of cantonal measures.

On 6 October 2017, Switzerland ratified the UNFCCC Paris Agreement and committed itself to reduce its greenhouse gas emissions by 50% by 2030 as compared with 1990 levels. To reach this target, the Federal Council proposed a revision of the CO₂ Act, which included new measures to reduce CO₂ emissions such as, among others, carbon emissions restrictions and thresholds for new and existing buildings. After the completion of the legislation process, a popular referendum was called against the revised CO₂ Act and, on 13 June 2021, the revised CO₂ Act was refused by the Swiss people.

Prohibiting Corrupt Practices

28. Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

Rules

The rules prohibiting corrupt business practices and bribery are set out in the Swiss Federal Criminal Code (SCC). There are no specific rules targeting the construction sector.

The SCC contains provisions regarding bribery in both the public and private sector.

Under the definition of bribery in the public sector included in the SCC, it is a crime for any person to offer, promise or give an official a bribe, or for an official (whether a Swiss or a foreign official) to accept a bribe. Granting an advantage to an official and the acceptance of such advantage by an official are also crimes under Swiss law.

Bribery in the private sector has a similar definition. The SCC provides that it is a crime for a person to offer, promise or give an employer (a company member, agent or any other auxiliary to a third party) in the private sector an undue advantage, or for an employer (a company member, agent or any other auxiliary to a third party) to accept an undue advantage. Advantages permitted under public employment law or contractually approved by a third party, as well as negligible advantages that are common social practice, do not qualify as undue advantages.

While criminal sanctions are usually aimed at individuals only, companies can also be prosecuted for corruption and held liable if they fail to take all reasonable organisational measures to prevent bribery.

Penalties

In the case of bribery of Swiss or foreign public officials, individuals face a penalty of imprisonment of up to five years or a monetary penalty (depending on the income and wealth of the individual).

In the case of bribery in the private sector, individuals face a penalty of imprisonment of up to three years or a monetary penalty (depending on the income and wealth of the individual).

A company that failed to take all the reasonable organisational measures that were required to prevent the bribery of officials or private persons is liable to a monetary fine of up to CHF5 million (*Article 102, SCC*).

Bankruptcy/Insolvency

29. What rights do the various parties involved in the project have on the contractor's bankruptcy or insolvency?

Clients

The bankruptcy or insolvency of the contractor does not automatically terminate the contract for work, unless the parties have specifically agreed to the termination in the contract.

Under the Swiss Debt Enforcement and Bankruptcy Act, on the opening of bankruptcy proceedings, non-monetary claims (such as the performance of construction work) are converted into monetary claims representing the value of the original claim, which can then be produced in the bankruptcy proceedings. However, the receiver of the bankrupt contractor can decide to perform the contract for works. In such a case, the receiver must inform the client that he or she will perform the contract and the client can request security. The client can withdraw from the contract if, on request, no security is provided for the performance of the contract.

Funders

The rights of the funder/s are governed by the contractual relationship between the funder/s and the client.

Contractors

The receiver of the bankrupt contractor can claim remuneration from the client for works that have been performed until the date of the opening of the bankruptcy proceedings, provided that such works represent an added value for the client.

Consultants

Consultants of the contractor who have a monetary claim towards the contractor must file their claim in the bankruptcy proceeding of the contractor. If the consultant of the contractor is a subcontractor and consequently must perform certain works for the contractor, the contract between the subcontractor and the contractor does not automatically terminate, unless the parties have specifically agreed to that. However, if the contract continues to be in force and the receiver wishes for the contract to be fulfilled, the subcontractor has the right to ask for a security for the performance of the contract before starting the work.

Public Private Partnerships

30. Are public private partnerships (PPPs) common in local construction projects? If so, which sectors commonly use PPPs?

PPPs are not broadly used in Switzerland but have become more popular in recent years.

PPPs are used for projects in the following sectors:

- Industry.

- Infrastructure (for example, fire stations, day-care centres, underground parking lots, long-distance heating stations).
- Transport (for example, bus stations, bike stations in Zurich).
- Leisure (for example, sports and events centres).
- Defence.

31. What local laws apply to PPPs?

There is no specific legislation on PPPs in Switzerland. However, the federal administration must assess for each project whether a PPP may be appropriate (*Article 52a, Financial Budget Ordinance*).

