Consultancy agreements (short form) Q&A: Switzerland

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Country Q&A | Law stated as at 31-Jul-2020 | Switzerland

Switzerland-specific information concerning the key legal and commercial issues to be considered when drafting consultancy agreements for use internationally.

This Q&A provides country-specific commentary on *Practice note, Consultancy agreements: International*, and forms part of *Cross-border employment*.

See also *Standard document, Consultancy agreement (short form): International*, with country-specific drafting notes.

Status of the consultant

1. Is there a risk in your jurisdiction that a consultant could be deemed to be an employee of the company and then acquire employment rights?

In Switzerland, a consultant could be deemed to be an employee of a company, and acquire the protected rights of an employee, depending on the factual situation (which should be assessed on a case-by-case basis, taking into account all circumstances). The Swiss Supreme court case law establishes that the factors which distinguish an independent contractor from an employee are:

- The contractor does not provide services exclusively to one company/client.
- There is no subordination of the contractor to the company to which they are providing services.
- The contractor is able to organise their work freely in terms of schedule, activity and location.
- The contractor does not receive a fixed remuneration.
- The contractor bears a certain economic risk.

(*ATF 125 III 78, paragraph 4; ATF 112 II 41, paragraph 1a/aa. and 1a/bb; Swiss Supreme Court 4A 200/2015 of 3 September 2015, paragraph 4.2.1; Swiss Supreme Court 4P.337/2005 of 21 March 2006, paragraph 3.3.2; Swiss Supreme Court 4C.276/2006 of 25 January 2007, paragraph 4.4.1*).

Factors indicating a genuine consultancy relationship

- The ability to operate investments (that is, to decide to make and to manage investments on the consultant's own account for their own business operation).
- The obligation to fund the general costs and expenses related to the activity.
- Acting in their own name and on their own account.
- Finding their own clients.
- Occupying (that is, instructing workers with work) and bearing the costs of their own workers.
- Using their own premises, tools and materials.
- Having at least three ongoing clients.
- Having the ability to terminate the consultancy relationship at any time.
- Having the ability to appoint a substitute for the performance of the services.
- Being registered as an independent contractor for social security purposes.

Factors indicating an employee relationship

- The obligation to respect instructions in terms of programme, working schedule, location, or instructions to perform tasks and how to perform the work, among other things.
- The obligation to record working time, since the employer has a legal obligation to make sure that their employees are recording their working time.
- The obligation to perform the duty personally.
- The presence of a non-compete clause in the contract of employment.
- The general obligation of presence (meaning both physical presence in the workplace, and presence at specific times/days).
- The regularity of the collaboration.
- The obligation on the worker to provide regular feedback on the progress of their duties.
- The use of the employer's premises, tools, apparel or equipment, among other things.
- Remuneration that relates to the time spent and not to the result provided.
- The existence of a probationary period.
- The granting of vacation subject to the approval of the employer.
- Appearing integrated into the employer's organisation (for example, having a company professional email address or being part of the organisation chart, among other things).

2. Could the consultant acquire any other status as a result of the agreement?

Switzerland only offers the status of an employee or an independent contractor: there is no intermediary status. Therefore, if the individual is deemed to be an employee, they will benefit from all related mandatory rights arising out of labour and social security laws.

3. If there is a risk of the consultant being deemed to be an employee in your jurisdiction, what are the tax consequences that could arise for:

- the consultant;
- the company?

Consultant

Should the consultant be considered to be an employee, the applicable tax principles would differ. Employees would not be able to deduct professional expenses from their taxable income. Moreover, consultants' services are generally subject to VAT while employees' wages are not.

Company

Should the consultant be considered to be an employee, the tax consequences would depend on the employee's actual situation. The company could be responsible for, among other things:

- The payment of tax at source.
- The preparation of yearly salary certificates for tax declaration purpose.

The payment of the applicable social security contributions (under the Federal Act of 20 December 1946 on Old-Age and Survivors, Federal Act of 19 June 1959 on Invalidity Insurance, Federal Act of 25 September 1952 on Compensation for Loss of Earnings for Persons on Military Service or Maternity Leave, and the Federal Act of 25 June 1982 on Occupational Old Age, Survivors' and Invalidity Pension Provision).

From a tax procedure perspective, if the consultant is deemed to be an employee and should have been taxed at source, the tax administration will open a supplementary tax procedure on the company's side and probably a tax evasion procedure, with late interests and penalties. Both company and employee will be jointly liable for the tax debt.

