

English Language Service

**A handbook for authors and translators
in the Federal Administration**

Legal Style Guide



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Confederation

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Design and production

Federal Chancellery
Communication Support Section

Bern, August 2025

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1. Introduction

This Legal Style Guide was produced jointly by legal translation specialists at the Federal Department of Foreign Affairs and the Federal Chancellery. It is intended primarily for English language translators, both in-house and freelance, working for the Federal Administration. It provides pointers on legal writing style, terminology, citations, references and cross-references. It is intended to help translators achieve the required legal effect and send out the proper legal signals to the readers of legal texts and legal professionals.

This Guide is not intended to be a comprehensive legal drafting guide for lawyers. It aims to provide translators with a basic toolkit for translating 'prescriptive' texts (legislation, regulatory rules, internal directives, contracts, etc.) and 'descriptive' texts (texts describing the law) in the context of Switzerland and the Federal Administration. It highlights common problems and suggests how to avoid some of the pitfalls involved in translating legal texts from German and French into English.

Legal language is a technical language. But unlike other specialist areas, such as science or medicine, there is no universal language of the law. Legal language is always tied to a specific national legal system which has its own legal culture and traditions, terminology and underlying concepts. One of the biggest challenges in translating Swiss legal texts into English – the language of common law – is the mismatch between legal concepts and terminology. There are Swiss law terms with no equivalents in common law and vice versa. It is not the legal translator's job to solve legal problems, but to facilitate communication. This requires an understanding of Swiss (civil law) and common law legal systems, an understanding of legal terminology, and familiarity with legal writing styles in the source and target languages. The purpose of this Guide is not to provide definitive solutions for all contexts, but to raise awareness of various issues and offer suggestions with typical examples.

For general style recommendations, please refer to the Federal Administration General Style Guide. Please also refer to TERMDAT, the terminology database of the Federal Administration, and the brochure 'The Swiss Confederation. A Brief Guide' for many terms specific to Switzerland.

Black's Law Dictionary is widely used by lawyers in common law jurisdictions. It is also recommended for translators of legal texts within the Federal Administration.

Layout

For the sake of clarity, the language points and guidelines have been placed on the left and the corresponding examples on the right.

Contact details for questions and suggestions:

If you have any questions or feedback regarding the contents of this Legal Style Guide, or if there are additional points that you would like to see included, please send an email to the following email address: dr.legalstyleguide@eda.admin.ch

2. Legal writing style

2.1. Know your audience

<i>Prescriptive or descriptive?</i>	
Is the legal document you are translating 'prescriptive' or 'descriptive'?	
Prescriptive texts lay down rules, i.e. have a regulatory function.	Laws, regulations, contracts, treaties and conventions, internal directives, guidelines, etc.
Descriptive texts have an informative function.	Federal Council reports, legal opinions, textbooks, articles, online texts explaining the law, press releases, etc.
Hybrid texts: descriptive texts with prescriptive parts.	Judicial decisions, pleadings, appeals, petitions, etc.

Prescriptive documents require a different style from descriptive texts

When translating or drafting a prescriptive document, as defined above, pay attention to the legal writing rules in section 2.3 'Expressing obligation, discretion, authorisation, permission and prohibition'.

In prescriptive texts, it is important to ensure that the legal effect of the target text is the same as that of the source text. In legal provisions that express obligation, pay special attention, for example, to the tense you use. You may need to depart from the tense used in the source text. The tense is determined by legal writing conventions, which may not follow the standard rules of grammar (see for example section 2.3.1 on the use of 'shall' in English).

2.2. General background

Common law versus civil law

There are different legal systems in different parts of the world, e.g.

Civil law. Also called 'Roman law', as it originates from the ancient Roman system. In a civil law system, governments create complete codes of law, which are continuously updated; government legislation is therefore the primary source of law.

Most of Europe, including Switzerland, as well as South America, Africa, Russia and China.

In a civil law system, academic legal experts, rather than judges, make legal interpretations. The judge's role is to establish the facts of the case and to assess and apply written laws. Legislators and legal scholars who draft and interpret the codes therefore have greater importance in civil law systems (see note on the term 'Doctrine' in section 3.5).

The civil law system is 'inquisitorial', which means that a judge is often actively involved in investigating the facts of the case.

Common law. The common law system dates back to the Norman Conquest in 1066. The law is developed through court decisions, rather than through legislation alone. While legislation exists, it is interpreted by the courts. Judges' decisions as to the meaning and application of legislation (called precedent) then become the law.

Legal proceedings are adversarial, rather than inquisitorial. The judge acts as an impartial referee between opposing parties to a case. A jury may determine the facts and a judge will decide the law to be applied.

Hybrid systems. Some countries have mixed legal systems that draw on common law and civil law traditions.

Australia, Canada (except Quebec), England and Wales, Hong Kong, India, Ireland, New Zealand, Northern Ireland, Pakistan, and the United States

Scotland and South Africa, for example

<p>NB: 'Civil law' as a legal system should not be confused with 'civil law' meaning the branch of law dealing with matters of private law, such as personal injury, contract cases or other legal disputes between private individuals. This is distinct from criminal law.</p> <p>For a more comprehensive (but non-exhaustive) list of countries with common law and civil law systems, see List of national legal systems (https://en.wikipedia.org/wiki/List_of_national_legal_systems).</p>	
<p>'Fuzzy' versus 'fussy' writing style'</p> <p>Legal writing style results from legal traditions, thought and culture. The languages that have developed in common law and civil law systems therefore differ in style. Civil law countries tend to use 'fuzzy' style and common law countries 'fussy' style.</p>	
<p>Civil law 'fuzzy' style:</p> <ul style="list-style-type: none"> • Concise, rather than precise. General statements of principle, resulting in a looser texture that is not cluttered with detail. • Advantage: simplicity. • Disadvantage: some aspects may remain unclear or unstated. Users of fuzzy law may therefore need to take legal advice to ascertain their rights and duties. 	<p><u>'Fuzzy style'</u></p> <p>The lessor leases to the lessee the following dwelling.</p> <p>Contrast this provision with an equivalent provision in 'fussy' style below:</p>

¹ Coined by Lisbeth Campbell, 'Legal Drafting Styles: Fuzzy or Fussy?', Murdoch University Electronic Journal of Law, Volume 3, Number 2, 1996.

<p>Common law 'fussy' style:</p> <ul style="list-style-type: none"> • Precise rather than concise. Specificity and certainty, resulting in a more cluttered style. • As large areas of law are not codified, lawyers cannot necessarily rely on statutes if there are interpretation problems. • Provisions are therefore focused on specific circumstances to provide immediate answers. • Advantage: certainty and foreseeability of outcome because the prescriptive document is sufficiently detailed to cover all (or most) eventualities. • Disadvantage: more legalese and more repetition. Specificity attained at the cost of intelligibility. 	<p><u>'Fussy style'</u></p> <p>The landlord has let and by these presents does grant, devise and let unto the said Tenant and the said Tenant has agreed to hire and take, and does hereby hire and take as Tenant the following space in the apartment building known as</p> <p>The above are extreme examples intended to illustrate the differences between 'fussy' and 'fuzzy' styles.²</p>
<p>Being aware of the conventions of legal phrasing in the source and target languages can help you achieve the intended legal effect in the translation.</p> <p>It's important to ensure that the legal effect of the target text is the same as that of the source text, e.g. by selecting an appropriate verb, phrase or tense to express obligation, discretion, authorisation, permission and prohibition (see section 2.3 below).</p>	<p><i>Article 697I paragraph 1 Swiss Code of Obligations:</i></p> <p>Die Gesellschaft führt ein Verzeichnis über die ihr gemeldeten wirtschaftlich berechtigten Personen.</p> <p>La société tient une liste des ayants droit économiques qui lui ont été annoncés.</p> <p>The company shall keep a register of the beneficial owners that have been notified to the company.</p>

² Examples from Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, Oxford University Press, 1998.

2.3. Expressing obligation, discretion, authorisation, permission and prohibition

2.3.1. Expressing obligation

Verbs

In German and French prescriptive texts, the present indicative tense is often used to express obligation.

In English, the present simple tense expresses habit or routine. It does not carry the meaning of something being legally required. Similarly, 'will' does not express obligation, but merely a future intention.

When writing in legal English, if you mean 'must' (something is required) you should use the word 'must' (or an equivalent word such as 'shall', 'is required to', 'is obliged to', 'has a duty to', etc.).

Annex 1, Article 4 of the Trade Agreement between the Swiss Confederation and the United Kingdom:

Die Schweiz **notifiziert** dem Vereinigten Königreich die in Protokoll Nr. 2 des Freihandelsabkommens festgelegten Referenzpreise für landwirtschaftliche Rohstoffe der Schweiz und der Europäischen Union.

Switzerland **shall** notify the United Kingdom of Switzerland's and the European Union's domestic reference prices for agricultural raw materials specified in Protocol 2 of the Free Trade Agreement.

Shall

Some legal writers argue that 'shall' should be banished from prescriptive texts on the basis that it is 'archaic', unidiomatic and ambiguous.

'Shall' was historically used as an English translation of the Latin future imperative. In practice, 'shall' is still widely used by legal professionals. It is a lawyer's way of saying 'must' and in a legal context clearly indicates that something is legally binding.

If you decide not to use 'shall', then you need to find an alternative term that expresses obligation. 'Will' is not a suitable candidate, as it expresses future time, not obligation. A possible alternative is 'must', which has the advantage of being unambiguous and always expresses an absolute obligation. However, 'must' can sound unduly bossy if used continuously throughout a text.

Article 697I paragraph 1 Code of Obligations:

Die Gesellschaft **führt** ein Verzeichnis über die ihr gemeldeten wirtschaftlich berechtigten Personen.

La société **tient** une liste des ayants droit économiques qui lui ont été annoncés.

The company **shall keep** a register of its beneficial owners that have been notified to the company. ✓

The company **keeps** a register of its beneficial owners that have been notified to the company. ✗

The company **must** keep a register of its beneficial owners that have been notified to it. ✓

The company **is obliged to** keep a register of its beneficial owners that have been notified to it. ✓

2.3.2. Expressing discretion, authorisation and permission

May vs can

When translating prescriptive texts, we frequently need to use language that states that someone 'is permitted', 'has discretion' or 'is authorised' to do something.

Use 'may' to express permission, authorisation or discretion. In the example opposite, 'kann' and 'peut' are best translated as 'may'.

'Can' is used to express physical or mental ability, as in 'he can translate ten pages a day'. Although in general usage 'can' is sometimes used instead of 'may' to express permission, it should never be used in prescriptive texts to express permission or discretion.

Wenn es eine ausserordentliche Lage erfordert, **kann** der Bundesrat für das ganze Land oder für einzelne Landesteile die notwendigen Massnahmen anordnen.

Si une situation extraordinaire l'exige, le Conseil fédéral **peut** ordonner les mesures nécessaires pour tout ou partie du pays.

If an extraordinary situation so requires, the Federal Council **can** order the measures required for the entire country or for individual parts of the country. ✘

If an extraordinary situation so requires, the Federal Council **may** order the measures required for the entire country or for individual parts of the country. ✔

<p>May: alternative meanings</p> <p>While 'may' is almost always appropriate for expressing permission, discretion and authorisation, there are some cases where it is ambiguous.</p> <p>In the example opposite, 'may' could mean that the response team is authorised to compile a report. Alternatively, it could mean that it is possible that it will do so, for example if sufficient data becomes available.</p> <p>It is usually clear from the context which meaning is intended. However, if 'may' is potentially ambiguous in the context, use an alternative term such as 'is permitted' to indicate discretion or 'might' to convey possibility.</p>	<p>Der Krisenstab kann einen Bericht über die Entwicklung der Epidemie zusammenstellen.</p> <p>L'équipe de reaction peut établir un rapport concernant l'évolution de l'épidémie.</p> <p>The response team may compile a report on the progression of the epidemic.</p>
<p>May not vs cannot</p> <p>Four possible translations of the French and German provisions are provided opposite.</p>	<p>In Restaurants und Bars dürfen sich nicht mehr als 50 Personen aufhalten, inklusive des Personals.</p> <p>Les restaurants et les bars ne peuvent pas accueillir plus de 50 personnes simultanément, personnel inclus.</p>

Translation 1 is ambiguous and could be interpreted in different ways:

- restaurants and bars are authorised not to have more than 50 people present; or
- restaurants and bars are not permitted to have more than 50 people present; or
- it is possible that restaurants and bars do not have more than 50 people present.

When expressing prohibition, it is best not to use 'may not' because it can produce greater ambiguity than 'may' (see section 'May: alternative meanings' above). Instead use an alternative phrase such as 'shall not' or 'must not', as in translation 2 opposite, or a negative subject, as in translation 4.

