Introduction to Swiss Law
Block 2: Private Law
Law of Obligations

220

Federal Act on the Amendment of the Swiss Civil Code

(Part Five: The Code of Obligations)

of 30 March 1911 (Status as of 1 July 2015)

The Federal Assembly of the Swiss Confederation,
having considered the Dispatches of the Federal Council dated 3 March 1905
and 1 June 1909.

Thursday, September 29th 2016, KOL-F-118
Dr. Tina Huber-Pürtschert, attorney at Law
www.rwi.uzh.ch/huguenin
Introduction to Swiss Law

Overview

I. Objectives
II. Literature
III. Translations
IV. Useful Links
V. Code of Obligations: Structure
VI. Swiss Contract Law
VII. Swiss Company Law
VIII. Did we meet the Objectives?
### Objectives

- Being able to **find** the **law text** and secondary **literature**
- Getting to **know** the **structure** and **functioning** of the Swiss code of obligations
- Being able to **enumerate** general **principles** of Swiss contract and company law and being able to **find** the respective **provisions** in the law text
- Starting **reflexions** about the **similarities** and **differences** to the jurisdiction of the respective „homecountry“
# Introduction to Swiss Law

## Literature

### Contract Law


### Company Law


### Other literature

English Translations of the Swiss Code of Obligations


An English version of each article of the code of obligations can also be found in:
### Useful Links

<table>
<thead>
<tr>
<th>The Jurisdiction of the Swiss Federal Tribunal:</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="http://www.bger.ch">www.bger.ch</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal Acts and Ordinances:</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="http://www.admin.ch/bundesrecht">www.admin.ch/bundesrecht</a> or  <a href="http://www.bundesrecht.admin.ch">www.bundesrecht.admin.ch</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal and Cantonal Jurisdiction, Literature (especially Law Journals and Commentaries):</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="http://www.swisslex.ch">www.swisslex.ch</a>; <a href="http://www.legalis.ch">www.legalis.ch</a></td>
</tr>
</tbody>
</table>
The Swiss Code of Obligations

- federal act on the amendment of the Swiss Civil Code (part 5)
- in force since January 1\textsuperscript{st}, 1912

**Division One**
- General Provisions (arts. 1-183 CO)

**Division Two**
- Types of Contractual Relationship (arts. 184-551 CO)

**Division Three**
- Commercial Enterprises and the Cooperative (arts. 552-926 CO)

**Division Four**
- The Commercial Register, Business Names and Commercial Accounting (arts. 927-964 CO)

**Division Five**
- Negotiable Securities (arts. 965-1186 CO)

- to be found in the classified compilation of federal law (No. 220)
- influenced by the German Code of Obligations, but much easier to read due to its straightforwardness and therefore often recommended as one of the best Civil Codes within Europe
Other federal acts (ordinances) beside the Swiss Code of Obligations (selection):

<table>
<thead>
<tr>
<th>Contract Law</th>
<th>Company Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention of International Sale of Goods (No. 0.221.211.1), «CISG»</td>
<td>Merger Act (No. 221.301)</td>
</tr>
<tr>
<td>Consumer Credits Act (No. 221.214.1)</td>
<td>Ordinance on the Commercial Register (No. 221.411)</td>
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<tr>
<td>Product Liability Act (No. 221.112.944)</td>
<td>Fair Trade Act (No. 241)</td>
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<tr>
<td>Package Travel Act (No. 944.3)</td>
<td>Cartel Act (No. 251)</td>
</tr>
<tr>
<td></td>
<td>Banking Act (No. 952.0)</td>
</tr>
<tr>
<td></td>
<td>Stock Exchange Act (No. 954.1)</td>
</tr>
<tr>
<td></td>
<td>Collective Investment Schemes Act (No. 951.31)</td>
</tr>
</tbody>
</table>
## Swiss Contract Law

### Overview

1. Principle of freedom of contract
2. Conclusion of a contract
3. Interpretation of a contract
4. Nullity of a contract
5. Defeasibility of a contract
6. Non-commercial agency
7. Breach of a contract
8. Quasi-contractual obligations
9. Obligations in tort
10. Restitution of an unjust enrichment
11. Time limits
12. Order of «testing» claims
13. Special types of contracts
Freedom to conclude or not conclude a contract

No one has to conclude a contract unless there is a legal provision to conclude. A legal provision to conclude a contract would for example be the obligation of every car owner to effect an insurance.