On the consultant side, the opening of supplementary tax and tax evasion procedures will depend on the circumstances (for example, if they deducted professional expenses from their taxable income).

4. If there is a risk of the consultant being deemed to be an employee in your jurisdiction, how can the agreement be worded in order to minimise or eliminate this risk?

Under Swiss law, when assessing the form and terms of a contract, the true common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement (*Article 18§ §1, Swiss Code of Obligations*). Where the nature of the relationship is in dispute, the judge will interpret the agreement by assessing the factual factors indicating a consultancy or an employment relationship in order to determine what type of contract has been concluded by the parties, irrespective of the wording used in the agreement. It is therefore of the essence that the factual situation corresponds to the provisions of the agreement.

That being said, in case of consultancy agreement, it is recommended that the agreement clearly mentions that the consultant:

- Can work for several clients.
- Can organise their own work as they see fit.
- Must provide proof that they are registered with the social security authorities as an independent contractor.
- Is not subject to any notice period.
- Is able to appoint a substitute.
- The consultant's fee is not subject to any social security or tax at source deductions and any contributions due in this respect will have to be paid by him.

It should also avoid any mention of vacation entitlement, and any non-compete provisions.

5. To minimise any risk of the consultant being deemed to be an employee, is it common practice for provisions to be included in the agreement for:

- the appointment of a substitute at any time as set out in *Standard document, Consultancy agreement (short form): International: clause 2.4*?
- the consultant to carry out other activities for other parties as set out in *Standard document, Consultancy agreement (short form): International: clause 4*?

Are there any consequences of these clauses that the parties need to be aware of?

The insertion of these clauses will help reduce the risk of a requalification of the consultancy agreement as an employment agreement. That said, in the case of any dispute, the courts will assess the factual situation to determine whether the consultant is in fact an employee.

Vicarious liability

6. Does the law in your jurisdiction stipulate that the company could be responsible for the consultant's acts and behaviour, if they cause loss or damage to the company, its employees, customers or suppliers, during the term of the agreement?

Yes. By law, the consultant is considered to be an auxiliary of the "mandator" (that is, the company). In case of damage caused by the consultant to a third party within the framework of the tasks entrusted to the consultant by the company, the company may be held liable (*Article 101 § 1, Swiss Code of Obligations*). It is, however, possible to exclude such liability contractually, except in cases of fraud or serious misconduct (*Articles 100 § 1 and Article 101 § 2, Swiss Code of Obligations*).

Duration

7. Are there any limitations or requirements in law that the consultant or the company needs to be aware of in relation to the term or duration of the consultancy agreement (*Standard document, Consultancy agreement (short form): International: clause 1*)?

It is a legal obligation that the consultancy agreement must be able to be revoked or terminated at any time by either party (*Article 404 § 1, Swiss Code of Obligations*). Any prohibition or limitation on this in the consultancy agreement

will be unenforceable. Even if the agreement is specified as being for a fixed duration, the parties have the right to terminate that agreement at any time.

However, a party revoking the consultancy agreement at an inopportune time (that is, before the contract is fully performed) must compensate the other party for any resulting damages. According to the Swiss Supreme Court, two conditions must be met for such liability to exist:

- The absence of serious reasons for the termination.
- Damages for the contractor resulting from the measures taken by them in order to perform the agreement.

(*Swiss Supreme Court 4A 686/2016 of 12 July 2017, paragraph 3.1.*)

It should also be noted that, unless otherwise agreed, or implied by the nature of the agency business, the consultancy agreement ends automatically in the following circumstances:

- Loss of capacity to act.
- Bankruptcy.
- Death or declaration of presumed death.

(*Article 405 § 1, Swiss Code of Obligations.*)

Termination will be automatic unless to do so jeopardises the company's interests, in which case the consultant, their heir or their representative must continue conducting the agency business and carrying out the consultancy work until such time as the company is able to conduct it itself (*Article 405 § 2, Swiss Code of Obligations*). However, in principle this transfer of obligation does not apply if the mandate was given to the consultant because of their specific personal abilities or qualifications (for example, in the case of a doctor).

Services

8. Are there any duties or services that would be standard practice to include within the agreement (*Standard document, Consultancy agreement (short form): International: clause 2*)? Are there any duties imposed by national law on consultants?