'Cannot', in example 3, is not appropriate. As mentioned above, 'can' is used to express physical or mental ability, but is never used in prescriptive texts to express permission or discretion. Similarly, 'cannot' expresses inability and should not be used to convey prohibition.

1. Restaurants and bars **may not** have more than 50 people present on their premises, including staff. ✘
2. Restaurants and bars **shall not/must not** have more than 50 people present on their premises, including staff. ✔
3. Restaurants and bars **cannot** have more than 50 people present on their premises, including staff. ✘
4. **No more than 50 people**, including staff, may gather in restaurants and bars. ✔

<p>As 'cannot' indicates 'inability' it is best not to use it in provisions where 'failure' is meant. In the example opposite, the parties do not lack the ability or skill to reach a decision. They have tried to reach a decision but have failed to do so.</p>	<p>Können die Vertragsparteien nicht darauf einigen, dass der Vorsitzende ersetzt werden muss, so kann jede von ihnen die Frage dem Vorsitzenden des Schiedspanelns vorlegen, dessen Entscheidung endgültig ist.</p> <p>Si les parties ne peuvent pas s'accorder sur la nécessité de remplacer un arbitre, toute partie peut demander à ce que le président du groupe spécial d'arbitrage soit saisi de l'affaire, sa décision étant irrévocable.</p> <p>If the Parties cannot agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final. ✘</p> <p>If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final. ✔</p>
<p>Avoid 'is to' and 'has to'</p> <p>Do not use 'is to' and 'has to' to express obligation in prescriptive documents. 'Have to' and 'be to' constructions are never used in legal rules, as their meaning can be ambiguous.</p>	

'Has to' does not unambiguously mean 'must'. It can also imply need. In the example opposite, Richard could have an obligation to deliver the translation by 5pm. Alternatively, he may need to finish the translation by 5pm, e.g. because he is going out.

Likewise, 'is to' does not clearly convey obligation. In the example opposite, Richard could be required to finish the translation by 5pm. Alternatively, he may intend to finish the translation by 5pm because it is desirable to do so.

Instead, use 'shall', 'must', 'is required to', 'is obliged to', etc.

Richard has to have the translation finished by 5pm.

Richard is to finish the translation by 5pm.

Auf Verlangen der Zollbehörden **hat** der Begünstigte eine Erklärung über die Art der Verwaltung dieser Mengen **vorzulegen**.

At the request of the customs authorities, the beneficiary **has to** provide a statement of how the quantities have been managed. ✘

At the request of the customs authorities, the beneficiary **is to** provide a statement of how the quantities have been managed. ✘

At the request of the customs authorities, the beneficiary **shall** provide a statement of how the quantities have been managed. ✔

2.3.3. Expressing prohibition

<p><i>Shall not and must not</i></p> <p>When translating prescriptive texts, we often need to express that the relevant parties are prohibited from doing something.</p> <p>Use 'shall not' and 'must not' to express prohibition where you would use 'shall' and 'must' to express obligation.</p> <p>It is better to avoid 'may not' as the meaning can be ambiguous (see 'May not vs cannot' in 2.3.2 above). 'Cannot' expresses inability and should not be used to convey prohibition.</p>	<p>Der Arbeitnehmer <i>darf</i> geheim zu haltende Tatsachen während des Arbeitsverhältnisses <i>nicht</i> verwerthen oder anderen mitteilen.</p> <p>Pendant la durée du contrat, le travailleur <i>ne doit pas</i> utiliser ni révéler des faits destinés à rester confidentiels.</p> <p>For the duration of the employment relationship the employee <i>must not</i> exploit or disclose confidential information. ✓</p> <p>For the duration of the employment relationship the employee <i>shall not</i> exploit or disclose confidential information. ✓</p>
<p><i>Negative subject + may</i></p> <p>Prohibition may also be expressed by using a negative subject, such as 'no' or 'neither' and 'may', as in the examples opposite.</p>	<p>Un époux <i>ne peut</i> aliéner, hypothéquer ni transporter hors de la résidence familiale les meubles qui servent à l'usage du ménage.</p> <p><i>Neither</i> spouse <i>may</i> alienate, hypothecate or remove from the family residence the movable property serving for the use of the household.</p> <p>Antragsteller <i>dürfen nicht</i> allein deshalb in Haft genommen werden, weil sie internationalen Schutz beantragen.</p>

	<p>Les demandeurs ne doivent pas être placés en rétention au seul motif qu'ils demandent la protection internationale</p> <p>No applicants may be detained merely because they are seeking international protection.</p>
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2.4. General legal writing points

2.4.1. Defined terms

<p>Definitions</p> <p>Some prescriptive texts, e.g. contracts and legislation, include provisions defining key terms used in the document.</p>	<p>Article 3 Federal Act on Data Protection:</p> <p>Art. 3 Begriffe</p> <p>Die folgenden Ausdrücke bedeuten:</p> <ul style="list-style-type: none"> a. Personendaten (Daten): alle Angaben, die sich auf eine bestimmte oder bestimmbare Person beziehen; b. betroffene Personen: natürliche oder juristische Personen, über die Daten bearbeitet werden; <p>Art. 3 Définitions</p> <p>On entend par:</p> <ul style="list-style-type: none"> a. données personnelles (données), toutes les informations qui se rapportent à une personne identifiée ou identifiable; b. personne concernée, la personne physique ou morale au sujet de laquelle des données sont traitées;
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<p>Defined terms are often capitalised in English legal texts.</p> <p>Defined terms in German contracts sometimes appear in block capitals. This is because German nouns are capitalised in any case. Putting the defined terms in block capitals or otherwise changing their appearance is therefore the only way to signal to the reader that the term is defined in the 'Definitions' clause. There is no need to put definitions in block capitals in English texts.</p>	<p>Art. 3 Definitions</p> <p>The following definitions apply:</p> <p>a. personal data (data): all information relating to an identified or identifiable person;</p> <p>b. data subjects: natural or legal persons whose data is processed;</p> <p><i>Definitions clause in a contract:</i></p> <p>1.1 Definitions</p> <p>In this Agreement, the following terms shall have the following meanings:</p> <p>'Affiliate' means any entity, individual, firm, or corporation, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with employer.</p> <p>'Agreement' has the meaning set forth in the recitals to this Agreement.</p> <p>3) Definitionen</p> <p>Die Begriffe in diesem VERTRAG haben die folgende Bedeutung:</p> <p>VERTRAGSGEBIET: vom IMPORTEUR festgelegtes Gebiet, welches der HÄNDLER nach Massgabe dieses Vertrages aktiv bewirtschaftet.</p>
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Consistency when using defined terms

Be consistent. If for example, the term 'Seller' is defined in the 'Definitions' section, you should stick to this term (preferably capitalised) throughout. Do not use 'Seller' in some parts of the document and 'Vendor' in other parts.

Do not include the definite article ('the') within quotation marks around a defined term. For example, as shown in the example opposite, write 'Project' not 'the Project' and 'Contractor' not 'the Contractor'.

This Agreement for XYZ project (hereinafter referred to as **the 'Project'**) is made between ABC Ltd, a corporation duly incorporated under the laws of XXX having its registered office at _____ (hereinafter referred to as **the 'Contractor'**), and... ✓

This Agreement for XYZ project (hereinafter referred to as **'the Project'**), is made between ABC Ltd, a corporation duly incorporated under the laws of XXX having its registered office at _____ (hereinafter referred to as **'the Contractor'**), and... ✗

Consistency when making amendments

When making amendments to prescriptive documents, e.g. directives, it is important to read the surrounding text and keep the terminology consistent. In particular, if the document contains defined terms, make sure you use the same defined terms in the amended parts.

2.4.2. Legal jargon and archaic expressions

Legalese and plain English

Plain English

Some legal writing experts, such as Bryan Garner, stress the importance of using plain English. Prescriptive texts should, of course, be clear, succinct and intelligible. But abandoning legal language altogether carries risks.

Legal professionals with expertise and experience in legal drafting, who choose a 'plain language' style, can still ensure that the document has the same legal effect. However, translators without a legal background should take care. Clear language and shorter sentences will certainly make your legal text easier to understand. But prescriptive texts have real-life impacts. Be careful not to change the meanings and legal effects intended in the source text.

Legal language is not everyday language but a technical language. Legal communication is ultimately a form of specialised communication.

The actual or direct addressees of prescriptive texts, such as legislation or contracts, must therefore also be specialists, i.e. judges, lawyers, public officials, subject matter experts, etc. (the direct receivers). The general public are often only indirect receivers.

Legal language sends out specific signals. When translating prescriptive texts, it is essential to ensure (a) that you send out the proper signals to the legal professionals reading the text and (b) that the legal effect of the target text is the same as that of the source legal text.

If you use plain language, you should therefore ensure that you:

- do not water down rights or obligations
- do not use your own invented terms to replace legal terms that describe complex circumstances and are readily understood by lawyers
- do not leave out important information
- do not create ambiguities
- keep the meaning clear and do not change the meaning in the process of translating the provision
- achieve the desired legal effect

Legalese

Legalese is not the same as 'correct legal language', which is the objective of good legal writing and requires the careful use of special legal terms.

Example 1 opposite is laden with legalese that has no useful meaning. This results in an unclear, unworkable provision.

Example 2 is not cluttered with legalese. It retains key information and legal terms without switching to an everyday language register.

Example 3 is too pared down and key information is missing. To achieve clarity, short sentences and simple words can be helpful, but they alone are not enough to do the job. The linguistically simplest texts can sometimes raise the most serious comprehensibility problems. It is therefore important not to abandon legal language altogether.

Special legal terms are often shorthand for complicated legal situations or specific sets of rights and duties. Replacing these terms with ordinary English terms can dilute the meaning and actually make them less understandable to legal professionals. In the event of a dispute users of the document may need to consult lawyers or apply to the courts to clarify the law or interpret the text.

Example 1

The Insurer **herein shall not be deemed** to provide cover or pay any benefit **hereunder to the extent that** the provision of **such aforementioned** cover or payment of **such** claim arises as a result of the act or default of a third party. ✘

Example 2

The Insurer will not provide any cover or pay any benefit under this policy in respect of any claim resulting from the act or default of a third party. ✔

Example 3

The insurer will not be responsible for third-party claims. ✘

Example 1 opposite is convoluted, but it contains many legal terms that are readily understood by legal professionals, e.g. negligence, indemnify, damages, default, breach and warranties.

Example 2 is an attempt to 'translate' the provision into everyday language. However, the writer has changed the meaning in the process and failed to achieve the intended legal effect. Here are some of the issues:

Reimburse and pay back simply mean to repay. *Indemnify* means to reimburse (or promise to reimburse) another party for a loss suffered because of a third party's or one's own act or omission.

Staff is not the same as agents. An *agent* is **someone who** is authorised to act on behalf of another.

Damage and damages have very different legal meanings: see section 3.5.

Example 1

Except for Lessor's **negligence** and/or **breach of express warranties**, Lessee shall **indemnify** Lessor and its **agents** from and against any and all claims, loss of rents and/or **damages, liens**, judgments, penalties and legal fees and/or **liabilities** arising out of, involving, or in connection with, the **occupancy of the Premises** by Lessee and out of any **default or breach** by Lessee in the performance of any obligation on Lessee's part to be performed under this Lease.

Example 2

The Lessee will **reimburse** the Lessor and its **staff** the costs associated with claims, loss of rents and/or **damage, pledges**, judgments, penalties and legal fees. It will also **pay the Lessor back** if the Lessor incurs costs in connection with the **lease**, the Lessee **fails to pay its debts** or breaks **a commitment under** the lease. This will not apply if the Lessor has been **careless** and/or **broken its promises**.

Pledge may seem like a less technical term than a lien, but there is a difference in meaning. A pledge is the transfer of the possession of an asset to the creditor by way of security for a debt. The ownership of the asset remains with the debtor. A pledge can only be created by contract. A *lien* is a specific type of security interest. It means the right to retain (but not sell) property until a debt or other obligation is discharged – once possession is lost, the lien is released. A lien can arise by operation of law or be created by contract.

Carelessness means not taking or showing enough care and attention. *Negligence* is a legal term meaning the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation and, in common law, negligence is also an area of tort law.

In legal English, a *breach* is a failure to fulfil an obligation under a contract. This meaning is therefore more specific than *break a promise*. In common law, a breach of contract may give the aggrieved party the right to terminate the contract, seek damages, etc.

Default means the omission or failure to perform a legal or contractual duty, especially the failure to pay a debt. The meaning is therefore wider than *non-payment of debts*.