Freedom to choose the contractual partner

Everyone has the right to choose his contractual partner unrestricted but there are cases where one can be forced to conclude a contract with someone else or cases where it's forbidden to conclude contracts with certain people (for example a real estate contract with a minor).

Freedom to establish the contracts content

The content of a contract may be chosen by the parties but it must not have an illegal content. If the content is forbidden by law the contract is null and void (art. 20 para. 1 CO).
Freedom of formality

The Swiss Code of Obligations does in general not demand a special form to conclude a contract (art. 11 para. 1 CO). A contract may therefore be concluded orally or even without using words but by a consenting behaviour. There are a few exceptions where a special form is provided by law, examples are:

- A labour contract with an apprentice has to be «done in writing» (art. 344a CO).
- A sales contract about real estate. It’s not only provided, that this contract has to be in written form, it even has to be «done as a public deed» (art. 216 CO).

Freedom to terminate or alter a contract

Freedom to conclude any kind of contract regardless of whether or not it’s one of the individual types of contracts in the second division of the CO
Conclusion of the contract, art. 1 CO

«¹The conclusion of a contract requires a mutual expression of intent by the parties.»

«²The expression of intent may be express or implied.»

Consensus
The parties must consent in every basic point of the contract. Less important points may be left open.

Contract of sales, art. 185 CO:

- Basic points that have to be determined: the **price of the good** and the **good itself**.
- Less important points may be for example: the place or the time of fulfillment of the contract.
Swiss Contract Law
2. Conclusion of a contract (II/II)

A offer B

A acceptance B

A counter offer = modified acceptance B

A acceptance B
Subjective Interpretation: Principle of will, art. 18 para. 1 CO

«[…] the true and 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»

Objective Interpretation: Principle of good faith (non-codified principle)

A declaration of intention is understood the way the other party of the contract could and did in good faith understand it.

Acting in good faith, art. 2 CC (Civil Code)

«1 Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations.»
### Nullity, art. 20 CO

«¹ A contract is void if its terms are impossible, unlawful or immoral.»

«² However, where the defect pertains only to certain terms of a contract, those terms alone are void unless there is cause to assume that the contract would not have been concluded without them.»

### Formal requirements and significance in general, art. 11 CO

«¹ The validity of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law.»

«² In the absence of any provision to the contrary on the significance and effect of formal requirements prescribed by law, the contract is valid only if such requirements are satisfied.»
<table>
<thead>
<tr>
<th>Unfair advantage</th>
<th>Error</th>
<th>Fraud</th>
<th>Duress</th>
</tr>
</thead>
<tbody>
<tr>
<td>art. 21 CO</td>
<td>art. 23 CO, error</td>
<td>art. 28 CO, fraud</td>
<td>art. 29 CO, consent to contract</td>
</tr>
</tbody>
</table>

**Unfair advantage**

art. 21 CO, unfair advantage

«¹ Where there is a clear discrepancy between performance and consideration under a contract concluded as a result of one party’s exploitation of the other’s straitened circumstances, inexperience or thoughtlessness, the injured party may [...] demand restitution of any performance already made.»

**Error**

art. 23 CO, error

«¹ A party labouring under fundamental error when entering into a contract is not bound by that contract.»

art. 24 CO, cases of mistake

«¹ [...]»

**Fraud**

art. 28 CO, fraud

«¹ A party induced to enter into a contract by the fraud of the other party is not bound by it even if his error is not fundamental.»

**Duress**

art. 29 CO, consent to contract

«¹ Where a party has entered into a contract under duress from the other party or a third party, he is not bound by that contract.»

art. 30 CO, definition of duress

«¹ [...]»
Consequence of an error, fraud or duress:

**Defect of consent negated by ratification of the contract, art. 31 CO**

«1 Where the party acting under error, fraud or duress neither declares to the other party that he intends not to honour the contract nor seeks restitution for the performance made within one year, the contract is deemed to have been ratified.»

«2 ...»