The consultant's first duty is to render the agreed services. Swiss law provides that, unless expressly defined by the consultancy agreement, the scope of the consultancy is determined by the nature of the business to which it relates (*Article 396 § 1, Swiss Code of Obligations*). In particular, it includes the authority to carry out such transactions as are required for performance of the consultancy agreement (*Article 396 § 2, Swiss Code of Obligations*).

However, specific powers must be granted in order for the consultant to be able to perform certain actions, such as:

- To agree a settlement.
- To accept an arbitration award.
- To contract bill liabilities (as defined by Articles 990 and following of the Swiss Code of Obligations).
- To alienate or encumber land.
- To make gifts.

It is therefore vital that the parties stipulate the scope of the consultancy in their agreement, as well as the extent of the powers granted to the consultant.

By law, the consultant who has received instructions from the company on how to conduct the business entrusted to them may deviate from those instructions only to the extent that circumstances prevent them from obtaining the company's permission, and where they may safely assume such permission would have been forthcoming had the company been aware of the situation.

It is therefore only in specific circumstances that the consultant is allowed to deviate from the instructions received (that is, in cases where the instructions are illicit, unethical or unreasonable). As the consultant is deemed to be a professional, they have a duty to verify whether the received instructions are appropriate (that is, realistic and judicious considering the work to be performed) and reasonable.

The Swiss Supreme Court has held that a consultant who is a specialist in their field is not obliged to follow technical instructions but remains bound by the instructions in relation to the set objective.

If the consultant considers that the instructions received are unreasonable, they have a duty to inform the company and to limit the performance of the consultancy agreement to the necessary actions only, until the company clarifies the instructions. These duties are part of the consultant's general duty of diligence.

The company has, at all times, the unilateral right to specify, complete or limit the scope of the consultancy and to revoke its instructions as long as they have not already been not executed.

At the request of the client and at all times, the consultant is required to report on their work and to return to the company everything the consultant has received under the contract (*Article 400, Swiss Code of Obligations*). This includes, for example, information and documents, and also any benefit received from third parties in connection with the performance of the contract (commission, advance payments and gifts, among other things).

Apart from a precise definition of the work to be performed and the extent of the powers granted, it is standard practice to include clauses:

- Allowing the consultant to appoint substitutes.
- Allowing the consultant to work for other companies.
- Setting out duties of confidentiality.

Payments

9. In your jurisdiction, is it permissible to include provisions for any sums due to the company to be deducted from the amounts owed to the consultant as set out in *Standard document, Consultancy agreement (short form): International: clause 3.4* and *clause 10.4*?

Under Swiss law, where two persons owe each other sums of money or performance of identical obligations, and provided that both claims have fallen due, each party may set-off its debt against its claim.

The debtor may assert the right of set-off even if the countervailing claim is contested.

Standard document, Consultancy agreement (short form): International: clause 3.4 and *clause 10.4* would therefore be valid.

It should be noted that the right to set-off is more restrictive in the context of employment agreements; therefore, if the relationship were found to be one of employment, those clauses might not be enforceable, depending on the circumstances.

Tax and social security

10. What tax, social security or other payments will each party be liable to make in your jurisdiction as a result of the consultancy agreement and how should they be dealt with in the agreement (*Standard document, Consultancy agreement (short form): International: clause 3*):

- the consultant;
- the company?

Consultant

Tax. The consultant will be liable for the payment of their own income tax. Specific provisions apply, notably regarding the calculation of the income. Additionally, the consultant might be liable for the payment of VAT. No specific provision in the consultancy agreement is needed.

Social security. If recognised as self-employed by social security authorities, the consultant will be liable for the payment of mandatory contributions to social security. No specific provision in the consultancy agreement is required.

Other. N/A.

Company

Tax. The company will have no tax liability in relation to the consultancy agreement.

Social security. The company will have no liability for social security payments regarding the consultant.

Other. N/A.

Anti-bribery and corruption

11. What national and international anti-bribery and corruption legislation may the consultant be required to comply with in relation to services performed in your jurisdiction (*Standard document, Consultancy agreement (short form): International: clause 2.7*)?

Under the Swiss Criminal Code, it is an offence to bribe or to accept bribes in the private sector. To constitute an offence, the act to which the bribery relates must be in connection with the perpetrator's professional or commercial activities and in breach of their legal or contractual duties (*Article 322-octies, Swiss Criminal Code*).

It is also an offence to bribe or to offer to bribe a public agent. The Swiss Criminal Code prohibits the act of granting an advantage to a public agent. Granting an advantage is to be understood as promising or giving an undue advantage to a public agent for them to carry out their official duties.

