

**DEPARTMENT OF COMMERCE.
SPECIAL AGENTS SERIES - NO.
150; COMMERCIAL LAWS OF
SWITZERLAND**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649301331

Department of commerce. Special Agents Series - No. 150; Commercial Laws of Switzerland by
A. J. Wolfe & Robert P. Shick & Phanor J. Eder

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LETTER OF SUBMITTAL.

DEPARTMENT OF COMMERCE,
BUREAU OF FOREIGN AND DOMESTIC COMMERCE,
Washington, August 4, 1917.

SIR: There is submitted herewith a report by Commercial Agent Archibald J. Wolfe on the commercial laws of Switzerland. It covers such phases of the administration of justice as are of interest to American business men having dealings in Switzerland, special attention having been given to the jurisdiction of the several courts, partnerships and corporations, powers of attorney, collection of debts, attachment, bankruptcy laws, and laws relating to trusts and unfair competition. A report by Mr. Wolfe on the commercial laws of England, Scotland, Germany, and France was issued in 1915 as Special Agents Series No. 97.

The text has been revised and supplemented by Robert P. Shick, of the Philadelphia bar, secretary of the Comparative Law Bureau of the American Bar Association and translator of the Swiss Civil Code, and by Phanor James Eder, of the New York bar, associate editor of the Comparative Law Bureau Bulletin, author of "Foreign and Home Law," "The Mining Laws, Colombia," and other publications.

Respectfully,

B. S. CUTLER,
Acting Chief of Bureau.

To HON. WILLIAM C. REDFIELD,
Secretary of Commerce.

COMMERCIAL LAWS OF SWITZERLAND.

INTRODUCTION.

Switzerland is a Federation composed of 22 sovereign States or Cantons, of which 3 are divided into sovereign demi-Cantons, so that it may be said to consist of 25 States. Originally every one of these 25 States had a legislature of its own, but in the course of time the centralizing tendency of the Swiss Parliament has led to the passage of uniform laws. At the present time the civil laws of Switzerland are in the form of a code, valid for the entire Federation. The fifth part of this code, known as the Law of Obligations and composed of 880 articles, takes up commercial legislation.

Certain matters are, however, left to the sovereign action of the Cantons, and especially the methods of carrying the provisions of the code into effect vary in every Canton, so that disputed claims must be handled differently in each of the 25 units composing the Federation. Particularly the organization of the courts differs from Canton to Canton. It is the cantonal—that is, the local—law which prescribes the competence of this or that court in commercial litigation. In some Cantons there are commercial courts provided for the settlement of disputes between business firms, while in other Cantons the same court passes on commercial and noncommercial litigation.

The ultimate appeal from the highest cantonal courts, where the claim exceeds in value the sum of 2,000 francs (\$386), lies to the Swiss Federal Tribunal at Lausanne. This supreme court of Switzerland decides upon the merits of the claim and thus provides for a uniform interpretation of the substantive provisions of the law affecting commerce, but it has no jurisdiction to entertain appeals as to points of procedure merely.

The Cantons of Switzerland are generally referred to as German, French, or Italian Cantons, in accordance with the language spoken by the major portion of the population therein. The Canton of Zurich is the principal among the German-speaking Cantons, and civil proceedings in most German Cantons are more or less patterned after those of Zurich, while Zurich has followed to some extent the common German law of procedure. In the French Cantons a similar leaning to French methods is observable.

DIVISION OF JUDICIAL AUTHORITY.

In the Canton of Zurich the justice of the peace decides in all cases where the value of the claim does not exceed 50 francs (\$9.65), and there is no appeal from his judgment. In cases exceeding 50 francs the justice of the peace makes an effort to bring about a set-

tlement, and if he fails, the president of the county court has the decision in claims from 50 to 200 francs (\$9.65 to \$38.60) in value. The decisions of this court official are likewise final. Claims exceeding 200 and below 500 francs (\$96.50) come before the county or district court for final adjudication.

The commercial court has jurisdiction over commercial litigation where the claim exceeds 500 francs in value, provided the litigants are business men or firms duly entered in the commercial register or where the plaintiff resides abroad if the defendant is so registered. But its jurisdiction is not exclusive. It may also be selected by the parties as an arbitral court if the claim exceeds 500 francs, even where its jurisdiction otherwise does not vest.

All other civil lawsuits come before the county or the district court, which also is competent in summary proceedings, such as injunctions, etc.

The Court of Appeal passes on all cases coming up from the county court, and its decisions are final in matters of cantonal law. In litigation based on Swiss Federal law, claims up to 2,000 francs (\$386) are finally adjudicated by the Court of Appeal.