«3 ...»
Have a „mini-conference“ (5’) with your neighbour and find examples for:

– null contracts
– defeasible contracts
Swiss Contract Law
6. Non-commercial agency (I/II)

Non-commercial agency (arts. 32-40 CO)

- contracts may not only be concluded by the parties themselves but also by an agent
- not to confound with a commercial agency (arts. 458-465 and 348b)

**two types** of non-commercial agency in the Swiss Contract Law:

- The agent acts in the party's name and for account of the represented party (art. 32 para. 1 CO).
- The agent acts in his own name but for account of the represented party (art. 38 para. 1 CO).
The agent needs to be authorized by the represented person. The extent of authority depends on the type of authorization:

Scope of authority, art. 33 CO

«¹ Where authority to act on behalf of another stems from relationships established under public law, it is governed by the public law provisions of the Confederation or the cantons.»

«² Where such authority is conferred by means of the transaction itself, its scope is determined by that transaction.»

Failure to ratify, art. 39 CO

«¹ Where ratification is expressly or implicitly refused, action may be brought against the person who acted as agent for compensation in respect of any damage caused by the extinction of the contract unless he can prove that the other party knew or should have known that he lacked the proper authority.»
Swiss Contract Law
7. Breach of a contract (I/IV)

Obligor’s duty to compensate – in general, art. 97 CO

«¹ An obligor who fails to discharge an obligation at all or as required must make amends for the resulting loss or damage unless he can prove that he was not at fault.»
Suppositions for a liability after art. 97 CO:

1. damage

2. breach of a contract

3. causality between the damage and the breach

4. misconduct attributable to the obligor (assumed)
Default, arts. 102 et seqq. CO

**Requirement, art. 102 CO**

«¹ Where an obligation is due, the obligor is in default as soon as he receives a formal reminder from the obligee.»

«² Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline.»
Swiss Contract Law
7. Breach of a contract (IV/IV)

- no performance rendered
  - reminder provided (CO 102 I)
  - reminder not necess. (CO 102 II)
    - default
      - new time limit (CO 107 I)
      - no need for a new time limit (CO 108)
        - obligee may choose
          - compel performance (CO 107 II)
            in addition to suing for damages in connection with the delay (CO 103 et seqq.)
          - forego subsequent performance and (CO 107 II)
            - claim damages for non-performance
            - withdraw from the contract
              - positive interest (CO 107 II)
              - negative interest (CO 109 II)
April 9th 2016 – Tina’s wedding:

- **Wedding dress** ordered, agreement that dress will be finished 3 weeks before wedding day, dressmaker has not even started, other dressmaker can tailor one in a hurry, which costs 1/3 more than the originally ordered one.

- Ordered a **new car** quite some time ago, it did not arrive yet, but Tina wants to go on the honeymoon with it.

- Tina ordered **white almonds** («confetti») for the wedding table. The almonds did not arrive. The couple decides that the flower decoration will be so abundant, that they are not needed any more.

Now we are three weeks before the wedding.

**How should Tina proceed? Discuss with your neighbour.** (10’
### Swiss Contract Law

8. Quasi-contractual obligations (I/II)

Suppositions for a liability after *inspired confidence, bared on trust*:

1. **damage**

2. **supposition «breach of contract»** for a liability after Art. 97 CO is replaced by:
   - **special juridical connection**
   - **creation** of inspired confidence, bared on trust that merits to be protected
   - **violation** of inspired confidence, bared on trust that merits to be protected

3. **causality between 1. and 2.**

4. **misconduct attributable to the obligor**
Swiss Contract Law
8. Quasi-contractual obligations (II/II)

Suppositions for a liability after *Culpa in contrahendo* (precontractual liability):

1. damage

2. «breach of contract» for a liability after Art. 97 CO is replaced by:
   - contractual negotiations
   - violation of a precontractual duty

3. causality between 1. and 2.

4. misconduct attributable to the obligor
The paradigm «tort» consists of an act or omission by the defendant which causes damage to the claimant. The damage must be caused by the fault of the defendant and must be a kind of harm recognized as attracting legal liability.

**General principles – conditions of liability, art. 41 CO**

«¹ A person who unlawfully causes loss or damage to another, whether willfully or negligently, is obliged to provide compensation.»

- damage
- illegality
- causality between the damage and the illegality
- misconduct attributable to the defendant
No one shall be enriched by assets of someone else if there’s no reason for the enrichment.