Additionally, depending on the activity covered by the consultancy, some specific rules could apply (for example, banking or finance sector anti-bribery specific rules such as the Federal Act of 10 October 1997 on Combating Money Laundering and the Financing of Terrorism and its related Ordinance, or the Ordinance of the Swiss Financial Market Supervisory Authority of 8 December 2010 on the Prevention of Money Laundering and the Financing of Terrorism).

Data protection

12. What data protection and privacy issues arise in your jurisdiction as a result of this arrangement and where personal data is transferred internationally? Is *Standard document, Consultancy agreement (short form): International: clause 6* sufficient to address these issues?

Data privacy

Personal data must only be processed for the purposes stated at the time of processing (*Article 4 § 3, Federal Act on Data Protection*). The consent of the data subject must be explicit in any case of sensitive data processing (*Article 4 § 3, Federal Act on Data Protection*). Sensitive data includes information about:

- Religious, ideological, political or trade union-related views or activities.
- Health and racial origin.
- Social security measures.
- Administrative or criminal proceedings and sanctions.

(*Article 3 lit. c, Federal Act on Data Protection*.)

On request, the controller of the file must fully disclose all data pertaining to the data subject that are in the controller's possession, including information on the origin of the data (*Article 8 § 1, Federal Act on Data Protection*).

Data transfer

Swiss law provides that no personal data may be communicated abroad if the privacy of the data subject could be seriously endangered, in particular because of the absence of legislation ensuring an adequate level of protection (*Article 6 § 1, Federal Act on Data Protection*).

Transmission of data to other group entities abroad, as provided for in *Standard document, Consultancy agreement (short form): International: clause 6*, would only be possible to the extent that the relevant countries are explicitly mentioned, and that sufficient data protection is guaranteed in those countries. The Swiss Federal Data Protection and Information Commissioner's website lists the jurisdictions which meet the level of protection required by Swiss law (*www.edoeb.admin.ch/edoeb/en/home/data-protection/handel-und-wirtschaft/transborder-data-flows.html*).

Intellectual property

> 13. Other than where it is explicitly stated in the agreement, who will own any intellectual property rights created by the consultant during the term of the agreement under the laws of your jurisdiction (*Standard document, Consultancy agreement (short form): International: clause 7*)?

The consultant can validly assign all their intellectual property rights, but in this case, they retain a core of rights linked to their authorship of the work, such as:

- The right to be recognised as the author of the work (Article 9 § 1, Federal Act on Copyright and Related Rights).
- The right to oppose any distortion of the work that is a violation of their personality rights (for example, their professional reputation or their honour (*Article 11 § 2, Federal Act on Copyright and Related Rights*).

Indemnities

14. Does your national law recognise the concept of one party indemnifying the other as set out in *Standard document, Consultancy agreement (short form): International: clause 10*? If not, what can be included in the agreement to create such protection?

Swiss law recognises the concept of indemnification.

However, mandatory employment-related payments (such as the payment of mandatory contributions by the employer for a consultant who is then deemed to be an employee) cannot be indemnified by the employee, as this would constitute a breach of mandatory principles. For employment-related claims, this clause might therefore not be enforceable in Switzerland.

The best protection against these claims is instead to ensure, before entry into the consultancy agreement, that the consultant is recognised by the social security authorities as having the status of an independent contractor.

In the case of a consultancy agreement with a long duration, the company would be well-advised periodically to verify the consultant's status with the social security authorities, to monitor any risk of the consultancy agreement being requalified as an employment agreement in the event of a dispute.

Discrimination

15. Is the consultant protected against discrimination during the term of the agreement and if so, can any wording be included in the agreement to minimise the risk for the company against a potential claim from a consultant?

The Federal Act of 24 March 1995 on Gender Discrimination only applies in employment relationships. By law, the consultant is not specifically protected against discrimination during the term of the agreement, except for discrimination which could be relevant to a criminal offence (that is, discrimination because of race, ethnic origin,

religion or sexual orientation, which is prohibited (*Article 261bis, Swiss Criminal Code*)). There is no specific wording that could be included in the agreement to minimise such risks for the company, as criminal liability cannot be excluded.