Examples of legalese include:

Archaic, obscure or unusual expressions, e.g.

by these presents
hold harmless
is dispositive of
to wit
viz.
the instant case
witnesseth

hereof, whereupon, thereat, etc. (see below)

Unnecessary verbiage, e.g.

agree and covenant
aver and allege
fit and proper
until such time as
wholly and fully
because of the fact that
cease and desist
null and void
in any manner whatsoever
each and every
the present Agreement

See also section on doublets and triplets below.

Alternatives:

Phrase is redundant. Omit it altogether
indemnify
dispose of
namely, specifically, more precisely, etc.
namely, in other words, etc.
this case
Omit altogether

Alternatives:

agree
allege
fit
until
wholly OR fully
because
stop
void
omit altogether
each OR every
this Agreement

Here-, there- and where- words

It is generally better to avoid archaic expressions. However, words like *hereof*, *thereof*, and *whereof* (and further derivatives ending in *-at*, *-in*, *-after*, *-before*, *-with*, *-by*, *-above*, *-on*, *-upon*, etc.) are still commonly used in legal English, mainly as a way of avoiding repetition. It is therefore important to understand the differences in meaning.

Here are some common examples:

hereby vs herewith

hereby means 'by this means; as a result of this'.

herewith means 'with this (letter or document)'.

hereafter vs hereinafter vs hereunder

hereafter means 'after this', 'from now on or at some time in the future'.

hereinafter means 'later referred to in this matter or document'.

hereunder means 'under this', i.e. 'in accordance with this document or provision'.

The parties hereto
instead of:

The parties to this contract

Hereinafter referred to as
instead of:

As written below or 'from this point on' in the document.

'The parties hereby agree'

'The plan enclosed herewith'

For a further example, see note on 'Hereby/ herewith' in section 3.5 below.

'Any of the Company's employee benefit plans which may now or hereafter be in effect'

'... hereinafter referred to as the 'Service Provider''

'Notice hereunder must be given within 30 days'

<p><i>thereon vs thereupon</i></p> <p><i>thereon</i> means 'on or following from the thing just mentioned'.</p> <p><i>thereupon</i> means 'immediately or shortly after that'.</p> <p><i>whereby vs whereupon</i></p> <p><i>whereby</i> means 'by which'.</p> <p><i>whereupon</i> means 'immediately after which'.</p>	<p>'Any value added tax or similar tax payable thereon'</p> <p>'Delivery shall take place on 28.03.2022. Thereupon the goods shall be stored in the warehouse'</p> <p>'The contract dated 1 May 2020, whereby the NGO agreed to supply the goods'</p> <p>'The plaintiff shall furnish evidence of the nature and extent of the claim, whereupon the court shall assess the amount recoverable'</p>
<p><i>Doublets and triplets</i></p> <p>There is a historical tendency in legal English to string together two or three words to convey what is usually a single legal concept.</p> <p>Avoid doublets and triplets. When translating, do not add words that are not in the source text.</p>	<p>null and void fit and proper promise, agree and covenant give, devise and bequeath</p> <p>able and willing -> able due and owing -> owing give, devise and bequeath -> give possession, custody, and control -> possession OR custody OR control</p>

2.4.3. Citations, references and cross-references

<i>Citing Swiss legislation</i>			
Use these translations and abbreviations for subdivisions of Swiss legislation:	Artikel	Article	Art.
	Absatz	paragraph	para.
	Buchstabe	letter	let.
	Ziffer	number	no
In the example opposite, note that there are no commas inserted.	Art. 11 para. 1 let. b BO		
Also note that the abbreviated form and its reference in the Classified Compilation of Federal Legislation (SR number) immediately follow the citation in brackets.	under Article 4 paragraph 1 letter b of the Collective Investment Schemes Ordinance (CISO; SR 951.311).		
Use these abbreviations when citing multiple provisions:	Articles	Arts	
	paragraphs	paras	
	letters	lets	
	numbers	nos	
Note that there is no final stop after 'Arts', 'paras', etc., as these are contractions and not truncations.	Art. 1 paras 3, 4 and 5 Arts 5, 6 para.1		
Where reference is made to an article or paragraph in running text, then the word 'Article', 'paragraph' and 'letter' are not abbreviated. If the reference is made in brackets after the main text, then the abbreviated form is used.	The foregoing time limits do not apply to family reunification in terms of Article 42 paragraph 2 letters a and b. The draft Federal CET Act implements the constitutional mandate on CET (Art. 65a of the Federal Constitution).		

Citing Swiss cases

Landmark cases are published in the Amtliche Sammlung der Entscheidungen des Schweizerischen Bundesgerichts (Decisions of the Swiss Federal Supreme Court), abbreviated as BGE.

In descriptive texts, it may be appropriate to write the citation in full at first mention as follows:

<English translation of court name> [*<court abbreviation>*] <date of decision>, <volume number> <reporter or periodical name> [*<reporter or periodical abbreviation>*] <part number> <page number>

Thereafter the short case citation may be used. A case citation contains all the information needed to locate a particular case. It is therefore important to keep the BGE citation in translations so that readers can find the original case report if necessary. They cannot do this if the citation has been translated.

Each case has a specific citation, e.g. BGE 114 IV 56.

The first number shown in blue indicates the annual volume. The first volume was published in 1874, so 114 indicates that the decision was made 114 years later in 1988.

BGE = Bundesgerichtsentscheid (i.e. Federal Supreme Court decision).

BGE 114 IV 56

Federal Supreme Court (FSC) decision, 17 June 2019, 125 Decisions of the Swiss Federal Supreme Court (BGE) I 98

BGE *114* IV 56

<p>For volumes after 1995, the Roman numeral indicates the area of law – here the case concerns criminal law:</p>	<p>BGE 114 <i>IV</i> 56</p>
<p>I. Constitutional law II. Administrative and international law III. Civil law, debt enforcement law IV. Criminal law, enforcement of sentences and measures, and criminal procedure V. Social security law</p>	
<p>The final set of digits indicates the page(s) within the volume – here p. 56.</p>	<p>BGE 114 IV <i>56</i></p>
<p>In the example opposite, E. 5 (35) means 'Erwägung 5' on page 35. Translate 'Erwägung' as 'finding' and do not abbreviate.</p>	<p>BGE 113 IV 58, <i>E. 5 (35)</i> BGE 113 IV 58, <i>finding 5</i> (35).</p>
<p>Since 2007 all final decisions of the Federal Supreme Court have been published online at www.bger.ch. Each case is assigned a separate case number in the system, e.g. 6B_300/2017.</p>	

References and cross-references: contracts, directives and other prescriptive texts

English-speaking legal writers often use brackets when referring to subdivisions of provisions in contracts and other documents.

Numbers with brackets are often neater and clearer. It is also not standard practice in English-speaking jurisdictions to write out the subdivisions of provisions using terms such as 'paragraph' and 'letter'. **However, this is recommended for Swiss legislation (see 'Citing Swiss legislation' above).**

The convention in legal English for describing the subdivisions of legal texts is to use:

Contracts: *clause* and *sub-clause* (see example opposite)

UK legislation: *section* and *sub-section*. Write 'section' in lower case.

Swiss and EU legislation: *Article* and *paragraph*. Write 'Article' in upper case and 'paragraph' in lower case.

Internal directives, circulars, policies, guidelines and other rules: *Article/paragraph, section/sub-section* as appropriate.

Anlagemöglichkeiten innerhalb der Freizügigkeitsstiftung der XYZ & Co Bank AG gemäss **Art. 19a Abs. 3 lit. a bis c**.

Investment options under the vested benefits foundation of XYZ & Co Bank AG under **Article 19a(3)(a) to (c)**.

Ziffer	chiffre	clause
Absatz	alinéa	sub-clause

The Equality Act 2010 prohibits discrimination against people with the protected characteristics that are specified in section 4 of the Act.

See section 'Citing Swiss legislation' above.

Chapter

For directives, guidelines, etc. do not translate 'Kapitel' and 'chapitre' as 'chapter'. A 'chapter' is (a) a main division of a book, typically with a number or title, (b) a major division within a piece of legislation, or (c) a section of a treaty. Use 'section' instead.

In Swiss legislation, translate 'Kapitel' as 'chapter', as this is the standard translation in Fedlex (Switzerland's federal law publication platform) for this sub-division of Acts and Ordinances.

Provision

'Provision' is a general term referring to a stipulation in a contract, piece of legislation or other legal instrument. 'Provision' can only be used in a general sense, e.g. 'the provisions of this Agreement' rather than to refer to specific clauses in a contract or other prescriptive text.

Während **Kapitel** 4.4 die Thematik in einem grösseren Zusammenhang erläutert, geht der Bundesrat in Anhang 1 vertieft auf die einzelnen Aspekte ein.

While **section** 4.4 explores the topic in a broader context, the Federal Council looks at individual aspects in greater detail in Appendix 1.

See also 'Swiss legislation' in section 3.1 'Names of laws'.

La couverture des employés locaux est assurée conformément aux **dispositions** de l'assurance sociale locale.

Local employees are insured in accordance with the **provisions** of local social security legislation.

<p>Do not use 'provision' followed by a number.</p> <p>Use 'section', 'Article' or 'clause' to refer to a specific provision with a number.</p>	<p>Die einzelnen Dokumente, die die Organisation der DEZA vorzulegen hat, sind unter Ziffer 5 aufgeführt.</p> <p>The specific documents that the Organisation is required to submit to the SDC are set out in Article 5. ✓</p> <p>The specific documents that the Organisation is required to submit to the SDC are set out in provision 5. ✗</p>
<p>Term</p> <p>'Term' is frequently used to refer to the provisions of contracts.</p> <p>Do not use 'term' followed by a number or description of the clause content. Use 'section', 'Article' or 'clause' to refer to a specific provision with a number or description.</p>	<p>Der Kunde bestätigt die Kenntnis vom Inhalt dieses Vertrags, insbesondere der darin enthaltenen Geheimhaltungsbestimmung.</p> <p>The Client confirms that it has read and understood the terms of this Agreement and in particular the confidentiality provision set forth herein. ✓</p> <p>The Client confirms that it has read and understood the terms of this Agreement and in particular the confidentiality term set forth herein. ✗</p>

Condition

'Terms' has a broader meaning than 'conditions'. 'Terms' refers to all the provisions of the document. A condition is more specific and refers to a future event on which the existence or scope of an obligation or liability depends.

In common law countries, 'condition' also means an 'essential' or 'material' contract term. If a 'condition' is breached, the non-breaching party is entitled to be discharged from all liabilities under the contract. English speakers may therefore interpret the term 'condition' differently from the meaning intended.

As a result, do not translate 'Bestimmung' as 'condition' unless either of the above meanings is intended. Instead, use 'term', 'provision', etc. as appropriate.

See also note on 'Condition, covenant, representation, warranty' in section 3.4.4 'Contract law' below.

Die Missbräuchlichkeit einer **Vertragsbestimmung** wird unter Berücksichtigung aller den Vertragsabschluss begleitenden Umstände sowie aller anderen **Bestimmungen** desselben Vertrages oder eines anderen Vertrages beurteilt.

The unfairness of a contractual **term** shall be assessed by taking into account all the circumstances attending the conclusion of the contract and all the other **terms** of the contract. ✓

The unfairness of a contractual **condition** shall be assessed by taking into account all the circumstances attending the conclusion of the contract and all the other **conditions** of the contract. ✗

Terms and conditions

'Terms and conditions' (T&Cs) is a set phrase for a standard agreement between a business and its customers. They are often referred as the 'small print'. Consumers routinely click to accept T&Cs, e.g. when buying goods online or signing up to a streaming service.

See also note on 'Allgemeine Geschäftsbedingungen' in 'Condition, covenant, representation, warranty' in section 3.4.4 'Contract law' below.

Point

Do not use 'point' when referring to subdivisions of legal provisions. Use 'section', 'article' or 'clause' as appropriate.

Wird ein Zahlungsauftrag vom Zahler ausgelöst, so haftet seine Bank vorbehaltlich der **Ziffern** 2.6.2 und 2.6.8 gegenüber dem Zahler für die ordnungsgemäße Ausführung des Zahlungsvorgangs.

Where a payment transaction is initiated by the payer, his or her bank shall, without prejudice to **clauses** 2.6.2 and 2.6.8, be liable to the payer for the correct execution of the payment transaction. ✓

Where a payment transaction is initiated by the payer, his or her bank shall, without prejudice to **points** 2.6.2 and 2.6.8, be liable to the payer for the correct execution of the payment transaction. ✗

Phrases used in cross-referencing

Typical phrases used when referring to other provisions within a prescriptive document or in another prescriptive document are 'subject to', 'notwithstanding', 'without prejudice to' and 'except as otherwise provided in'.