**arts. 62-67 CO**

suppositions for a restitution after art. 62 CO

**Requirement – in general, art. 62 CO**

«¹ A person who has enriched himself without just cause at the expense of another is obliged to make restitution.»

- enrichment of one person
- (loss of property/assets of another person)
- no justification for the enrichment
## All claims become time-barred

<table>
<thead>
<tr>
<th>Category</th>
<th>Art.</th>
<th>Time Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract law</td>
<td>127 CO</td>
<td>after <strong>ten years</strong> unless otherwise provided by federal civil law.</td>
</tr>
<tr>
<td>Obligations in tort</td>
<td>60 CO</td>
<td><strong>One year</strong> from the date on which the injured party became aware of the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>loss/damage and of the identity of the person liable; in any event **ten</td>
</tr>
<tr>
<td></td>
<td></td>
<td>years** after the date on which the loss/damage was caused.</td>
</tr>
<tr>
<td>Unjust enrichment</td>
<td>67 CO</td>
<td><strong>One year</strong> after the date on which the injured party learned of his claim</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and in any event <strong>ten years</strong> after the date on which the claim first arose</td>
</tr>
</tbody>
</table>
Swiss Contract Law
12. Order of «testing» claims

- Contractual claims
- Quasi-contractual claims
- Property law claims (CC)
- Obligations in tort
- Unjust enrichment claims
### Codified contracts

- **Sale and exchange** (arts. 184-238 CO)
- Gifts (arts. 239-252 CO)
- **Lease and usufructuary lease** (arts. 253-304 CO)
- Loan (arts. 305-318 CO)
- **Employment contracts** (arts. 319-362 CO)
- **Contract for work and services** (arts. 363-379 CO)
- Publishing contract (arts. 380-393 CO)
- **Agency contracts** (arts. 394-418 CO)
- Agency without authority (arts. 419-424 CO)
- Commission contract (arts. 425-439 CO)
- Contract of carriage (arts. 440-457 CO)
- Payment instruction (arts. 466-471 CO)
- Contract of bailment (arts. 472-491)
- Contract of surety (arts. 492-512 CO)
- Gambling and betting (arts. 513-515 CO)
- Life annuity contract and lifetime maintenance agreement (arts. 516-529 CO)
Codified contracts

Secondary terms, art. 2 CO

«Where the parties have agreed on all essential terms, it is presumed that the contract will be binding [...]»

Codified contracts are characterized by standard principal obligations of the contractual parties („standard“ essentialia negotii)

every type of contract has his own „specialities“, depending also on the fact, how strong the two parties are
**Codified contracts**

**Sale**, art. 184 CO

- **Seller:**
  «*deliver the item sold and transfer ownership»*

- **Buyer:**
  «*payment of the sale price»*

**Chattel sale**, arts. 187-215 CO

**Sale of immovable property**, art. 216-221 CO
13. Special types of contracts (IV/IX)

Codified contracts

**Loan for use**, arts. 305-311 CO

- **lender:** «make an object available free of charge to the borrower»
- **borrower:** restitution of borrowed object

**Fixed-term loan**, arts. 312-318 CO

- **lender:** «transfer the ownership of a sum of money or of other fungible goods»
- **borrower:** restitution of objects of the same quantity and quality
**Codified contracts**

**contract for work and services**, art. 363 CO

- contractor: «carry out a work»
- customer: payment for the work

**simple agency contract**, art. 394 CO

- agent: conduct a business or provide a service
- principal: paying a remuneration if agreed or customary

**art. 394 para. 2 CO**, «Contracts for the provision of work or services not covered by any other specific type of contract are subject to the provisions governing agency.»

**art. 404 CO**, «The agency contract may be revoked or terminated at any time by either party.»
Codified contracts

**Lease,**
arts. 253-273c CO

- landlord or lessor:
  granting «a tenant or lessee the use of an object»

- tenant or lessee:
  payment of a rent

**Usufructuary lease,**
arts. 275-304 CO

- lessor:
  granting a «lessee the use of a productive object or right and the benefit of its fruits or proceeds»

- lessee:
  payment of a rent
Swiss Contract Law
13. Special types of contracts (VII/IX)

Codified contracts

**individual employment contract**, art. 319 CO

- **employee:**
  
  «work in the service of the employer for a limited or unlimited period»

- **employer:**
  
  payment of «a salary based on the amount of worked time (time wage) or the tasks performed (piece work)»

apprenticeship contract (arts. 344-346a CO)

commercial traveller’s contract (arts. 347-350a CO)

homeworker's contract (arts. 351-354 CO)

- collective employment contract (arts. 356-358 CO)
- standard employment contract (arts. 359-360f CO)
As for the freedom of contracts, every kind of contract may be concluded as far as its content is legal. Over time there have been built several new kinds of contracts, not provided in the CO.