An appeal may be taken from the decision of the commercial court or any other court, if the rules of the law have been disregarded by such court, and come before the Supreme Court of Judicature, which may reverse or affirm the judgment.

An appeal may be taken from all final judgments of cantonal courts of last resort to the Federal Court at Lausanne where a question of Federal law is involved and the amount in controversy exceeds 2,000 francs; without regard to the amount in controversy, an appeal lies in cases involving trade names, trade-marks, patents, and copyrights. This Federal Court has jurisdiction also as a court of cassation, or review, in cases involving matters of Federal law in which the amount involved may not be 2,000 francs, provided the cantonal court of last resort has applied cantonal or foreign law instead of Federal law in its adjudication when Federal law should have been applied.

Very few courts in Switzerland, outside of those in the thickly settled Cantons, have permanent judges who are trained in law. In some cantons any citizen, whether he is a trained lawyer or not, can act as an attorney before the court. In some Cantons, however, only graduates of law schools are admitted to the bar. Any attorney who is a graduate of a law school and has passed the cantonal examination and been admitted to the bar in one Canton can practice in all courts in Switzerland. The same attorney can carry on litigation from the lowest court to the Supreme Court. There is no distinction between solicitors and barristers. In this connection it may be said that there are no patent attorneys in Switzerland. Either ordinary lawyers or engineers undertake to act as patent attorneys, but there is no regulation preventing anybody from attending to patent and trade-mark matters.

SECURITY FOR COURT COSTS.

In all courts the costs must be advanced in cash before the commencement of litigation. The amount of this advance depends on the importance of the claim, but rarely exceeds 200 francs (\$38.60).

In small claims it is generally about 10 francs (\$1.93). The amount of the advance for costs is paid into the treasury of the court.

Where opinions of sworn experts are called for or any special expenses for the production of evidence or the obtaining of depositions are incurred, the party in whose behalf the expenditure is made is obliged to advance the estimated costs.

No distinction is made between Swiss litigants and foreigners in this or any other commercial litigation.

On the other hand, a Swiss defendant, if sued by an American plaintiff, need pay no attention to it unless the latter furnishes security for any costs that may be assessed against him in the event of a verdict favorable to the defendant. A branch of an American firm established in Switzerland is treated the same as a Swiss concern. The deciding principle is not nationality but residence. The obligation to furnish such security rests upon an American plaintiff but not on citizens of those countries that subscribed to the "International agreement of 1905" at The Hague, among which are Germany, Austria-Hungary, France, Italy, Spain, and Denmark.

The court in its decision determines which party is to bear the costs. As a rule, the losing party bears all court costs and reimburses the successful litigant for all attorney's expenses.

PROCEDURE—ATTORNEYS' FEES.

The attorney representing a plaintiff generally files a brief with the court, but he may present his case orally.

Frequently the claim is first brought before the justice of the peace, who attempts to make an amicable settlement, and in case of failure passes the case on to the competent court.

As soon as the attorney has received his power from the party whom he represents he can take all necessary measures in behalf of his client before all Swiss courts.

It may be said that no one is obliged to employ a lawyer when suing in Switzerland or when he is a defendant, but it is, of course, wiser to procure the services of a reliable lawyer. As stated above, even the judges and the justices of the peace and of the county courts are not always trained in the law, being officers elected by the people, frequently from the merchant class.

The judges of the Court of Appeal and the Supreme Court of Judicature are elected by the Council of the Canton and are generally learned lawyers. The commercial court is composed, as a rule, of some members of the Court of Appeal and some merchants elected by the Council.

Proceedings in the courts of Switzerland are less hampered by legal formalities than in almost any other civilized country.

Special scales of fees payable to attorneys are generally specified in the different Swiss Cantons. In view of the fact that the law does not require representation by a lawyer, the attorney's costs, as allowed by the court, are generally very moderate, and the successful plaintiff frequently has to pay an additional sum out of his own pocket. Swiss attorneys do not accept cases on a contingent-fee basis.

CONSTITUTION, CODES, AND PRINCIPAL COMMERCIAL LAWS.

The present Swiss Confederation dates from the adoption of the organic law on September 12, 1848. A revised Constitution was adopted in 1874, and there have been some isolated amendments since that date. Notable among these was one permitting the adoption of a uniform civil code, which code was voted December 10, 1907, and went into effect January 1, 1912. In 1881 a Federal Code of Obligations had been enacted. This was superseded by a new code on March 30, 1911, which became Book V of the Swiss Civil Code and went into effect on the same date as that statute; by its transitory provisions the final title of the Civil Code (introductory and inaugurating provisions) received some modifications. The law of debt recovery and bankruptcy was adopted April 11, 1889, amended June 28, 1895; the law of trade-marks, September 26, 1890, amended 1914 and 1915; the law of commercial travelers' licenses, June 24, 1892; the law of industrial models and designs, March 30, 1900; the law of patents, June 27, 1907, amended April 3, 1914.