'Notwithstanding' signals that the provision in question overrides another provision inconsistent with it. The provision is dominant in the referencing relationship signalled.

'Subject to' signals that the provision in question is governed by some other provision. The provision in question is subordinate in the referencing relationship being signalled.

... bei der nachträglichen Entdeckung der Tatsache, dass der Kunde **ungeachtet** der vorliegenden Deklaration eine US Person gemäss US-Steuerrecht ist oder geworden ist.

... it is subsequently established that the Client is, or has become, a US person as defined by US tax law, **notwithstanding** the declaration set out above.

Nonobstant toutes dispositions contraires dans le Contrat de licence, vous n'êtes pas autorisé à transférer le produit ou toute copie de celui-ci.

Notwithstanding anything to the contrary in the Licence, you may not transfer the product or any copy thereof.

Es tritt **vorbehältlich** der Genehmigung durch die FINMA (§ 14 Abs. 3) am xx xx xxxx in Kraft.

Subject to approval by FINMA (clause 14(3)), it will enter into force on xx xx xxxx.

Do not translate 'vorbehältlich', 'unter Vorbehalt' 'vorbehalten', or 'sous reserve de' as 'remain reserved' or 'under reservation of'.

'Reserve' can be used in the context of rights, e.g. 'the Company reserves the right to...' or 'all rights reserved.' It also means to retain or store something for future use, e.g. a fund of money set aside by a bank or insurance company to cover future liabilities. But avoid 'reserve'/'reservation' when cross-referring to other provisions.

'Without prejudice to' has two meanings:

(1) 'Without affecting ...', 'independently of', 'leaving intact ...' another provision. (See examples opposite).

(2) 'Without loss of any rights'.

In common law, a letter marked 'without prejudice' cannot later be used as evidence in court proceedings if the settlement negotiations fail. This is a rule of evidence in common law which has no equivalent in civil law.

Sous réserve de l'art. 720, al. 3, celui qui trouve un animal perdu est tenu d'en informer le propriétaire ou, à défaut, l'autorité compétente.

A person who finds a lost animal must, **subject to** Article 720 paragraph 3, inform the owner or, if the latter is unknown, report his or her find. ✓

A person who finds a lost animal must, **under reservation of** Article 720 paragraph 3, inform the owner or, if the latter is unknown, report his or her find. ✗

Unbeschadet der De-minimis-Regel müssen die Mitgliedstaaten alle Verkäufe bei der Kommission anmelden.

Without prejudice to the de minimis rule, Member States must notify the Commission of any sale.

Das Kündigungsrecht gemäss Ziffer 15 **bleibt hiervon unberührt**.

The provisions of this clause shall be **without prejudice to** the right to terminate this Agreement in accordance with clause 15.

<p><i>'Except as otherwise provided in'</i> also means that the provision is trumped by another provision of the contract. However, the phrase is narrower than 'subject to'. 'Except as otherwise provided in' indicates that the other provision referred to constitutes an exception to the rule.</p>	<p><i>Sans préjudice de</i> l'article 9 des présentes dispositions, lors de l'élection des membres, nul ne peut voter plus d'une fois</p> <p><i>Without prejudice to</i> Article 9 of these Rules, no one may vote more than once in any election of members.</p> <p><i>Im Übrigen</i> gelten die Allgemeinen Geschäftsbedingungen der Bank.</p> <p><i>Except as otherwise provided herein,</i> the Bank's General Terms and Conditions shall apply.</p> <p><i>Vorbehältlich anders lautender Bestimmungen</i> der Verordnung sind die Bestimmungen des EG-Vertrags anzuwenden.</p> <p><i>Except as otherwise provided in</i> the Regulation, the Treaty rules shall apply.</p> <p><i>Sauf dispositions contraires de</i> l'article 16, les États partenaires restent responsables conformément aux dispositions de la Convention sur la responsabilité.</p> <p><i>Except as otherwise provided in</i> Article 16, the Partner States shall remain liable in accordance with the Liability Convention.</p>
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2.4.4. Inclusive language

Gender-inclusive language

In legal writing, masculine language has traditionally been used to refer to people regardless of their gender. This should be avoided. Only use gender markers when relevant for communication, e.g. to refer an individual if you know their gender.

Strategies for avoiding gender-specific language are set out below:

Select neutral words:

reasonable man ✘
reasonable person ✔

chairman ✘
chair ✔

policeman ✘
policewoman ✘
police officer ✔

juryman ✘
juror ✔

Ombudsman ✘
Ombuds ✔

<p>Repeat the noun</p> <p>Repeat the noun each time, rather than using a pronoun.</p>	<p>A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if he ... ✘</p> <p>A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person ... ✓</p>
<p>Rewrite to avoid the need for a pronoun</p> <p>Use they (singular)</p> <p>'They' is commonly used as a third person singular pronoun that is neutral for all genders. It is increasingly accepted in legal texts. However, it may seem more natural in some contexts than in others.</p>	<p>A person commits an offence if he ... ✘</p> <p>It is an offence for a person to ... ✓</p> <p>Niemand darf in einen Staat ausgeschafft werden, in dem ihm Folter oder eine andere Art grausamer und unmenschlicher Behandlung oder Bestrafung droht.</p> <p>No person may be deported to a state in which he faces the threat of torture or any other form of cruel or inhumane treatment or punishment. ✘</p> <p>No person may be deported to a state in which they face the threat of torture or any other form of cruel or inhumane treatment or punishment. ✓</p>

NB: using 'they' singular in prescriptive texts:

Ambiguity should be avoided in prescriptive texts. Using 'they' instead of 'he' or 'she' in a contract, for example, could imply 'they' plural and create ambiguity as to who or what a provision or obligation applies to. In contracts, gender clauses are commonly used instead (see example below).

Use they (plural) or omit the pronoun altogether

Turn the singular noun into a plural noun and then use the pronoun 'they'.

Omit the possessive pronoun altogether

Convert nouns to verbs

Der Arbeitnehmer kann seinen Anspruch auf Sozialversicherung verlieren, wenn der Vertrag kündigt wird.

Employees may lose their right to social security if the contract is terminated.

The employee may lose ***the right*** to social security if the contract is terminated.

The landlord shall ***give his consent*** to alterations of the premises.

The landlord shall ***consent*** to alterations of the premises.

Use a relative clause

Where an agent has been issued with an authorisation, **he must** return it or deposit it with the court when that authority has ended.

An agent who has been issued with an authorisation **must** return it or deposit it with the court when that authority has ended.

Pronouns in prescriptive texts

In German and French the personal pronoun relates to the gender of the noun, but in English it may relate to the individual (male or female) concerned, or a legal entity or company.

In German you would refer to 'die Gesellschaft' as 'sie' and in French 'la société' would be 'elle'. In English you should use 'it'. Never use 'they' (singular) for companies or other legal entities.

Die Gesellschaft wurde im November 2007 gegründet; **sie** hat derzeit vier Standorte.

The company was established in November 2007; **it** currently has four business locations. ✓

The company was established in November 2007; **they** currently have four business locations. ✗

Do not automatically use gender-specific pronouns for the parties to a document. For example, 'der Kunde', 'der Käufer' or 'die Auftragnehmerin', etc. may in the context be a legal entity, e.g. company, not an individual. Use 'it' rather than 'he' or 'she', unless it is clear from the context that the customer, purchaser or contractor is a male or female individual.

Translating amendments

When making amendments to a document or translating provisions in isolation, do not automatically translate 'er' or 'sie', 'il' or 'elle' as 'he' or 'she' without checking first whether a legal entity is involved. If a legal entity is involved, make sure that 'it' is used throughout.

Der Auftraggeber informiert den Auftragnehmer unverzüglich, wenn **er** Fehler oder Unregelmässigkeiten im Zusammenhang mit der Verarbeitung personenbezogener Daten durch den Auftragnehmer feststellt.

The Client shall inform the Contractor immediately if **it** identifies errors or irregularities in connection with the processing of personal data by the Contractor. ✓

The Client shall inform the Contractor immediately if **he** identifies errors or irregularities in connection with the processing of personal data by the Contractor. ✗

Use a gender clause in contracts

Lawyers often insert gender clauses into English contracts as a way of dealing with problematic pronouns. It helps to avoid clumsy formulations such as 'he/she/they/it'.

Provided the gender clause is inserted, you can select any pronoun or pronouns you think appropriate.

In some cases, it may be worth explaining to clients that there is no grammatical gender in English and that inserting a gender clause is recommended.

Except where the context otherwise requires, words denoting the singular shall include the plural and vice versa, words denoting any gender shall include all genders and words denoting persons shall include companies, partnerships and other legal entities and vice versa.

2.5. Legal style recommendations

*Gemäss, nach, entsprechend
selon, conformément, etc.*

There are a number of options for translating the above terms:

Under Article 8 ...

In accordance with ...

Pursuant to

Article 8 provides that ...

As specified/set out in Article 8 ...etc.

*According to, in accordance with,
under*

'According to' and 'in accordance' with are not synonyms.

Gemäss Artikel 72 Absatz 1 BV obliegt die Regelung des Verhältnisses zwischen Kirche und Staat den Kantonen.

In accordance with Article 72 paragraph 1 of the Federal Constitution the regulation of the relationship between church and state is the responsibility of the cantons. ✓

Article 72 paragraph 1 of the Federal Constitution **provides that** the regulation of the relationship between church and state is the responsibility of the cantons. ✓

<p>Pursuant to also has alternative meanings. It can mean 'under', 'in accordance with', 'as authorised by', or 'in the process of carrying something out', e.g. 'pursuant to his responsibilities'. There is therefore a risk of ambiguity and it is better to use a more precise term such as 'in accordance with' or 'under'.</p>	<p>There might be other circumstances in which a refusal to remit assets pursuant to such a request might be justified.</p>
<p>im Sinne von, au sens de, en vertu de</p> <p>These phrases can be translated in different ways:</p> <p>For the purposes of</p> <ul style="list-style-type: none"> • provides a context within which you can engage with the contents of the provision, and • signifies that the term or phrase or definition (here 'Arbeitnehmer') is intended to apply in the context of the Act or provision referred to. <p>As defined in</p> <ul style="list-style-type: none"> • Use this phrase when you want to indicate that a term has the meaning in another provision if that provision contains a definition of that term. 	<p>Als Arbeitnehmer im Sinne des Gesetzes gilt, wer eine unselbstständige Erwerbstätigkeit ausübt und für die geleistete Arbeit einen Lohn erhält.</p> <p>For the purposes of the Act 'employee' means a person who is employed and receives a salary for work performed.</p> <p>Est une OING au sens de la présente loi l'organisation qui est constituée en la forme de l'association ou de la fondation de droit suisse.</p> <p>An INGO, for the purposes of this Act, is an organisation with the legal form of an association or a foundation formed in accordance with Swiss law.</p> <p>Anspruchsberechtigt sind Begleitpersonen im Sinne von Art. 3 der Verordnung des EDA zur Bundespersonalverordnung.</p>

<ul style="list-style-type: none"> • Here, 'Begleitperson' is one of the defined terms in the definitions section (Article 3) of the Ordinance of 20 September 2002 to the Federal Personnel Ordinance. • If there is no actual definition of a term, then another translation may be preferable such as 'within the meaning of' (see below). <p>Within the meaning of</p> <ul style="list-style-type: none"> • Indicates that the provision has the meaning given to it in another provision. • It can be used to translate 'im Sinne von'/'au sens de' when no specific definition of a term has been given. • In the example opposite, Article 10 of the Börsengesetz doesn't actually contain a definition of 'licence', but describes the general type of licence, i.e. one granted by FINMA, and sets out the general conditions for obtaining the licence. 	<p>'Accompanying persons', as defined in Article 3 of the FDFA Ordinance to the Federal Personnel Ordinance, are eligible.</p> <p>Quiconque opère principalement dans le domaine financier ne peut exercer les activités suivantes que s'il détient une autorisation d'exercer en tant que maison de titres en vertu de la présente loi.</p> <p>Persons operating primarily in the financial sector may perform the following activities only if they have authorisation as a securities firm as defined in this Act.</p> <p>Als Effektenhändler gelten Personen, die über eine Bewilligung im Sinne von Artikel 10 des Börsengesetzes verfügen.</p> <p>Securities dealers mean individuals or entities holding a licence within the meaning of Article 10 of the Stock Exchange Act.</p> <p>La signature électronique qualifiée avec horodatage électronique qualifié au sens de la loi du 18 mars 2016 sur la signature électronique est assimilée à la signature manuscrite.</p>
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	<p>An authenticated electronic signature combined with an authenticated time stamp <i>within the meaning of</i> the Federal Act of 18 March 2016 on Electronic Signatures is deemed equivalent to a handwritten signature.</p>
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3. Terminology