32. What is the typical procurement/tender process in a PPP transaction? Does the government or another body publish standard forms of PPP project agreement and related contracts?

Typical Procurement or Tender Process

Due to the lack of specific legislation for PPPs, the general rules on procurement/tender apply. The central issue of whether a PPP project is subject to public procurement law must be carefully examined in each case.

The main stages of the procurement process are as follows:

- Publication of the invitation to tender for a planned contract on www.simap.ch.
- Submissions by suppliers within the deadline.
- Evaluation of the offers submitted and determination of the economically most advantageous offer.
- Potential appeal procedures.

Below certain turnover thresholds, procurements can be awarded through a (less restrictive) invitation procedure or a limited tender procedure, under which the award can be awarded directly to a specific supplier without conducting a tender procedure. There are certain exemptions that also justify the application of the limited tender procedure (for example, if the contract has special technical or artistic features that can only be provided by one specific supplier or in the absence of adequate alternatives).

Standard Forms of PPP Project Agreements/Related Contracts

There are no standard contracts/forms or best practice rules for PPPs.

Dispute Resolution

33. Is your jurisdiction subject to any specific laws on how construction disputes are resolved?

In Switzerland, construction disputes are generally held in state courts and are based on the Swiss Civil Procedure Code (CPC).

In 2018, the Swiss Society of Engineers and Architects issued SIA Norm 150 which regulates arbitration proceedings for construction disputes. If the parties chose to apply this norm to any construction dispute that arises between them, any decision of the arbitral tribunal will become final and binding at the time of the rendering of the award (unless one of the rare cases apply where an appeal to the Swiss Federal Supreme Court is possible).

34. Which are the most common formal dispute resolution methods used? Which courts and arbitration organisations deal with construction disputes?

Formal Dispute Resolution Methods

The most commonly used formal dispute resolution methods in domestic matters are regular court litigation and ad hoc or institutional arbitration. Arbitration clauses are regularly used in international projects.

Courts and Arbitration Organisations

The applicable court litigation proceedings mainly depend on the value at stake. Usually, the regular courts of first instance are competent and a mandatory conciliation procedure must be followed before the actual court litigation.

In certain cantons a cantonal commercial court is put in place, which is then usually competent, if at least the defendant is a commercial enterprise. In this case, no conciliation procedure is required before filing a lawsuit. In litigations with a value exceeding CHF100,000, the parties can agree to submit the case directly to the superior court, which will then act as single (cantonal) instance.

In arbitration proceedings, the use of arbitration institutions (such as the International Chamber of Commerce (ICC)) and ad hoc arbitration clauses are both frequent. In addition, there is a specialised local arbitration tribunal in the real estate sector, the Arbitral Tribunal for the Swiss Real Estate Industry (*Schiedsgericht der*

Schweizer Immobilienwirtschaft) of the Swiss Association of Real Estate Trustees (*Schweizer Verband der Immobilienreuhänder*) (SVIT) (www.svit-schiedsgericht.ch).

35. What are the most commonly used alternative dispute resolution (ADR) methods?

Parties commonly agree in their contract that, before initiating court or arbitral proceedings, they must submit their disputes to an institutional or informal conciliation or mediation procedure led by mediators specialised in construction and/or real estate matters.

Under the Swiss Civil Procedure Code, the parties can agree that mediation replaces the conciliation procedure that is usually required before initiating first instance court litigation. Parties can also at any time jointly request the court to suspend the proceedings to conduct mediation.

Tax

36. What are the main tax issues arising on projects?

Corporate Income tax

Swiss tax resident contractors are subject to Swiss corporate income tax. The tax rates range between 12% and 24% (federal/cantonal/communal) depending on the canton and the community. More than half of the cantons have lowered corporate income tax rates and have tax rates between 12% and 14% (federal/cantonal/communal). A Swiss tax resident contractor may be liable to tax in a particular canton by reason of tax residence, ownership of immovable property or maintaining a permanent establishment in the canton. Taxable income corresponds to the annual profit of the Swiss statutory profit and loss statement, subject to Swiss tax provisions (for example, transfer pricing, thin cap and interest rate rules). Taxable profit includes all income derived from any source, in particular rental and lease income, real estate capital gains, income from general contractor agreements, income from constructional services and so on.