From a civil standpoint, it is worth noting that any person whose personality rights (that is, the rights that are inherent to being a legal person, such as the right to be treated fairly, the right to live, the right to free movement, the right to privacy, the right to effective relationships, among other things) are unlawfully infringed may petition the court for protection against all those causing the infringement (*Article 28 § 1, Swiss Civil Code*). This general provision in particular protects the individuals against discrimination. However, it is not possible to waive that right, so no wording could minimise the risk of claim from a consultant for violation of their personality rights.

Confidentiality

16. Can a confidentiality clause be included as set out in *Standard document, Consultancy agreement (short form): International: clause 5* that continues after termination of the agreement? Could such a clause suggest that the consultant is an employee instead of an independent contractor?

Yes, this clause can be included.

Since the factual circumstances are the only basis for the courts' assessment of whether an agreement is either a consultancy agreement or an employment agreement, the existence of a confidentiality clause is not determinative. The interpretation of the will of the parties does not stop at the terms used by them.

That said, the Swiss Criminal Code also makes it an offence to reveal a manufacturing or trade secret for a person that is under a statutory or contractual duty not to reveal that information (*Article 162, Swiss Criminal Code*). In the case of breach of these statutory or contractual duties, the consultant might incur criminal liability and civil liability to the company.

Restrictive covenants

17. Can restrictive covenants be included for agreement by the consultant? Is the limitation in *Standard document, Consultancy agreement (short form): International: clause 4* permissible in your jurisdiction?

A restrictive covenant limited to the duration of the consultancy agreement, as provided for in *Standard document, Consultancy agreement (short form): International: clause 4*, is permissible under Swiss law, and is relatively common.

There are no required formalities for a restrictive covenant in this context to be enforceable, as the terms of the covenant may be freely determined by the parties, as long as:

- They are not impossible, unlawful or immoral.
- They do not constitute an excessive restriction of the consultant's rights (notably regarding the consultant's economic freedom).

To reinforce the protection, the parties may in addition agree on a penalty clause in the event of breach of the restrictive covenant. It is worth noting that, in the case of judicial dispute, the judge has the power to examine and reduce the penalty clause should it be deemed excessive (*Article 163 § 3, Swiss Code of Obligations*).

To limit the risk of requalification of the consultancy agreement as an employment agreement, it is recommended that the restrictive covenant be limited to the duration of the consultancy agreement, and not to provide for a post-contractual restrictive covenant, which could be a factor indicative of an employment relationship.

Termination

18. Under what circumstances can the consultancy agreement be terminated without notice as set out in *Standard document, Consultancy agreement (short form): International: clause 8* by:

- the consultant;
- the company?

Consultant

Under Swiss law, a consultancy agreement may be revoked or repudiated at any time (*Article 404 § 1, Swiss Code of Obligations*). However, a party who revokes or repudiates the agreement at an inopportune time must compensate the other party for the damage caused (*Article 404 § 2, Swiss Code of Obligations*). The Swiss Supreme Court considers that the right to revoke at any time is mandatory and that any limitation in this respect would be void (*Swiss Supreme Court 4A_437/2008 of 10 February 2009, paragraph 1.4, for example*). Any termination without notice which causes damage to the other party is considered given in inopportune time unless justified by serious reasons, and would therefore trigger liabilities under Article 404 § 2 of the Swiss Code of Obligations.

It is worth noting that some scholars consider that the Swiss Supreme Court's position is too restrictive and consider that Article 404 § 2 of the Swiss Code of Obligations should be mandatory only where the mandate has been given

in consideration of a specific personal relationship or a specific trust relationship. In all other cases, those scholars consider that the parties should be able waive their right to revoke or terminate the consultancy agreement.

That said, unless the Swiss Supreme Court modifies its case law, contractual provisions specifying the circumstances in which the consultancy agreement can be revoked, or introducing notice periods to do so, would be used by the judge, in case of a dispute, to interpret whether the revocation has been given in inopportune time.

Company

The same principles as above prevail in the case of termination by the company.

Procedure

Swiss law does not impose any particular form for the termination of the consultancy agreement, as it is a simple manifestation of will, subject to receipt. The termination takes effect at the time when it enters the legal sphere of the contractual partner. In brief, the moment a manifestation of will is deemed to enter the legal sphere is when the addressee receives it, or would be able to receive it given how they normally organise their affairs. For evidential reasons, it is recommended to provide the other party with a written termination by means which provide proof of receipt (that is, registered mail).