3.1. Names of laws

<p><i>Act vs law</i></p> <p>Use 'Act', rather than 'law', for the official titles of individual laws.</p> <p>English translations of many Swiss Acts and Ordinances are available TERMDAT.</p>	<p>Bundesgesetz über das öffentliche Beschaffungswesen</p> <p>Loi fédérale sur les marchés publics</p> <p>Federal Act on Public Procurement ✓</p> <p>Federal Law on Public Procurement ✗</p>
<p>'Act' in the sense of a piece of legislation should always be written in upper case, even when the full title is not used.</p>	<p>Gemäss Artikel 93 des Gesetzes wird der Jahresabschluss von einem oder mehreren Rechnungsprüfern geprüft.</p> <p>L'article 93 de la loi dispose que les comptes annuels sont vérifiés par un ou plusieurs commissaires aux comptes.</p> <p>Article 93 of the Act provides that the annual financial statements must be audited by one or more auditors. ✓</p> <p>Article 93 of the act provides that the annual financial statements must be audited by one or more auditors. ✗</p>

<p>Use 'law' as a generic term for (1) the system or set of rules made by a government to regulate human activities, (2) a written set of rules passed by a legislative body, (3) judicial precedents, legal principles, statute law or case law, (4) systems of law as a subject of study or as the basis of the legal profession.</p>	<p>The Anti-Money Laundering Act is an important element of Swiss criminal law.</p>
<p>Regulation vs regulations</p> <p>Regulation (singular) has two distinct meanings:</p> <p>(1) targeted rules and an oversight mechanism for monitoring and enforcing compliance by a specific industry; and</p> <p>(2) a piece of legislation that is immediately enforceable in all EU member states without the need for member states to enact implementing legislation.</p> <p>Do not use 'regulation' (singular) except where the above meanings are intended.</p> <p>Regulations (plural) are authoritative rules dealing with details or procedure.</p> <p>In the UK, 'regulations' can specifically mean secondary legislation or statutory instruments which are enacted to implement a specific piece of legislation.</p>	<p><u>Example 1</u></p> <p>Financial regulation refers to the laws and rules that govern what financial institutions such as banks, brokers and investment companies can do. These rules are generally laid down by government regulators or international groups to protect investors, maintain orderly markets and promote financial stability.</p> <p><u>Example 2</u></p> <p>Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports.</p> <p>The Management of Health and Safety at Work Regulations 1999 implement certain provisions or powers under the Health and Safety at Work Act 1974.</p>

<p>Do not translate 'Reglement'/'règlement' as 'regulation' (singular). Instead, use 'regulations', 'rules', 'guidelines', 'terms and conditions', etc., depending on the document type.</p>	<p>Der Vorstand regelt das Anforderungsprofil für seine Mitglieder sowie seine Arbeitsweise in einem Reglement.</p> <p>Le comité définit dans un règlement son mode de travail et le profil d'exigences auquel doivent satisfaire ses membres</p> <p>The board of directors shall issue a set of rules defining the job requirement profile for its members and the working methods to be used.</p>
<p>Ordinance</p> <p>In countries other than Switzerland, an ordinance is generally a set of rules established by an organisation to regulate itself or, more specifically, a law made by a local authority.</p> <p>In Switzerland, it is the standard term for secondary legislation.</p>	<p>Verordnung über den Schutz von Informationen des Bundes</p> <p>Ordonnance concernant la protection des informations de la Confédération</p> <p>Ordinance on the Protection of Federal Information</p>
<p>Statute</p> <p>A primary piece of legislation (i.e. a main law) passed by a legislative body (as opposed to secondary implementing legislation). The word is often used to distinguish law made by a legislative body from case law, which is decided by the courts.</p>	<p>Die Rechte wurden per Gesetz eingeräumt.</p> <p>The rights have been conferred by statute.</p>

Do not translate 'Statuten' or 'statuts' as 'statutes'. 'Statuten' refer to a company's articles of association.

Statuten sind für Gesellschaften mit beschränkter Haftung (GmbH) gesetzlich vorgeschrieben. Die **Statuten** einer Gesellschaft müssen mindestens die Punkte Rechtsform, Ziel, Sitz, Gesellschaftskapital und Beiträge der Gesellschafter enthalten.

Pour les sociétés à responsabilité limitée (Sàrl), les **statuts** sont fixés par la loi. Les **statuts** d'une firme doivent inclure au moins sa raison sociale, son but, son siège, son capital social et de la somme libérée par chaque associé.

Articles of association are required by law for limited liability companies (LLCs). A company's **articles of association** must include at least its company name, corporate purpose, registered office, share capital and the amount paid up by each member. ✓

Statutes are required by law for limited liability companies (LLCs). A company's **statutes** must include at least its company name, corporate purpose, registered office, share capital and the amount paid up by each member. ✗

EU directives and regulations

It is important to use the official EU terms for EU legislation and other legal instruments.

Regulation (singular – see also section on 'Regulation vs regulations' above)

A regulation is a binding piece of legislation that must be applied in its entirety across the EU.

In an EU context, always translate 'Verordnung' as 'Regulation', as this is the official EU term. Never use 'Ordinance' as used in Switzerland (see also note on 'Ordinance' above).

Directive

An instrument of EU law that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals.

Always use the official English titles of EU Regulations and Directives. You can search for the titles of EU law, which is published in 24 official languages of the EU on the EUR-Lex website at <https://eur-lex.europa.eu/homepage.html>

DE: Verordnung

FR: Règlement

EN: Regulation

DE: Richtlinie

FR: Directive

EN: Directive

Verordnung (EU) 2015/478 des Europäischen Parlaments und des Rates vom 11. März 2015 über eine gemeinsame Einfuhrregelung

Règlement (UE) 2015/478 du Parlement européen et du Conseil du 11 mars 2015 relatif au régime commun applicable aux importations

	<p>Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports</p> <p>Richtlinie 93/42/EWG des Rates vom 14. Juni 1993 über Medizinprodukte</p> <p>Directive 93/42/CEE du Conseil, du 14 juin 1993, relative aux dispositifs médicaux</p> <p>Council Directive 93/42/EEC of 14 June 1993 concerning medical devices</p>
<p>Swiss legislation</p> <p>Disclaimer</p> <p>Translations of pieces of Swiss legislation begin with the following disclaimer:</p>	<p>English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.</p>
<p>Acts and Ordinances have a full title, a short title, an abbreviation of the title, and a date. If the law has no short title or abbreviation in the Swiss languages, omit these in English too.</p> <p>Many English translations for titles of Swiss Acts and Ordinances are available in TERMDAT and Fedlex. Use these translations where available.</p>	<p>Bundesgesetz vom 12. Juni 2009 über die Mehrwertsteuer</p> <p>Full title: Federal Act of 12 June 2009 on Value Added Tax (VATA)</p> <p>Short title: Value Added Tax Act, VAT Act</p>

<p>In running text, the full title is cited as: Act of [date] on [topic].</p> <p>Do not write 'Federal Law on ...'</p> <p>See also 2.4.3 Citations, references and cross-references.</p> <p>Preamble</p> <p>Below the title and date there is a preamble, which normally takes a standard form, citing the legislation that forms the basis for the Act or Ordinance in question.</p> <p>The preamble ends with a verb: in Acts this is 'decrees' and in Ordinances 'ordains'.</p> <p>Subdivisions of legislation</p> <p>Above 'Article' level, Acts and Ordinances are subdivided as follows:</p> <table border="0"> <tr> <td>Artikel</td> <td>Article</td> <td>Article</td> </tr> <tr> <td>Abschnitt</td> <td>Section</td> <td>Section</td> </tr> <tr> <td>Kapitel</td> <td>Chapitre</td> <td>Chapter</td> </tr> <tr> <td>Titel</td> <td>Titre</td> <td>Title</td> </tr> <tr> <td>Teil</td> <td>Partie</td> <td>Part</td> </tr> </table>	Artikel	Article	Article	Abschnitt	Section	Section	Kapitel	Chapitre	Chapter	Titel	Titre	Title	Teil	Partie	Part	<p>Federal Act of 12 June 2009 on Value Added Tax</p> <p>The Federal Assembly of the Swiss Confederation,</p> <p>based on Article 173 paragraph 2 of the Federal Constitution and having considered the Federal Council Dispatch dated 16 October 1996,</p> <p>decrees:</p> <p>1. Teil: Allgemeine Bestimmungen 1. Titel: Gegenstand und Geltungsbereich 1. Kapitel: Sachliche und funktionelle Zuständigkeit 2. Abschnitt: Personenrecht Art. 20 Persönlichkeits- und Datenschutz</p> <p>Partie 1 Dispositions générales Titre 1 Objet et champ d'application Chapitre 1 Compétence à raison de la matière et de la fonction</p>
Artikel	Article	Article														
Abschnitt	Section	Section														
Kapitel	Chapitre	Chapter														
Titel	Titre	Title														
Teil	Partie	Part														

<p>In the English version on the right, note that:</p> <ul style="list-style-type: none"> • the number follows the subdivision, • the key words in the main headings are in upper case, and • in the Article headings, only the first word is in upper case. 	<p>Section 2 Droit des personnes Art. 20 Protection de la personnalité et protection des données</p> <p>Part 1 General Provisions Title 1 Subject Matter and Scope of Application Chapter 1 Material Jurisdiction and Functional Jurisdiction Section 2 Law of Persons Art. 20 Protection of personal privacy and data protection</p>
<p><i>Final provisions</i></p> <p>Most legislative texts end with 'Final Provisions', which have fairly standard wording.</p> <p>Note that the UK legislative terms 'commencement' and 'come into force' are generally preferred to the more cumbersome 'entry/enter into force'.</p>	<p>Chapter 7: Final Provisions</p> <p>Art. 33 Implementing provisions</p> <ol style="list-style-type: none"> 1. The Federal Council shall enact the implementing provisions. 2. It may assign implementation responsibilities to the cantons or to private legal entities. 3. It may delegate administrative responsibilities in the area of host state policy to private legal entities. <p>Art. 34 Repeal and amendment of current legislation The repeal and amendment of the current legislation is regulated in the Annex.</p> <p>Art. 173 Transitional provisions</p> <ol style="list-style-type: none"> 1. Transitional provision relating to Art. 13 (Disciplinary measures) Article 13 applies to infringements that are committed after this Act comes into force

	<p>Art. 174 Commencement</p> <ol style="list-style-type: none"> 1. This Act is subject to an optional referendum. 2. The Federal Council shall determine the date on which this Act comes into force.
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3.2. Names of courts

<p><i>Swiss courts</i></p> <p>The Federal Supreme Court is the highest court in Switzerland. It deals with cases at federal level. It hears and determines all appeals against decisions of the highest cantonal courts, the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court. The court ensures that Swiss federal law is correctly applied and that the rights of citizens under the Constitution are protected.</p> <p>The other three courts at federal level are the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court.</p> <p>Use these translations:</p>	<p>DE: Bundesgericht FR: Tribunal fédéral EN: Federal Supreme Court</p> <p>DE: Bundesstrafgericht/ FR: Tribunal pénal fédéral EN: Federal Criminal Court</p> <p>DE: Bundesverwaltungsgericht FR: Tribunal administratif fédéral EN: Federal Administrative Court</p> <p>DE: Bundespatentgericht FR: tribunal fédéral des brevets EN: Federal Patent Court</p>
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<p>Each canton has its own courts, which hear cases at first instance, i.e. for the first time before any appeal, in their jurisdictions.</p>	
<p><i>International and foreign courts</i></p> <p>Use the official English court name and abbreviation, if these exist.</p> <p>Refer to names of courts in full at first mention. Thereafter, you can use an abbreviation and/or acronym, e.g. the International Criminal Court (ICC or the 'Court'), the European Court of Human Rights (ECtHR), or just refer to the 'Court'.</p> <p>In running text, when using 'the Court' as shorthand for a specific court, write 'Court' in upper case.</p> <p>If there is no official name, always write the name of the court in the original language in italics at first mention followed by an English translation in brackets. Thereafter use the English translation.</p> <p>Refer to the European Commission's 'Country Compendium: A companion to the English Style Guide' (https://commission.europa.eu/document/download/2d706ca2-0927-4a58-a0f4-ae76aae2d84c_en?filename=styleguide_english_dgt_country_compendium_en.pdf), which includes many official or suggested translations for courts and judicial bodies in a range of countries.</p>	<p>International Criminal Court (ICC) European Court of Human Rights (ECtHR) Court of Justice of the European Union (CJEU)</p> <p><i>Tribunal de Comarca</i> (District Court) <i>Kammarrätt</i> (Administrative Court of Appeal)</p>

Easily confused terms

Tribunal

The French term 'tribunal' is best translated as 'court', not tribunal. In English, 'tribunal' is used for specific types of courts, e.g.

employment tribunal: in the UK, a special type of court that deals with legal disputes between employees and employers;

arbitration tribunal or arbitral tribunal: the arbitrator(s) appointed on behalf of the parties to an arbitration to resolve their dispute. A tribunal may consist of a sole arbitrator or a panel of arbitrators (generally, three).