Foreign tax resident contractors are subject to Swiss corporate income tax of between 12% and 24% (federal/cantonal/communal). A foreign tax resident contractor may be liable to tax in a particular canton by reason of ownership of immovable property or maintaining a permanent establishment in the canton. The mere ownership of real estate (*Kapitalanlageliegenschaft*) does not constitute a permanent establishment. According to Swiss double tax treaties concluded with foreign contracting states, a construction project lasting for more than 12 months generally constitutes a permanent establishment in Switzerland. Taxable income corresponds to the annual profit that is attributable to the real estate or the permanent establishment if it were a separate and independent enterprise (functionally separate entity approach).

In some cantons, Swiss tax resident and foreign tax resident companies are subject to cantonal and/or communal real estate capital gains tax on real estate capital gains (monistic taxation scheme) instead of cantonal and communal corporate income taxes (dualistic taxation scheme; see below, *Other taxes*). At federal level, real estate capital gains are always subject to federal corporate income tax. The federal corporate income tax rate is 7.83% (effective tax rate).

Real Estate Capital Gains tax

In some cantons and communities, Swiss tax resident and foreign tax resident companies are subject to cantonal and/or communal real estate capital gains tax on real estate capital gains instead of cantonal and communal corporate income taxes (monistic taxation scheme). At federal level, real estate capital gains are always subject to federal corporate income tax. The tax rates of the real estate capital gains tax range between 10% and 60% (cantonal/communal) depending on the canton and the community as well as the holding period and the progression. Further, real estate capital gains tax includes charging provisions to tax the transfer of shares (share deals) in real estate companies (*wirtschaftliche Handänderung*).

Switzerland has concluded an increasing number of double tax treaty provisions (in accordance with Article 13(4) of the OECD Model) with foreign contracting states that allocate taxing right for capital gains derived upon the sale of shares in a Swiss real estate company to Switzerland as source state.

Further, real estate capital gains tax includes tax mortgage provisions according to which the canton and/or community has an interest in the sold real estate for the proportion of the seller's tax liability that is attributable to the real estate capital gain. This tax mortgage may be registered in the land register and be enforced against the real estate. As a consequence, the purchaser generally asks for the inclusion of an escrow account clause in the purchase agreement.

Real Estate Transfer tax

In some cantons and/or communities, the transfer of real estate is subject to cantonal and/or communal real estate transfer tax. Some cantons charge registration fees only (Zurich, Uri, Glarus, Zug, Schaffhausen, Aargau, Tessin and Wallis) and one canton does not tax transfers of real estates (Schwyz). The purchaser is generally subject to tax. In some cantons, both the seller and the purchaser are subject to tax. Always, the tax burden is subject to contractual negotiation. Tax rates are generally proportional and vary between 1% and 3% of the purchase price or the administrative value. Further, real estate transfer tax generally includes a charging provision in order to tax the transfer of shares (share deals) in real estate companies (*wirtschaftliche Handänderung*).

Compensation duty

A Swiss tax resident or foreign tax resident owner of real estate is subject to cantonal compensation duty (*Mehrwertabgabe*) if the real estate benefits from significant planning advantages under public construction law. In particular, the permanent assigning of parcel of lands to a private building zone is subject to compensation duty (for example, a parcel of land is reclassified from agriculture zone or public building zone to private building zone). Cantons tax the planning advantages at a rate of at least 20%. The payment of the compensation is deferred and becomes due until the development or disposal of the real estate. The compensation duty can be deducted as expense from the real estate capital gain for purpose of cantonal and/or communal real estate capital gains tax.

Value Added tax

Swiss tax resident contractors and Swiss permanent establishment of foreign tax resident contractors (dual entity approach) are subject to Swiss value added tax (VAT) if they generate a taxable turnover in Switzerland of at least CHF100,000 a year.

Foreign tax resident contractors without Swiss permanent establishment are subject to Swiss value added tax (VAT) if they generate taxable turnover in Switzerland and the worldwide taxable turnover is at least CHF100,000 a year.

Partnerships and consortiums that act in their own name become themselves subject to VAT if the above requirements are fulfilled.

Subject to VAT is taxable turnover. Turnover is generally taxable if goods are delivered and services are provided in Switzerland (destination principle). The standard tax rate is 7.7%. The contractors are entitled to reclaim Swiss input VAT incurred in the course of the entrepreneurial activities that generate taxable turnover.