To handle these contracts, the judges sometimes refer to rules from similar codified contracts or they build new rules for these special kinds of non-codified contracts.

Examples:

- «leasing» contract (which is not the same as a lease contract)
- franchise contract
- licence contract
- sponsoring contract
Example for a codified contract:

Rights and obligations of the parties in general, art. 184 CO

«1 A contract of sale is a contract whereby the seller undertakes to deliver the item sold and transfer ownership of it to the buyer in return for the sale price, which the buyer undertakes to pay to the seller.»

«2 Unless otherwise provided by agreement or custom, the seller and the buyer are obliged to discharge their obligations simultaneously quid pro quo.»

«3 The price is deemed sufficiently determined where it can be determined from the circumstances.»

Example for a non codified contract:

«Leasing» contract

Definition after the jurisdiction on leasing contracts:

A «lessor» passes a movable or immovable object to a «lessee» in order to let the latter use it for a certain period of time. The «lessee» pays an interest/rent and for the maintainance of the object and he has to bear the risk of loss/demolition of the object. The property right remains with the «lessor».

Components of a lease and a sale contract
Think about the jurisdiction of your own country.

- Where do you see the main difference in contract law to Switzerland?
- Are there any questions regarding swiss contract law?

**Discuss with your neighbour. (10’)**
1. Definition of the term «company»
2. Difference between Swiss Contract and Company Law
3. Types of business associations
4. Legal entity, legal capacity and capacity to act
5. Commercial agency
6. Most frequent business associations
7. Commercial register
8. Business names
9. Commercial accounting and financial reporting
10. Negotiable securities
### An association of persons on a contractual basis pursuing a common purpose

<table>
<thead>
<tr>
<th>association of persons</th>
<th>contractual basis</th>
<th>common purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>simple partnership: at least 2 persons</td>
<td>the associates conclude a «partnership contract»</td>
<td>the subject term of a partnership contract is the common purpose of the associates</td>
</tr>
<tr>
<td>cooperative: at least 7 persons</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
There are seven different types of business associations, all to find in the Swiss Code of Obligations.

Unlike Swiss Contract Law, Swiss Company Law does not provide freedom to build any kind of company with its own provisions.

People are bound to choose from the types the law is offering.

Which type to choose depends on the intentions and interests of the partners.
3. Types of business associations (I/IV)

**sole Proprietorship**

„one-man business“

**Partnerships**

association of persons without separate legal existence

**Corporations**

legal entities

Legal entities outside of the CO
Swiss Company Law
3. Types of business associations (II/IV)

**Partnerships**
association of persons without separate legal existence

**Corporations**
legal entities

Legal entities outside of the CO

**sole Proprietorship**
„one-man business“

**simple Partnership,**
arts. 530-551 CO

**general Partnership,**
arts. 552-593 CO

**limited Partnership,**
arts. 594-619 CO
Swiss Company Law

3. Types of business associations (III/IV)

sole Proprietorship
„one-man business“

Partnerships
association of persons without separate legal existence

Corporations
legal entities

- company Limited by Shares,
  arts. 620-763 CO
- partnership Limited by Shares,
  arts. 764-771 CO
- limited Liability Company,
  arts 772-827 CO
- cooperative,
  arts. 828-926 CO

Legal entities outside of the CO
Swiss Company Law
3. Types of business associations (IV/IV)

<table>
<thead>
<tr>
<th>sole Proprietorship</th>
</tr>
</thead>
<tbody>
<tr>
<td>„one-man business“</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Partnerships</th>
</tr>
</thead>
<tbody>
<tr>
<td>association of persons without separate legal existence</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Corporations</th>
</tr>
</thead>
<tbody>
<tr>
<td>legal entities</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Association, arts. 60-79 CC</th>
</tr>
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</table>

<table>
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<tr>
<th>Foundation, arts. 80-89a CC</th>
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</table>