Only use 'tribunal' in the above senses.

Le **tribunal** est par ailleurs libre de déterminer les moyens de preuve et leur recevabilité selon le cas.

In addition, the **court** is free to determine the means of proof and the extent to which evidence is taken, according to the individual case. ✓

In addition, the **tribunal** is free to determine the means of proof and the extent to which evidence is taken, according to the individual case. ✗

Alle Ansprüche oder Streitigkeiten, die durch diese Schlichtung nicht beigelegt werden konnten, können von jeder Vertragspartei einem **Schiedsgericht** vorgelegt werden.

Any claims or disputes which have failed to be settled by such mediation may be submitted by either Party to an **arbitration court**. ✗

Any claims or disputes which have failed to be settled by such mediation may be submitted by either Party to an **arbitration tribunal**. ✓

Magistrate

In the UK, a magistrate is a layperson (not a legal professional) who administers the law and sits in a magistrates' court, which deals with minor offences and holds preliminary hearings for more serious ones.

In Switzerland, 'magistrat' or 'Magistratsperson' is specific to the Swiss government system and is used to mean certain senior members of government and judges.

In other European civil law jurisdictions, magistrat (FR), magistrato (IT) and magistraat (NL), for example, refer to legally qualified prosecutors and judges.

Translating these words as 'magistrate' will cause confusion, so if need be, use the term in the original language and provide an explanatory phrase.

In a civil law system, criminal cases are often investigated by an *examining magistrate* (*Untersuchungsrichter/juge d'instruction*). This term is widely understood by English-speakers.

In seiner Sitzung vom 28. Oktober hat der Bundesrat beschlossen, dass eine nachträgliche Auszahlung von Ruhegehältern an **Magistratspersonen** auf fünf Jahre beschränkt ist.

Lors de sa séance du 28 octobre 2020, le Conseil fédéral a décidé que le versement rétroactif de pensions de retraite aux **magistrats** serait limité à 5 ans.

At its meeting on 28 October, the Federal Council decided that there is a five-year limit on retroactive pension payments to **senior members of government.** ✓

At its meeting on 28 October, the Federal Council decided that there is a five-year limit on retroactive pension payments to **magistrates.** ✗

3.3. Names of legal professionals

Be careful when translating the job titles of legal professionals.

Rechtsanwalt/Rechtsanwältin
Advokat/Advokatin
Fürsprecher/Fürsprecherin

The above terms all mean a lawyer who advises clients, prepares legal documents and may appear in court.

Translate as 'lawyer' or possibly 'attorney-at-law' (US). 'Solicitor' and 'barrister' should be avoided, as these have specific meanings in UK English (see below).

Solicitor/barrister

In England and Wales and some other English-speaking countries, the legal profession is divided into solicitors and barristers:

Solicitor: a lawyer who advises clients and prepares legal documents. Solicitors specialising in litigation may represent clients in court if specifically licensed to do so, but will generally instruct a barrister to represent their clients.

Barrister: a lawyer who is admitted to plead at the bar and who may argue cases in higher courts.

Als beschwerdeführende Person haben Sie während des ganzen Verfahrens das Recht, sich durch eine **Rechtsanwältin**, einen **Rechtsanwalt** vertreten zu lassen.

As the individual lodging the appeal, you have the right to be represented by a **lawyer** throughout the procedure. ✓

As the individual lodging the appeal, you have the right to be represented by a **solicitor** throughout the procedure. ✗

Advocate

Do not translate Advokat/Advokatin as 'advocate'. It is not a synonym of 'lawyer'. An advocate is:
(1) a generic term for a professional pleader in a court of justice, (2) in the Scottish legal system: a barrister.

Counsel

In the UK and the US, 'counsel' means one or more lawyers who are authorised to give advice about legal matters, especially a courtroom advocate (barrister in England and Wales and advocate in Scotland).

Attorney

US term for a lawyer.

But be careful: in the UK and other jurisdictions an 'attorney' is a person authorised under a power of attorney, i.e. usually a layperson, not a legal professional.

Als unabhängige Stiftungsräte wirken Hans Muster (Präsident) und Heinz Schmidt (**Advokat**).

Hans Muster (Chair) and Heinz Schmidt (**lawyer**) function as independent members of the foundation board. ✓

Hans Muster (Chair) and Heinz Schmidt (**advocate**) serve as independent members of the foundation board. ✗

The client instructed counsel to advise on the merits and to prepare the pleadings.

Under his Power of Attorney, Denis appointed Tom as his attorney. In addition to making decisions regarding his father's medical care, Tom also had to assume the responsibility of looking after his father's financial affairs.

Notar/notaire

Translate as 'notary', not 'notary public'.

In civil law systems, as in Switzerland, a notary is a type of lawyer who specialises in areas such as land law and the settlement of estates but is not allowed to appear in court. Documents prepared by the notary or authenticated in the proper manner are, in these countries, admissible in court without further proof of their authenticity; the notary guarantees the identity of the parties.

In England and Wales, a notary public is a public officer and special type of lawyer who is mainly responsible for authenticating signatures and drafting commercial and private documents for use outside the UK. They are also authorised to practise in all areas of law.

In the US and some other common law countries a notary public is not necessarily legally qualified. Notaries public primarily authenticate contracts, deeds, and other documents by an appropriate certificate with a notarial seal.

Letztwillige Verfügungen können in der Schweiz bei einem **Notar** hinterlegt werden.

Wills may be deposited with a **notary public** in Switzerland. ✘

Wills may be deposited with a **notary** in Switzerland. ✔

Jurist/Juristin/juriste

A person with a law degree who may or may not also be licensed to practise law.

Do not translate as 'jurist'. In English, a jurist is a person who has a thorough knowledge of the law, especially a judge or eminent legal scholar.

Do not confuse with 'juror', i.e. a member of a jury in common law systems.

'Jurist/Juristin/juriste' should be translated to fit the context (see examples on the right). Possible translations include:

legal practitioner
legal professional
legal officer
legal expert
legal adviser
legal researcher

The above translations are general, but could also denote lawyers, notaries, legal advisers or paralegals. A paralegal is a person with some legal education who assists a lawyer in duties related to the practice of law, but is not a licensed lawyer.

Die Rechtsabteilung des Beauftragten oder ein externer **Jurist** wird das Formular überprüfen.

The contractor's in-house legal department or external **legal experts** will assess the form.

Herr Muster war vom 17. Februar 2017 bis am 4. August 2021 bei der Direktion für Völkerrecht (DV) im Eidgenössischen Departement für auswärtige Angelegenheiten (EDA) in einem befristeten Arbeitsverhältnis als **Jurist** tätig.

<p><i>Anwaltskanzlei, cabinet</i></p> <p>Translate as 'law firm', which means a business that employs lawyers and is engaged in the practice of the law.</p> <p>Avoid 'chambers'. In UK English 'chambers' are (1) rooms used by a barrister or barristers, especially in the Inns of Court, London; (2) a judge's office, where proceedings may be held if not required to be held in open court.</p>	<p>Mr Muster was employed full-time on a fixed-term contract as a legal officer in the Directorate of International Law (DIL) of the Federal Department of Foreign Affairs (FDFA) from 17 February 2017 to 4 August 2021.</p> <p>Diese föderalistische Struktur kritisierte der namhafte Jurist und Adoptionsexperte Hans Muster bereits 1973.</p> <p>The renowned legal scholar and adoption expert Hans Muster had criticised this federalist structure as early as 1973.</p> <p>Depuis 2015, il est associé au sein d'un cabinet d'avocats à Zurich.</p> <p>Since 2015, he has been a partner in a law firm in Zurich. ✓</p> <p>Since 2015, he has been a partner in law chambers in Zurich. ✗</p>
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3.4. Fields of law

3.4.1. International law

International private law vs private international law

International private law (also termed 'conflict of laws') is a set of rules of law that determine which court has jurisdiction and which law governs a given legal matter. It also determines the circumstances in which a judgment handed down by a foreign court will be recognised and enforced domestically. International private law rules typically apply when a legal dispute has an international element.

The key piece of legislation in Switzerland is the Federal Act of 18 December 1987 on International Private Law.

The term 'international private law' is preferred to 'private international law', which according to Black's Law Dictionary "misleadingly suggests a body of law somehow parallel to public international law, when in fact it is merely a part of each legal system's private law".

Do not translate 'Kollisionsrecht' as 'collision law' or 'collision rules'. In legal English, 'collision' specifically refers to the contact of two or more moving vessels in maritime law.

Das **internationale Privatrecht (Kollisionsrecht)** kommt bei denjenigen privatrechtlichen Sachverhalten zur Anwendung, die einen internationalen Bezug aufweisen.

Le ***droit international privé (conflit de lois)*** est applicable aux situations de droit privé à caractère international.

International private law (collision law) is a set of rules of law that determine which court has jurisdiction and which law governs a given legal dispute. ✘

International private law (conflict of laws) is a set of rules of law that determine which court has jurisdiction and which law governs a given legal dispute. ✔

International law vs transnational law vs supranational law

International law, also termed public international law or the law of nations, is the legal system governing the relationships between countries, or the law of international relations. It also applies to international organisations and individuals (e.g. individuals who invoke human rights or commit war crimes).

Transnational law is an umbrella term for all law, whether national, international or mixed, which applies to actions or events that transcend national frontiers.

Supranational law is a sub-category of international law where states agree to limitations on their sovereignty in exchange for the benefits of cooperation in a supranational organisation. In practice, supranational law often refers to the law of the EU. Supranational law is not merely law between member states (as in international law) but also law between the bodies of the EU and the citizens of the member states, who are also EU citizens.

Customary international law

International obligations arising from the established practices of states, as opposed to obligations arising from formal written conventions and treaties.

International humanitarian law (IHL)

Also known as the 'law of armed conflict' and 'law of war'. 'International humanitarian law' is the preferred term. IHL governs relations between states, international organisations and other subjects of international law. It comprises rules under international treaties or customary international law which seek – for humanitarian reasons – to protect persons who are not or are no longer directly participating in armed conflict, and to restrict the means and methods of warfare.

International human rights law (IHRL)

International human rights law lays down obligations which states are bound to respect. By becoming parties to international treaties, states assume obligations and duties under international law to respect, to protect and to fulfil human rights.

International criminal law (ICL)

The branch of international law that deals with international crimes, i.e. war crimes, crimes against humanity, genocide and crimes of aggression.

Soft law

In international law, soft law refers to guidelines, standards of conduct, policy declarations, resolutions of the United Nations, or international conferences, etc. that are not legally binding in themselves but are more than mere statements of political aspiration.

Names of international instruments

Treaty

Specific term

An agreement formally signed, ratified and adhered to by two countries or sovereigns or an international agreement in written form concluded between two or more states and governed by international law.

Arms Trade Treaty, New York, 2 April 2013

There are no consistent rules regarding the use of 'treaty' as a title of an international instrument. 'Treaty' is usually used for subject matter of some gravity that requires a solemn agreement. Signatures are usually sealed and require ratification. The term 'treaty' is now less commonly used in the titles of international instruments than other terms.

Generic term

'Treaty' is also a generic term for a binding instrument under international law concluded between international entities, irrespective of whether or not 'treaty' appears in the title of the instrument.

Convention

Specific term

'Convention' is generally used for formal multilateral treaties.

'Convention' is usually used as the title of instruments negotiated under the auspices of an international organisation or adopted by a body within an international organisation, e.g. the 1951 ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted by the International Labour Conference or the 1989 Convention on the Rights of the Child, adopted by the General Assembly of the UN.

Like the Kyoto Protocol and unlike the Copenhagen Accord, the Paris Agreement is a treaty within the meaning of international law.

United Nations Convention on Biological Diversity, 1992

United Nations Convention on the Law of the Sea, 1982

Vienna Convention on the Law of Treaties, 1969.

ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (adopted by the International Labour Conference)

<p>Generic term</p> <p>'Convention' is synonymous with the generic 'treaty', i.e. it also means a binding instrument under international law concluded between international entities.</p> <p>International agreement</p> <p>Specific term</p> <p>'Agreement' is usually used in the titles of less formal instruments that deal with a narrower range of subject matter than 'treaties'. 'Agreement' is generally used for bilateral or restricted multilateral treaties and often for instruments of a technical or administrative nature, which are signed by the representatives of government departments, but are not subject to ratification. Typical agreements deal with matters of economic, cultural, scientific and technical cooperation.</p>	<p>Convention on the Rights of the Child (adopted by the General Assembly of the UN)</p> <p>The European Convention on Human Rights (ECHR) is an international convention between the member States of the Council of Europe (CoE).</p> <p>European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways, Geneva, 26 May 2000</p> <p>Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation</p> <p>Agreement Between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens' Rights Following the Withdrawal of the United Kingdom From the European Union and the Free Movement of Persons Agreement</p>
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Generic term

In the generic sense, an 'international agreement' is any type of instrument in which states and other subjects of international law, e.g. international organisations, agree matters of concern to them. It includes treaties and even oral agreements, which have the same binding force as treaties.

For detailed information on treaties and international agreements and relevant wording, see the FDFA's 'Practice Guide to International Treaties' (<https://www.eda.admin.ch/eda/en/fdfa/dfa/publikationen.html/content/publikationen/en/eda/voelkerrecht/Praxisleitfaden-Voelkerrechtliche-Vertraege>).

Unless it is prohibited under an international agreement, the Federal Office of Public Health (FOPH) may issue exceptional licences for cultivating, importing, producing and placing narcotics on the market.

The Federal Council may on its own initiative conclude international agreements on Switzerland's participation in international systems to guarantee the safety of foodstuffs and utility articles.

One common feature of most international agreements, including all agreements between the EU and a third country, is that the courts of one party are not given direct jurisdiction over the other in order to resolve disputes between them.

3.4.2. Civil law and civil procedure

Problem civil law terms

Procedure, proceedings, process

Note the differences between the terms 'procedure', 'proceedings' and 'process':

Procedure

The rules for conducting a civil lawsuit.

In Switzerland, the rules are laid down in the Swiss Civil Procedure Code.

Proceedings

Action taken in a court to settle a dispute.

The plural should be used.

Process

(1) The whole course of proceedings in a civil action, (2) a summons or writ, especially to appear or respond in court.

Herausforderungen bestehen in der praktischen Umsetzung der Antidiskriminierungsgesetzgebung für die Betroffenen, wobei hohe Verfahrenskosten in **Zivilverfahren** oft eine Hemmschwelle für Klagen wegen Diskriminierung darstellen.

Implementing anti-discrimination legislation in practice presents challenges for those who are affected, with the high legal costs involved in **civil proceedings** often preventing victims from pursuing a claim. ✓

Implementing anti-discrimination legislation in practice presents challenges for those who are affected, with the high legal costs involved in **civil procedure** often preventing victims from pursuing a claim. ✗

Während des **Prozesses** half ihm ein Dolmetscher, die Fragen und andere Vorgänge des **Verfahrens** zu verstehen.

Do not translate 'Prozess' or 'procès' as 'process'. Translate as 'trial', 'proceedings', 'litigation', 'lawsuit', 'hearing', etc., as appropriate in the context.

NB: 'due process' or 'due process of law' is a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly, e.g. the right to a fair hearing. It applies to both civil and criminal matters.

This is different from the 'rule of law' which means the restriction of the arbitrary exercise of power by subordinating it to well-defined and established laws.

Pendant le **procès**, il a reçu l'assistance d'un interprète pour comprendre les questions et d'autres éléments de la **procédure**. **x**

During the **process**, he was helped by an interpreter to understand the questions and other parts of the **procedure**. **x**

During the **trial**, he was helped by an interpreter to understand the questions and other parts of the **proceedings**. **✓**

Das EDA hat dabei wiederholt die Einhaltung der **rechtsstaatlichen Standards** eingefordert. Insbesondere kritisiert das EDA die 30-stündige Befragung.

Ce faisant, le DFAE a demandé à plusieurs reprises à ce que les **normes de l'état de droit** soient respectées. Ses critiques portent en particulier sur l'interrogatoire de 30 heures.

The FDFA has repeatedly called for **due process** to be followed. In particular, the FDFA has criticised the 30-hour interrogation to which the employee was subjected. **✓**

The FDFA has repeatedly called for the **rule of law** to be respected. In particular, the FDFA has criticised the 30-hour interrogation to which the employee was subjected. **x**

Pleadings vs submissions

'Pleadings' are the formal written statements filed in civil proceedings. They may include the particulars of claim, defence, and any counterclaim.

'Submissions' is a general term referring to the written or oral arguments presented to the court.

Translate the French 'plaidoiries' as 'submissions' not 'pleadings'.

La durée des **plaidoiries** peut varier selon la complexité de l'affaire et l'existence ou l'absence d'éléments de fait nouveaux.

The time taken in presenting oral **submissions** may vary, depending on the complexity of the case and on whether or not new facts have arisen. ✓

The time taken in presenting oral **pleadings** may vary, depending on the complexity of the case and on whether or not new facts have arisen. ✗

Plaintiff, claimant, complainant, defendant

Plaintiff

In most English-speaking jurisdictions, 'plaintiff' is used as the general term for the party bringing a civil action in court.

In a Swiss context, use 'plaintiff', the term used in the Swiss Civil Procedure Code.

Claimant

In England and Wales, 'claimant' has now replaced 'plaintiff'. The term used in Scotland is 'pursuer'.

In the US 'claimant' is used in extrajudicial contexts, especially in insurance and administrative law.

In vermögensrechtlichen Streitigkeiten kann die **klagende Partei** mit Zustimmung der beklagten Partei direkt an das obere Gericht gelangen, sofern der Streitwert mindestens 100 000 Franken beträgt.

Si la valeur litigieuse d'un litige patrimonial est de 100 000 francs au moins, le **demandeur** peut, avec l'accord du défendeur, porter l'action directement devant le tribunal supérieur.

If in a financial dispute the value in dispute is at least CHF 100,000, the **plaintiff** may, with the consent of the defendant, file its action directly before the higher court. ✓

<p>Complainant</p> <p>Do not use 'complainant' for the party initiating court proceedings, as the term can also mean the key complaining witness in criminal proceedings. 'Plaintiff' is always used in civil law contexts and is therefore preferred.</p> <p>Defendant</p> <p>The 'defendant' is the party against whom a civil action is brought.</p>	<p>If in a financial dispute the value in dispute is at least CHF 100,000, the claimant may, with the consent of the defendant, file its action directly before the higher court. ✘</p> <p>If in a financial dispute the value in dispute is at least CHF 100,000, the complainant may, with the consent of the defendant, file its action directly before the higher court. ✘</p>
<p>Recourse, remedy, redress, relief, recovery</p> <p>The above terms are very close in meaning, but they are not interchangeable.</p> <p>Terms such as 'Regress', 'Rückgriff' and 'recours' can be translated in different ways. Do not automatically translate these terms as 'recourse', for example, but select the English term that fits best in the context.</p> <p>The examples opposite are intended to show some of these terms in context. Other translations are, of course, possible.</p>	

Recourse

A general term for action that can be taken to resolve a (legal) issue.

Remedy

The means of enforcing a right or obtaining compensation for loss, damage or injury, usually through a court. The term is narrower than 'recourse'.

Redress

Compensation for loss, injury or some other grievance in the form of monetary damages or some other form of relief. The meaning is narrower than 'recourse'.

Relief

Remedy awarded by a court. In the common law system, the term is especially used in connection with remedies other than money damages, i.e. injunctions or specific performance (where the court orders a party to perform a contract exactly as written instead of awarding damages).

Il est essentiel d'assurer des **voies de recours** utiles à toutes les catégories de personnel des Nations Unies sans distinction.

It is essential to ensure that effective **recourse** is available to all categories of UN personnel without distinction. ✘

It is essential to ensure that effective **remedies** are available to all categories of UN personnel without distinction. ✔

Wir behalten uns hiermit ausdrücklich den **Regress** gegenüber dem Lieferanten vor.

We hereby expressly reserve the right to seek legal **redress** against the supplier. ✔

We hereby expressly reserve the **right of recourse** against the supplier. ✘

Artikel 3 gewährt der Partei, der Beweis für die Nichterfüllung antritt, bis zur endgültigen Entscheidung über ihren Anspruch ein Recht auf sofortigen **Rechtsschutz**, und zwar in Form einer Anordnung auf Erhaltung des Gegenstands.

<p>Recovery</p> <p>(1) The action of regaining or securing compensation by means of a legal process, (2) an amount of money awarded in, or collected following, a judgment, (3) the action of giving back something that has been taken away or lost.</p>	<p>Article 3 provides the party that adduces evidence of default with the right to speedy relief, pending final determination of its claim, in the form of an order for preservation of the object.</p> <p>Artikel 127 ist dahin auszulegen, dass sich eine öffentliche Einrichtung, die im Wege einer Regressklage die Rückzahlung von Beträgen verlangt, die sie nach öffentlichem Recht gezahlt hat, nicht auf diese Bestimmung berufen kann.</p> <p>Article 127 must be interpreted as meaning that it cannot be relied on by a public body which seeks, in an action for recovery, reimbursement of sums paid under public law. ✓</p> <p>Article 127 must be interpreted as meaning that it cannot be relied on by a public body which seeks, in an action for recourse, reimbursement of sums paid under public law. ✗</p>
<p>Appeal</p> <p>The Civil Procedure Code provides for various types of appeal ('Rechtsmittel'/'recours'), including the 'Berufung', 'Beschwerde' and 'Revision'.</p>	

The term 'appeal' in English is very broad and can be used for any proceedings initiated to have a decision reconsidered by a higher authority. The Civil Procedure Code terms above and the differences between them can therefore be confusing.

'Appeal' can be used for all the above terms. In texts where the reader does not need to know the precise type of appeal under the Civil Procedure Code, it may be clearer to use 'appeal', rather than e.g. 'objection' (the CPC translation of 'Beschwerde'), which would not automatically signal an appeal process to an English-speaking reader.

In texts requiring greater precision, translate the terms in line with the Civil Procedure Code, which is available in English on Fedlex. This will allow recipients of the text to match the terms exactly against the Zivilprozessordnung/Code de procédure civile and avoid any ambiguity.

In the context of appeals, do not translate 'Beschwerde' as 'complaint' (the ordinary, non-legal meaning). In legal English, a 'complaint' is an initial pleading that starts a civil action and states the basis for the plaintiff's claim and the relief sought. It is therefore an earlier stage of civil proceedings than an appeal.

English translations for French and German terms in the Civil Procedure Code:

Rechtsmittel	recours	appeal
Berufung		
Beschwerde	recours	objection
Revision	révision	review

Die **Beschwerde** ist innert 30 Tagen schriftlich und begründet einzureichen.

The **complaint** must be filed in writing and with a statement of grounds within 30 days. ✘

The **objection** must be filed in writing and with a statement of grounds within 30 days. ✔

The following terms may be used for the parties in an appeal case:

Appellant

A party bringing an appeal to a higher court or other body.

Applicant / petitioner

A party making an appeal from a lower court is also known as an 'applicant' or 'petitioner'.

Appellee

The defending party in an appeal taken to a higher court.

Respondent

A defending party in an appeal case is also known as a 'respondent'.

Der **Beschwerdeführer** kann mit der Beschwerde rügen: Verletzung von Bundesrecht einschliesslich Missbrauch des Ermessens.

In the appeal, the **appellant** may contend that there has been a violation of federal law including the abuse of discretionary powers. ✓

In the appeal, the **complainant** may contend that there has been a violation of federal law including the abuse of discretionary powers. ✗

Enforcement, execution, implementation

Enforcement

The action of compelling a party to comply with a judgment. This is the meaning in Example 1 opposite. Courts do not always enforce judgments automatically; a successful claimant must apply to the court for enforcement steps to be taken.

Execution

In the law of England and Wales, 'execution' has a narrower meaning than 'enforcement'.

It refers to the formal procedure by which enforcement is carried out. Specifically, it means the judicial enforcement of a money judgment, usually by seizing and selling the judgment debtor's property.

Execution can also mean 'the action of making a legal document valid by signing' (see 'Execute' in section 3.5).

In Example 2 on the right, 'enforcement measures' would be possible, but 'execution' specifically refers to the procedure by which the enforcement is carried out.

Example 1

Die Anerkennung oder **Vollstreckung** einer Entscheidung kann versagt werden, sofern und soweit die Entscheidung auf einer vorfrageweisen Beurteilung einer nach Artikel 2 ausgeschlossenen Angelegenheit beruht.