Goods delivered and services provided by contractors are generally subject to the standard VAT rate of 7.7%. Contractual deliveries and services are generally supplied at the place where the property is situated. If the property is situated abroad, there is no supply in Switzerland and, thus, no taxable turnover.

Examples of constructional delivery of goods:

- Work on immovable property.
- Work according to a general contractor agreement and subscription agreement.
- Work on temporary installations (scaffold, building side installations, constructions panels and so on).
- Leasing of equipment (machines, devices, vehicles and so on).
- Supply of equipment and materials.

Examples of constructional provision of services:

- Projects, plans, models, implementation and execution plans.
- Calculations, submission procedures, externalisation work, construction management and supervision.
- Ground surveys, wastewater analysis, measurements, aerial views.
- Staff leasing.
- Disposal and deposit and transport of objects.
- Market value estimates.
- Expert opinion on construction faults.
- Brokerage of real estate.
- Administration of real estate.

Letting and leasing of real estate are exempted from VAT. As a consequence, the owner is not entitled to reclaim Swiss input VAT incurred in the course of the entrepreneurial activities. The lessor of business premises, therefore, generally opts to treat the lease as liable to VAT to allow itself and the tenants to reclaim Swiss input VAT. The lessor

also generally opts that the sale of real estate is liable to VAT to the extent that the lease revenues have been subject to VAT and the purchase price is attributable to the sold building but not the land to avoid claw-back of previously reclaimed Swiss input VAT. To avoid cashflow drain, the parties generally agree to apply the notification procedure and to fulfil the tax liability of the seller by notification to the Federal Tax Administration.

Other Taxes

Swiss source tax: Interest paid on a loan secured by mortgage on real estate situated in a canton to a foreign tax resident mortgage lender is subject to Swiss source taxation (federal/cantonal/communal). The tax rate depends on the canton and the community. The foreign tax resident mortgage lender is subject to Swiss source tax. Further, the debtor is obliged to withhold the tax from the interest and to remit it to the cantonal tax administration. The debtor is jointly and severally liable for the payment of the tax. According to double tax treaties, Switzerland has a taxing right only if the debtor is Swiss tax resident and, therefore, the interest is Swiss source. Further, Switzerland has concluded double tax treaty provisions with foreign contracting states that generally split the taxing right for interest between the resident state of the recipient and Switzerland as source state.

Corporate capital tax: Swiss tax resident contractors are subject to Swiss corporate capital tax between 0.001% and 0.5% (federal/cantonal/communal). Taxable capital corresponds the share capital, capital reserve and profit reserve of the Swiss statutory balance sheet, subject to Swiss tax provisions (such as thin cap rules). A Swiss tax resident contractor may be liable to tax in a particular canton by reason of tax residence, ownership of immovable property or maintaining a permanent establishment therein. Foreign tax resident contractors are subject to Swiss corporate capital tax between 0.001% and 0.5% (federal/cantonal/communal). A foreign tax resident contractor may be liable to tax in a particular canton by reason of ownership of immovable property or maintaining a permanent establishment therein. Taxable capital corresponds the capital that is attributable to the real estate or the endowment capital that is attributable to the permanent establishment if it were a separate and independent enterprise (functionally separate entity approach).

Swiss dividend withholding tax (WHT): Swiss tax resident companies that hold real estate in Switzerland are subject to Swiss dividend withholding tax (WHT) on dividends at a rate of 35%. Swiss resident shareholders are entitled to full relief and foreign tax resident shareholders are entitled to partial or full refund according to a double tax treaty concluded between Switzerland and the foreign residence state of the shareholder. Further, Switzerland has concluded a zero WHT rate for inter-company dividends with EC Member States (Article 9 of the Agreement between the European Community and the Switzerland providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments). Foreign tax resident companies that hold real estate in Switzerland are not subject to Swiss WHT irrespective of whether they are liable to tax in a particular canton by reason of ownership of immovable property (*Kapitalanlagelienshaft*) or maintaining a permanent establishment therein. Repatriation of profits of a Swiss permanent establishment is not subject to Swiss WHT.