As it stands, *Standard document, Consultancy agreement (short form): International: clause 8* is too restrictive and would not be enforceable as it limits the right to terminate the consultancy agreement to cases of material breach of the agreement or where the consultant, after notice in writing, wilfully neglects to provide, or fails to remedy any default in providing, the agreed services. Under the Swiss Supreme Court's case law, the termination of the consultancy agreement for other reasons would be valid. Moreover, the exclusion of liability would not be enforceable, if the termination were to be given at an inopportune time and cause damage.

19. On termination, does the law in your jurisdiction stipulate that any mandatory notice period or payments are to be made to the consultant?

There is no mandatory notice period as the consultancy agreement can be terminated at any time (see *Question 4* and *Question 18*). If the termination is made at an inopportune time, the revoking party must compensate the other party for the damage caused.

The damage to be compensated is the damage caused to the party who suffers as a result of the arrangements made by that party at the time when the termination took place. As a result, if the consultant has already made arrangements at the time of termination, the costs incurred as a result of those arrangements will have to be compensated by the client. In any case, if remuneration has been agreed under the consultancy agreement, this will be payable to the consultant for work already carried out at the time of termination.

Mediation

20. Is it suitable in your jurisdiction to include a CEDR international core mediation clause?

Generally speaking, mediation is not commonly used in Switzerland to resolve private disputes, but the parties have the right, notably in the case of dispute, to make a joint request for mediation (*Article 214 § 2, Swiss Code of Civil Procedure*). The parties are responsible for organising and conducting the mediation (*Article 215, Swiss Code of Civil Procedure*) and can therefore decide to appoint the mediation body of their choice. A CEDR clause would be recognised.

In Switzerland, certain institutions are specialised in mediation and can guide the parties in any mediation steps; these include:

- The Swiss Chamber of Commercial Mediation (*https://skwm.ch/fr/*).
- The Swiss Chambers' Arbitration Institution (*www.swissarbitration.org/*).

Governing law and jurisdiction

21. Does the law in your jurisdiction dictate which governing law and jurisdiction will apply to this agreement (*Standard document, Consultancy agreement (short form): International: clause 14* and *clause 15*)?

Under Swiss law, the parties are free to decide which law will govern their consultancy agreement, as the parties will be considered equal and therefore not needing special protection.

As for jurisdiction, the parties may agree on the court that will decide a dispute that has arisen or may arise in connection with a particular legal relationship. However, the choice of court will have no effect if it leads to an unreasonable deprivation of the protection afforded to a party by a forum provided by Swiss law (*Article 5 § 2, Federal Act of 18 December 1987 on International Private Law*).

In particular, this rule may apply in cases where the chosen foreign jurisdiction has the effect of making it exceedingly difficult to exercise a right because of the remoteness of that jurisdiction, or because of factors relating to the administration of justice there (such as deficiencies in ensuring that procedural rights are respected).

Practically, this provision could apply when the dominant party to the contract has used its position to impose an unfavourable choice of forum clause on the other party. In the context of a consultancy agreement to be performed

in Switzerland and/or with an agent domiciled in Switzerland, a jurisdiction clause imposed by the principal which provides for a jurisdiction offering little to no procedural protection to the agent could be deemed ineffective, in which case the court would apply the Federal Act of 18 December 1987 on International Private Law to determine which jurisdiction is competent.

Execution and other formalities

22. How does this agreement need to be executed in order to ensure that it is valid and enforceable? Does it need to be registered with any authority in your jurisdiction?

Execution formalities

By law, there are no specific execution formalities regarding consultancy agreements. If the written form is chosen by the parties (which is recommended for evidential reasons), the agreement must by law be signed by hand by the parties or with an authenticated electronic signature within the meaning of the Federal Act on Electronic Signatures (*Article 14 § 1 and 3, Swiss Code of Obligations*).

Registration formalities

Language

23. Does the agreement need to be in a language other than English in order for it to be valid and enforceable (*Standard document, Consultancy agreement (short form): International: clause 16*)?

There is no language requirement under Swiss law regarding consultancy agreements.

General

24. Are there any clauses in the *Standard document, Consultancy agreement (short form): International* that would not be legally enforceable or not standard practice in your jurisdiction?

The termination clause (*Standard document, Consultancy agreement (short form): International: clause 8*) would not be enforceable under Swiss law, as the parties have the right to revoke the consultancy agreement at any time.

Mediation clauses are not commonly used in consultancy agreements in Switzerland, but would still be recognised before a court.

25. Are there any other clauses that would be usual to see in a consultancy agreement and/or that are standard practice in your jurisdiction?

N/A.

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