All of these laws are Federal and prevail throughout Switzerland. There is also extended Federal legislation on a variety of other matters more or less directly affecting commerce—for example, factory and labor laws, legislation as to food products, wines and liquors, transportation, banking, insurance, mortgage certificates, mortgage of live stock, etc., to say nothing of the special laws enacted during the war, notable among which are embargoes on export of a great variety of goods and products.

The Cantons have adopted legislation putting into effect the Civil Code and the Code of Obligations and making provision as to the matters therein left to the sovereignty of the Cantons. Some of these laws are of considerable length; for example, that of Fribourg of November 22, 1911 (373 articles). As previously stated, the organization, practice, and procedure of the courts are matters wholly within the province of the Cantons. Criminal law is also within their realm, no Federal penal code having yet been adopted.

TREATY RIGHTS OF CITIZENS OF THE UNITED STATES.

Both the United States and Switzerland are members of the International Union for the Protection of Industrial Property and are signatories of the Washington Convention of 1913, articles 2 and 10bis of which are as follows:

ART. 2. The subjects or citizens of each of the contracting countries shall enjoy in all other countries of the union, with regard to patents of invention, models of utility, industrial designs or models, trade-marks, trade names, the statements of place of origin, suppression of unfair competition, the advantages which the respective laws now grant or may hereafter grant to the citizens of that country. Consequently, they shall have the same protection as the latter and the same legal remedies against any infringements of their rights, provided they comply with the formalities and requirements imposed by the national laws of each State upon its own citizens. Any obligation of domicile or of establishment in the country where the protection is claimed shall not be imposed on the members of the union.

ART. 10bis. All the contracting countries agree to assure to the members of the union an effective protection against unfair competition.

The other provisions of the convention are, of course, also of importance, but it is deemed unnecessary to here reproduce them, as they are easily accessible.

Notice was given in 1899 of the intention of the United States to arrest the operation of the commercial provisions (Arts. VIII to XII, inclusive, relating to importation, exportation, and transit of the respective products of the two countries, duties thereon, commercial most-favored-nation clauses, and shipwrecked merchandise) of the Swiss-American treaty of 1850. Articles XIII to XVII, inclusive, on extradition, of that treaty were terminated by the extradition treaty concluded May 14, 1900.

The Swiss-American treaty of 1850 (art. 1) refers to the right of citizens of the one country residing in the other. It does not distinctly give reciprocal rights to the citizens of one country residing in the native country with regard to actions taken by them in the other country. Practice, however, has generally recognized this right, and American citizens residing in the United States may sue Swiss citizens residing in Switzerland or citizens of other countries residing in Switzerland. It would be advisable in such cases to engage a Swiss lawyer practicing in the Canton in which the defendant resides.

Articles 859 et seq. of the Swiss Code of Obligations cover the Swiss commercial register, registration of firms, etc. (see p. 19). A foreign firm not established in Switzerland can, for the purpose of accepting suit as defendant, acquire a legal domicile through that of its legal representative (attorney or other authorized person). Such attorney requires security for all costs and charges in the event of an unfavorable decision.

FEDERAL ADMINISTRATION OF JUSTICE.

The Federal Court is located at Lausanne; it consists of 33 members (24 judges and 9 substitutes). The sections affecting commercial legislation are the civil section, the section for debt recovery and bankruptcies, and the court of cassation. Its appellate jurisdiction in commercial matters has already been mentioned (p. 8).

The members of the Federal Court and their substitutes are elected by the Federal Council in such manner that all three languages of Switzerland are represented. In this connection it may be mentioned that any of the three languages (French, Italian, and German) may be freely used by lawyers pleading in Switzerland.

The Federal Court has jurisdiction in disputes between the Swiss Federation and the individual Cantons; between the Swiss Federation on the one hand and corporations and individuals on the other hand; in disputes between Cantons and individuals involving Federal legislation; in the case of conflicting jurisdiction between Federal and cantonal authorities; in cases of violation of constitutional rights or of treaty rights.

The Federal Department of Justice and Police has, among many other functions, the oversight of the commercial register, the control of the provisions of treaties with other countries, and the carrying into effect of the judgments of the Federal Court. The Division of Justice is in charge of a chief, and a special section is devoted to the commercial register.