Swiss interest withholding tax (WHT): Interest paid on debentures (*Obligationen*) issued by Swiss tax resident persons and interest on Swiss bank deposits (*Kundenguthaben*) are subject to Swiss interest withholding tax (WHT) at a rate of 35%. Swiss resident recipients are entitled to full relief and foreign tax recipients are entitled to partial or full refund according to a double tax treaty concluded between Switzerland and the foreign residence state of the recipient. Interest paid by Swiss tax resident borrowers on individual loans, private placements and intercompany loans is generally not subject to WHT unless a loan is qualified as Swiss bond, a Swiss note or a Swiss bank deposit. A Swiss borrower is deemed to issue a bond (*Anleihensobligation*) if funds are borrowed under the same terms from more than ten non-bank lenders (ten non-bank lenders rule) or a Swiss note (*Kassenobligation*) under different terms from more than 20 non-bank lenders (20 non-bank lenders rule).

37. Are any methods commonly used to mitigate tax liability on projects? Are there any tax incentives to carry out regeneration projects?

Tax Mitigation

The tax planning tools to mitigate tax liability on projects or real estate transactions include:

- Purchasers of real estate can finance the acquisition company through shareholder loans. Interest on shareholder loans are tax deductible for Swiss corporate income tax purposes and can be set off against rental and lease income. Further, interest is not subject to Swiss interest withholding tax subject to thin capitalisation and interest rate rules as well as 10 non-bank/20 non-bank lenders rules (see [Question 36](#)). Further, shareholder loans reduce taxable capital for Swiss capital tax purposes subject to thin capitalisation rules. Depreciation of the real estate tax base is tax deductible for Swiss corporate income tax purposes and can be set off against rental and lease income.
- To comply with the ten non-bank/20 non-bank lenders rule, Swiss tax resident borrowers and foreign lenders can agree on the inclusion of Swiss borrower language (transfer restriction and minimum interest clauses).
- To avoid Swiss source taxation of interest paid on a loan secured by mortgage on real estate situated in a Swiss canton to a foreign mortgage lender by a Swiss tax resident debtor, both can agree on the inclusion of Swiss treaty lender language (transfer restriction).
- To avoid cashflow drain, the seller and the purchaser of a Swiss real estate transaction can agree to apply the notification procedure (*Meldeverfahren*) according to which the seller can fulfil the VAT liability by notification to the Federal Tax Administration. Without notification procedure, the seller must charge VAT on top of the purchase price (for the building, but not for the land), the purchaser must pay and finance the VAT and is entitled to reclaim the paid VAT only in the first quarter following the transaction.
- Purchasers of Swiss real estate often use a two-tier acquisition structure where the acquisition company and the overlying holding company are tax resident in a foreign treaty state that has not concluded a treaty provision (in accordance with Article 13(4) of the OECD Model) that allocates taxing right for capital gains derived upon the sale of shares in a Swiss real estate company to Switzerland as source state. The purchaser plans the exit through a share deal where the overlying holding company sells the shares in the acquisition company. Switzerland has not yet opted to apply Article 9(1) of the Multilateral Instrument that provides for a provision equivalent to Article 13(4) of the OECD Model. However, Swiss double tax treaties are increasingly including tax treaty provisions in accordance with Article 13(4).

Tax Incentives

Tax incentives to carry out regeneration projects relate to investments in residential real estate include:

- Individuals can deduct from taxable income for Swiss individual income tax purposes investments in existing residential real estate for efficient energy use and use of renewable energy, in particular measures for reduction of energy losses of building cover and measures for efficient energy use of facility equipment. Cantons generally treat investments in existing residential real estate for photovoltaics as measures for efficient energy use and use of renewable energy.
- Subsidies that are paid by state authorities (for example *Gebäudeprogramm*) for investments in existing or new residential real estate for efficient energy use and use of renewable energy are taxable for Swiss individual income tax purposes.

Other Requirements for International Contractors

38. Are there any specific requirements that international contractors or construction professionals must comply with?

There are no additional specific requirements for international contractors.

Developments and Reform

39. Are there any significant developments or proposals for reform that may have an impact on construction projects in the future?

Reform Proposals

At the moment there are several reform proposals pending in the field of construction law:

- **Amendment of condominium ownership law (*Stockwerkeigentum*).** A report conducted for the Federal Council concluded that certain areas need reform. In particular, the acquisition of condominium ownership "off plan" (before construction is concluded) needs to be standardised and formally stipulated in the law. The proposal was discussed and adopted in the National Council. It must now be discussed by the Council of States.