<table>
<thead>
<tr>
<th>Federal act on collective investment schemes (No. 951.31), CISA, inter alia:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- investment company with variable capital (SICAV)</td>
</tr>
<tr>
<td>- limited partnership for collective investment</td>
</tr>
</tbody>
</table>
Introduction to Swiss Law, Block 2: Private Law, Law of Obligations

Swiss Company Law
4. Legal entity, legal capacity and capacity to act (I/III)

Physical Person
or
Natural Person

Legal Entity
or
Legal Person

Legal capacity
art. 11 CC (Civil Code)

Personality in general – legal capacity, art. 11 CC

«1 Every person has legal capacity.»
«2 Accordingly, within the limits of the law, every person has the same capacity to have rights and obligations.»

Legal capacity
art. 53 CC (Civil Code)

Legal Entities – legal capacity, art. 53 CC

«Legal entities have all the rights and duties other than those which presuppose intrinsically human attributes, such as gender, age or kinship.»
Legal Entities: **Capacity to act**

### Requirements, art. 54 CC

«Legal entities have capacity to act once the governing bodies required by law and their articles of association have been appointed.»

### Action on behalf of the legal entity, art. 55 CC

«1 The governing bodies express the will of the legal entity.»

«2 They bind the legal entity by concluding transactions and by their other actions.»

«3 The governing officers are also personally liable for their wrongful acts.»
Legal entities have legal standing in the eyes of law. A legal entity:

- can enter into agreements or contracts;
- can assume obligations;
- can incur and pay debts;
- can sue and be sued in its own right;
- can be held responsible for its actions.
## Swiss Company Law

### 5. Commercial agency

<table>
<thead>
<tr>
<th>Non-commercial agency</th>
<th>Commercial agency</th>
<th>Governing bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td>arts. 32-40 CO</td>
<td>arts. 458-465 / 348b CO</td>
<td>e.g. arts. 707 et seqq. CO</td>
</tr>
</tbody>
</table>

### Commercial agency

<table>
<thead>
<tr>
<th>registered power of attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>arts. 458-461 / 464-465 CO</td>
</tr>
</tbody>
</table>

- entry in the **commercial register** required

<table>
<thead>
<tr>
<th>other forms of commercial agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>arts. 462-465 CO</td>
</tr>
</tbody>
</table>

- implicitly or explicitly, no form requirements

<table>
<thead>
<tr>
<th>commercial traveller</th>
</tr>
</thead>
<tbody>
<tr>
<td>art. 348b CO</td>
</tr>
</tbody>
</table>

- Implicitly or explicitly, no form requirements
**Swiss Company Law**

6. Most frequent business associations (I/IX)

<table>
<thead>
<tr>
<th>Number of private businesses registered in the commercial register</th>
<th>29.09.2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole proprietorship</td>
<td>157’123</td>
</tr>
<tr>
<td>General partnership</td>
<td>11’488</td>
</tr>
<tr>
<td>Limited partnership</td>
<td>1’713</td>
</tr>
<tr>
<td>Company limited by shares</td>
<td>211’031</td>
</tr>
<tr>
<td>Limited liability company</td>
<td>176’038</td>
</tr>
<tr>
<td>Cooperative</td>
<td>8’887</td>
</tr>
<tr>
<td>Association</td>
<td>8’553</td>
</tr>
<tr>
<td>Foundation</td>
<td>17’091</td>
</tr>
</tbody>
</table>
# Sole proprietorship

| Creation | automatically, when a single person starts his own commercial business under his own name and own responsibility  
|          | if turnover p.a. amounts up to CHF 100'000, a sole proprietorship has to be registered in the commercial register, below that level it is optional |
| Liability | as a sole proprietor one is fully liable in person for the liabilities of the business |
| Company name | must contain the family name of the sole proprietor |
| Self-employment given | working under the own name and at own expenses, autonomously, at own risk |
**Sole proprietorship**

<table>
<thead>
<tr>
<th>When used:</th>
<th>Where regulated:</th>
</tr>
</thead>
<tbody>
<tr>
<td>to start first commercial activities</td>
<td>art. 934 CO (provision about registration in the commercial register)</td>
</tr>
<tr>
<td>commercial activities might be small</td>
<td>art. 936a CO (business identification number)</td>
</tr>
<tr>
<td>„one-man-show“</td>
<td>arts. 945 et seq. CO (names of sole proprietorship)</td>
</tr>
<tr>
<td>no budget to set up a corporation</td>
<td>arts. 957 et seq. CO (duty to keep accounts and file financial reports)</td>
</tr>
<tr>
<td></td>
<td>ordinance on the commercial register</td>
</tr>
<tr>
<td></td>
<td>tax law</td>
</tr>
</tbody>
</table>

**rudimentary regulated!**
<table>
<thead>
<tr>
<th><strong>Company limited by shares (Ltd)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Creation</strong></td>
</tr>
<tr>
<td>- when registered in the commercial register (last step after a notarial process, with establishment of articles of association)</td>
</tr>
<tr>
<td>- minimum share capital of CHF 100’000</td>
</tr>
<tr>
<td><strong>Liability</strong></td>
</tr>
<tr>
<td>- shareholders are not liable in person for the liabilities of the company</td>
</tr>
<tr>
<td>- the company’s liability is limited to the share capital</td>
</tr>
<tr>
<td><strong>Company name</strong></td>
</tr>
<tr>
<td>can be freely chosen by respecting the general principles on the composition of business names and hast to indicate the legal form (Ltd or in German: AG, in French/Italian: SA)</td>
</tr>
</tbody>
</table>
### Company limited by shares (Ltd)

<table>
<thead>
<tr>
<th>Governing bodies</th>
<th>Duties of a shareholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ general meeting (art. 698 et seqq. CO) supreme governing body of the company</td>
<td>▪ shareholders do not have other duties then paying in the share capital prize</td>
</tr>
<tr>
<td>▪ board of directors (arts. 707 et seqq. CO) leading the company, can delegate that – if allowed by the articles of association - to individual members of the board or third parties (directors)</td>
<td>→ shareholders have to regulate duties among them by a separate contract (shareholders’ agreement)</td>
</tr>
<tr>
<td>▪ external auditors (arts. 727 et seqq. CO) by law required intensity of the audit depends on the size of the company</td>
<td></td>
</tr>
</tbody>
</table>
Company limited by shares (Ltd)

**When used:**
- commercial activities with a broader impact
- intention to employ people
- existence of the company should not depend on the people owning it
- limitation of liability for the owners of the company
- enough budget to set up a corporation

**Where regulated:**
- arts. 620-763 CO
- ordinance on the commercial register
- tax law

**best regulated business association!**
## Limited liability company (Ltd liab. Co)

| Creation | when registered in the commercial register (last step after a notarial process, with establishment of articles of association)  
|          | minimum nominal capital of CHF 20’000, has to be fully paid in |
| Liability | company members are not liable in person for the liabilities of the company  
|          | the company’s liability is limited to the nominal capital |
| Company name | can be freely chosen by respecting the general principles on the composition of business names and has to indicate the legal form (Ltd liab. CO or in German: GmbH, in French: S.á.r.l, in Italian: S.a.g.l.) |
## Limited liability company (Ltd liab. Co)

<table>
<thead>
<tr>
<th>Governing bodies</th>
<th>Duties of a member</th>
</tr>
</thead>
</table>
| - members’ general meeting (art. 804 et seqq. CO)  
  supreme governing body of the company  
- management (arts. 809 et seqq. CO)  
  leading the company, company members are jointly responsible for the management, articles of association may adopt alternative provisions on management  
- auditor (arts. 818 CO)  
  by law required intensity of the audit depends on the size of the company |
| company members can have additional duties (e.g. additional financial and material contributions, prohibition of competition) if stated so in the articles of association |
Limited liability company (Ltd liab. Co)

**When used:**
- commercial activities with a more local impact
- intention to employ people
- existence of the company should depend on the people owning it
- limitation of liability for the owners of the company
- not enough budget to set up a company limited by shares

**Where regulated:**
- arts. 772-827 CO
- ordinance on the commercial register
- tax law

**good regulated business association!**
What kind of business association would you choose in the following cases? Motivate your decision! (15’)

- Michael makes a profession out of his hobby: organizing personalized trips to Asia.
- Your sister loves to knit in her spare time. She thinks to sell her items on one of the online marketplaces like dawanda.com or ansalia.ch.
- Eugene is planning to open an insurance broker boutique.