The report also discusses the need to increase the quora for decisions on construction measures on common parts.

Another important part of the intended revision is to examine whether legislative amendments are necessary to simplify energy-efficient refurbishment of condominium ownership.

- **Revision of building contract law.** Due to various parliamentary motions, the Federal Office of Justice is preparing a revision of the legal provisions on building contract law. The revision intends to strengthen the rights of building owners.
- **Abolition of the imputed rental value (*Eigenmietwert*).** An initiative to abolish the imputed rental value and thus to implement a system change in the taxation of residential property is currently pending. It is still unclear how the initiative should be implemented exactly. The Federal Council was formally invited to comment on the change of system and its concrete implementation in March 2020. However, due to the COVID-19 crisis this deadline was extended until the Autumn of 2021.

Trends

See [Question 1](#)

Contributor profiles

Catrina Luchsinger Gaehwiler, Partner

MLL Meyerlustenberger Lachenal Froriep Ltd

T +41 58 552 03 80

E catrina.luchsinger@mll-legal.com

W www.mll-legal.com

Professional qualifications. Switzerland, Attorney at law

Areas of practice. Financial markets/capital markets, predominantly for real estate investment products.

Non-professional qualifications. Dr. iur (PhD)

Languages. German, English

Professional associations/memberships. Zurich Bar Association; Swiss Bar Association; International Pacific Bar Association (Vice Chair Banking & Finance).

Publications. See: <https://www.froriep.com/en/people/dr-catrina-luchsinger-gahwiler/>

Marcel R. Jung, Tax Partner

MLL Meyerlustenberger Lachenal Froriep Ltd

T +41 58 552 06 30
E marcel.jung@mll-legal.com
W www.mll-legal.com

Professional qualifications. Switzerland, Certified tax expert, Attorney at law

Areas of practice. Tax law.

Languages. German, English

Non-professional qualifications. Dr. iur (PhD)

Professional associations/memberships. Zurich Bar Association; Swiss Bar Association; International Bar Association; International Fiscal Association.

Publications. See: <https://www.froriep.com/en/people/marcel-r-jung/>

Benjamin Dürig, Counsel

MLL Meyerlustenberger Lachenal Froriep Ltd
T +41 58 552 03 83
E benjamin.duerig@mll-legal.com
W www.mll-legal.com

Professional qualifications. Switzerland, Attorney at law

Areas of practice. Real estate; mergers and acquisitions; banking and finance; corporate and commercial.

Languages. German, French, English

Professional associations/memberships. Zurich Bar Association; Swiss Bar Association; Franco-Swiss Chamber for Trade and Industry; International Association of Young Lawyers (AIJA).

Publications. See: <https://www.froriep.com/en/people/benjamin-durig/>

Romina A. Brogini, Senior Associate

MLL Meyerlustenberger Lachenal Froriep Ltd
T +41 58 552 08 00
E romina.brogini@mll-legal.com
W www.mll-legal.com

Professional qualifications. Switzerland, Attorney at law

Areas of practice. Real estate; litigation; public commercial and construction law; arbitration; competition law.

Languages. German, Italian, English, French

Professional associations/memberships. Zurich Bar Association; Swiss Bar Association; Franco-Swiss Chamber for Trade and Industry; International Association of Young Lawyers (AIJA).

Publications. See: <https://www.froriep.com/en/people/romina-a-brogini/>

END OF DOCUMENT

Related Content

Topics

[Real Estate Finance and Investment Development and Construction](#)
[Contracts](#)
[Construction Litigation](#)
[International Construction Contracts](#)
[PFI/PPP](#)

Tasks

[Construction and engineering contracts](#)

Practice note: overview

[Assignment and novation of construction documents](#) • [Maintained](#)
[FIDIC Forms of Contract](#) • [Maintained](#)
[Adjudication toolkit](#) • [Maintained](#)

Practice notes

[Selecting the Right Private Project Delivery System](#)

Country Q&A

[Commercial real estate in Switzerland: overview](#) • [Law stated as at 01-May-2020](#)
[Environmental law and practice in Switzerland: overview](#) • [Law stated as at 01-Jun-2020](#)
[Electricity regulation in Switzerland: overview](#) • [Law stated as at 01-Nov-2020](#)

Toolkit

[Purchasing and Selling Commercial Real Estate Toolkit](#) • [Maintained](#)