Which „features“ would be core for the following situations?

- Some elderly people would like to buy a house and live there together. Inhabitants should also dedicate time to the house community.
- Some neighbours would like to organize regularly film evenings in the street.
- A very wealthy person would like to invest his money in financing higher education for women with a migration background.
Swiss Company Law
7. Commercial register

- public register administered by the government, legislated in the Ordinance on the Commercial Register (No. 221.411)
- purpose: to provide important informations on legal entities such as their name, legal form, registered seat, amount of capital, names of the executives
- commercial register extracts may be required by anyone on any company (www.zefix.ch)
- new admissions and modifications of inscriptions are published in the Swiss Official Gazette of Commerce (www.sogc.ch)
In addition to the essential content required by law, each business name may contain information which serves to describe the persons mentioned in greater detail, an allusion to the nature of the company or an invented name provided that the content of the business name is truthful, cannot be misleading and does not run counter to any public interest.

Commercial enterprises and cooperatives are free to choose their business name subject to the general principles on the composition of business names. The business name must indicate the legal form.
Protection of business names, art. 956 CO

«¹ ...»

«² A party whose interests are injured by the unauthorised use of a business name may apply for an *injunction* banning further abuse of the business name and sue for *damages* if the unauthorised user is at fault.»
Duty to keep accounts and file financial reports, art. 957 CO

Accounting, art. 957a CO

- Basis of financial reporting
- Follows recognised accounting principles (i.a. completeness, truthfulness, clarity, verifiability, see also the enumeration of recognised financial reporting principles in art. 958c para. 1 CO)
- Carried out in one of the official languages or English
- In writing, electronically or in a comparable manner

Two „levels“, according to firm specifications
### Financial reporting

<table>
<thead>
<tr>
<th>Aim and constituent elements, art. 958 CO</th>
</tr>
</thead>
<tbody>
<tr>
<td>«¹ [...] is intended to present the economic position of the undertaking in such a manner that third parties can make reliable assessments of the same»</td>
</tr>
<tr>
<td>«² ...»</td>
</tr>
<tr>
<td>«³ ...»</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Principles of financial reporting, art. 958a CO</th>
</tr>
</thead>
<tbody>
<tr>
<td>«¹ Financial reporting is based on the assumption that the undertaking will remain a going concern for the foreseeable future.»</td>
</tr>
<tr>
<td>«² ...»</td>
</tr>
<tr>
<td>«³ ...»</td>
</tr>
<tr>
<td><strong>Financial report for larger undertakings</strong>, arts. 961 et seqq. CO</td>
</tr>
<tr>
<td><strong>Financial statements in accordance with Recognised Financial Reporting Standards</strong>, arts. 962 et seqq. CO</td>
</tr>
<tr>
<td><strong>Consolidated accounts</strong>, arts. 963 et seqq. CO</td>
</tr>
</tbody>
</table>
Registered securities, bearer securities and instruments to order (arts. 965 et seqq. CO)
- registered securities (arts. 974 et seqq. CO)
- bearer securities (arts. 978 et seqq. CO)
- bills and notes (arts. 990 et seqq. CO)
- cheque (arts. 1100 et seqq. CO)
- bill-like securities and other instruments to order (arts. 1145 et seqq. CO)
- document of title of goods (arts. 1153 et seqq. CO)

bonds (arts. 1156 et seqq. CO)
### Introduction to Swiss Law

**Did we meet the objectives?**

<table>
<thead>
<tr>
<th>Objective</th>
<th>Achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Being able to <strong>find</strong> the law text and secondary <strong>literature</strong></td>
<td>✔️</td>
</tr>
<tr>
<td>Getting to <strong>know</strong> the <strong>structure</strong> and <strong>functioning</strong> of the Swiss code of obligations</td>
<td>✔️</td>
</tr>
<tr>
<td>Being able to <strong>enumerate</strong> general <strong>principles</strong> of Swiss contract and company law and being able to <strong>find</strong> the <strong>respective provisions</strong> in the law text</td>
<td>✔️</td>
</tr>
<tr>
<td>Starting <strong>reflexions</strong> about the <strong>similarities</strong> and <strong>differences</strong> to the jurisdiction of the respective „**homecountry““</td>
<td>✔️</td>
</tr>
</tbody>
</table>