La reconnaissance ou l'**exécution** d'un jugement peut être refusée si, et dans la mesure où, ce jugement est fondé sur une décision relative à une matière exclue en vertu de l'article 2.

Recognition or **enforcement** of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter excluded under Article 2. ✓

Recognition or **execution** of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter excluded under Article 2. ✗

Example 2

Wenn der Gläubiger seine Forderung nachgewiesen hat, dass die **Vollstreckungsmassnahme** zur Befriedigung der Forderung nicht ausreichen wird, ist der Schuldner verpflichtet, eine Vermögensübersicht vorzulegen.

<p>Implementation</p> <p>The action of putting a law, resolution, order, system, decision or plan, etc. into operation.</p>	<p>Si le créancier prouve que les mesures d'exécution proposées ne suffiront pas à satisfaire sa créance, le débiteur est tenu de produire un inventaire de ses avoirs.</p> <p>If the creditor proves that the proposed execution measures will not suffice for the satisfaction of his claim, the debtor is obliged to submit an inventory of their property. ✓</p>
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3.4.3. Criminal law and criminal procedure

<p>Criminal Code and Criminal Procedure Code</p> <p>In Switzerland the principles and offences of criminal law are set out in the Criminal Code: https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en</p> <p>Likewise, the rules of criminal procedure are set out in the Criminal Procedure Code: https://www.fedlex.admin.ch/eli/cc/2010/267/en</p> <p>Both have been translated into English.</p>	<table border="0"> <tr> <td>Strafrecht</td> <td>droit pénale</td> <td>criminal law</td> </tr> <tr> <td>Strafprozess-recht</td> <td>procédure pénale</td> <td>criminal procedure</td> </tr> <tr> <td>strafbare Handlung</td> <td>infraction</td> <td>(criminal) offence</td> </tr> </table>	Strafrecht	droit pénale	criminal law	Strafprozess-recht	procédure pénale	criminal procedure	strafbare Handlung	infraction	(criminal) offence
Strafrecht	droit pénale	criminal law								
Strafprozess-recht	procédure pénale	criminal procedure								
strafbare Handlung	infraction	(criminal) offence								

Be aware of the translation and terminology difficulties arising from differences between the Swiss system and systems in English-speaking countries.

Criminal or penal?

One fairly obvious difference in the language used in Swiss criminal law and procedure is the emphasis placed on 'punishment', e.g. 'Strafrecht/droit penal', 'strafbare Handlung/acte punissable'. A literal translation into English (e.g. punishable act) sounds unnatural, so is best avoided.

The term 'penal' is also best avoided, unless you are talking about the prison system. Instead, use the expression 'criminal offence'.

Types of offence

There are three types of offence in Switzerland:

Felony = Verbrechen/crime

Misdemeanour = Vergehen/délit

Contravention = Übertretung/contravention

Wer vorsätzlich einen Menschen tötet wird mit Freiheitsstrafe nicht unter fünf Jahren **bestraft**.

Any person who kills a person intentionally **shall be liable to** a custodial sentence of not less than five years. ✓

Any person who kills a person intentionally **shall be punished with** a custodial sentence of not less than five years. ✗

Some types of conduct that would be regarded as tax evasion in the UK are not **punishable** in Switzerland. ✗

Some types of conduct that would be regarded as tax evasion in the UK are not **criminal offences** in Switzerland. ✓

Die Bundesanwaltschaft ist zuständig für die Anklage von **Verbrechen** und **Vergehen** in Zusammenhang mit Sprengstoff und Falschgeld.

The Office of the Attorney General of Switzerland is responsible for prosecuting **felonies** and **misdemeanours** connected with explosives and counterfeit money.

<p>Be careful of the French term 'crime', which will often be a specific reference to a felony. As 'felony' and 'misdemeanour' are rather technical terms in English, and somewhat archaic, in the UK at least, and 'contravention' is an invented term that is not always easy to understand, it may be useful in more general contexts to use 'serious offence' and 'minor offence' as appropriate.</p> <p>The names of the various offences under Swiss law can be found in the Criminal Code; the English terms used should be reasonably familiar.</p>	<table border="0"> <tr> <td>Mord</td> <td>assassinat</td> <td>murder</td> </tr> <tr> <td>Raub</td> <td>brigandage</td> <td>robbery</td> </tr> <tr> <td>Diebstahl</td> <td>vol</td> <td>theft</td> </tr> <tr> <td>Betrug</td> <td>escroquerie</td> <td>fraud</td> </tr> </table>	Mord	assassinat	murder	Raub	brigandage	robbery	Diebstahl	vol	theft	Betrug	escroquerie	fraud
Mord	assassinat	murder											
Raub	brigandage	robbery											
Diebstahl	vol	theft											
Betrug	escroquerie	fraud											
<p>Penalties</p> <p>The penalties (avoid 'punishments') under Swiss law are generally the same or similar to those in English-speaking countries. 'Sentence' can be used as a synonym for 'penalty', particularly when talking about a custodial sentence or a penalty imposed by a court.</p> <p>A 'measure' is another type of disposal in a criminal case. Measures generally involve some form of treatment or therapy, often in a secure institution; however, they also include the ultimate sentence: 'indefinite incarceration'. Penalties and measures, taken together, can be referred to as 'sanctions'.</p>	<table border="0"> <tr> <td>Strafe</td> <td>peine</td> <td>penalty sentence</td> </tr> <tr> <td>Massnahme</td> <td>mesure</td> <td>measure</td> </tr> <tr> <td>Verwahrung</td> <td>internement</td> <td>indefinite incarceration</td> </tr> </table>	Strafe	peine	penalty sentence	Massnahme	mesure	measure	Verwahrung	internement	indefinite incarceration			
Strafe	peine	penalty sentence											
Massnahme	mesure	measure											
Verwahrung	internement	indefinite incarceration											

<p>The most common penalty under Swiss law is known as a 'monetary penalty' (Geldstrafe/peine pécuniaire). This must be contrasted with a 'fine' (Busse/amende), which is the penalty imposed for a contravention or minor offence. In most texts, it will be important to make this distinction.</p> <p>Monetary penalties are measured in daily 'penalty units' (Tagessätze/jours-amende). Often they are 'suspended' (bedingt, avec sursis), i.e. they do not have to be paid if the offender is of good behaviour for a certain period.</p> <p>Custodial sentences (Freiheitsstrafen, peines privatives de liberté) may also be suspended.</p> <p>Other forms of penalty include 'community service' (gemeinnützige Arbeit) and a range of orders prohibiting offenders from various activities, e.g. an order prohibiting a person from carrying on a specific activity (Tätigkeitsverbot), or a 'contact prohibition and exclusion order' (Kontakt- und Rayonverbot). In addition, the 'forfeiture' (Einziehung/confiscation) of assets obtained through crime may be ordered.</p>	<p>Das Gericht verurteilte alle Angeklagten zu Freiheits- und Geldstrafen sowie zur Zahlung von Tagessätzen, wobei alle Strafen zur Bewährung ausgesetzt wurden.</p> <p>La Cour a condamné tous les prévenus à des peines privatives de liberté ainsi qu'à des peines pécuniaires et des jours-amende, le tout avec sursis.</p> <p>The court imposed custodial and monetary penalties on all the accused, and also ordered the payment of the daily penalty units, with the execution of all the penalties being suspended for a probationary period.</p> <p>Les paiements obtenus de manière illicite ont été confisqués en faveur de la caisse générale de l'État.</p> <p>The payments unlawfully obtained have been forfeited to the Swiss general treasury.</p>
<p>Criminal procedure</p> <p>Criminal procedure in Switzerland is very different from the systems we may be familiar with in the UK or US from books, TV or personal experience!</p>	

The police generally play a more limited role in the investigation of crimes, normally acting under the direction of a 'cantonal prosecutor's office' (Staatsanwaltschaft) or, in the case of certain (usually more serious) crimes, the Office of the Attorney General of Switzerland (Bundesanwaltschaft).

Minor cases, such as many traffic and drugs offences, are dealt with under the 'fixed penalty procedure' (Ordnungsbussenverfahren/procédure relative aux amendes d'ordre). The offender is sent a letter ordering them to pay a 'fixed penalty fine' (Ordnungsbusse/amende d'ordre).

Most offences, from relatively minor infringements to quite serious cases, are dealt with by the 'summary penalty order procedure' (Strafbefehlsverfahren/procédure de l'ordonnance pénale). If the prosecutor's office decides there is sufficient evidence, it issues a 'summary penalty order' (Strafbefehl/ordonnance pénale), setting out the offence and imposing a penalty, which can range from a fine to a six-month custodial sentence.

In more serious cases, or if an accused does not accept a summary penalty order, the matter goes to court.

Die Bundesanwaltschaft (BA) hat eine **Verurteilung mittels Strafbefehles** erreicht.

The Office of the Attorney General of Switzerland secured a conviction by issuing a **summary penalty order**.

<p>The document setting out the charges against the accused is the 'indictment' (Anklageschrift). Jury trials are now practically unheard of in Switzerland. In a trial, or 'main hearing' (Hauptverhandlung), the judge is responsible for conducting the proceedings and asking witnesses and the accused questions.</p>	<p>The accused was charged in the indictment with five counts of fraud.</p>
<p>Problem criminal law terms</p> <p>Report/denounce A victim of or witness to a crime reports the matter to the police ('Strafanzeige'/'Strafantrag'). Do not use 'denounce' in this context (both 'denounce' and 'condemn' simply mean to 'criticise strongly' in modern English).</p> <p>Convict/condemn If a person is found guilty, they are convicted of the offence. Do not use 'condemn' in this context. If a person is found not guilty in court, they are said to be acquitted of the offence.</p> <p>Penalty/punishment If a person is fined, sent to prison, etc. for committing a crime, this is known as the 'penalty' or 'sentence', not the 'punishment'.</p>	<p>She reported her neighbour to the police for playing loud music late at night. ✓</p> <p>The opposition leader denounced the government for its policy on immigration. ✓</p> <p>At her trial, she was convicted of fraud and embezzlement. ✓</p> <p>She condemned the murder as an act of terrorism. ✓</p> <p>The normal penalty for speeding is a fine. ✓</p>

Verdict/sentence/judgment

The decision to find a person guilty or not guilty (convict or acquit) is the 'verdict'. The penalty imposed is the 'sentence'. The entire decision, verdict and sentence, is the 'judgment'.

Suspect/accused

A person who is being investigated in connection with an offence, but who has not been charged or appeared in court, is a 'suspect'. Once charged or once in court, they are known as the 'accused'.

Seize/confiscate/forfeit

Physical assets or assets held in bank accounts can be 'seized', i.e. brought under the control of the police or prosecution authorities.

The procedure by which the holder of assets permanently loses control over them as a penalty for criminal conduct is known as 'forfeiture'. Rather confusingly, the term 'confiscation' is also used for this procedure in certain international agreements. If possible, 'confiscate/confiscation' should be avoided in this context, as in normal English it means temporary deprivation of ownership.

She was found guilty and sentenced to two years imprisonment. She appealed against the **sentence** but not against the **verdict**. ✓

As one of the three **suspects** died during the investigation, there were only two **accused** when the case came to trial. ✓

At the start of the investigation, assets held in several Swiss bank accounts were **seized**. ✓

He was convicted of fraud and sentenced to three years in prison. The house and cars he bought with the proceeds of the crime were **forfeited**. ✓

When the teacher caught her texting her friends in class, he **confiscated** her mobile phone. ✓

Strafantrag/Strafanzeige/Strafklage

The German term 'Strafantrag' can be problematic as it has two distinct meanings:

- 1) It can be a 'criminal complaint', i.e. a request made by the victim of a crime for the perpetrator to be prosecuted. In this sense, it is similar to a 'Strafanzeige', the report of a crime (which can, however, be made by a person other than the victim), and synonymous with a 'Strafklage'.
- 2) It can also be the proposal made by the prosecutor for the sentence to be imposed on the accused if convicted.

Court/judge

Oftentimes where a Swiss text refers to the 'judge' (Richter*in/juge), English prefers to use the less personal 'court'.

Sie können einen **Strafantrag** (zusätzliche Erklärung zur **Strafanzeige**) bei jedem Polizeirevier stellen.

You can file a **criminal complaint** (in addition to simply **reporting an offence**) at any police station.

Die **Strafanträge** wird die BA anlässlich der Hauptverhandlung vor dem Bundesstrafgericht stellen.

The OAG will make its **sentencing proposals** at the trial before the Federal Criminal Court.

In leichten Fällen kann **der Richter** die Strafe mildern.

Dans les cas de peu de gravité, **le juge** pourra atténuer la peine.

In minor cases, **the court** may impose a reduced penalty.

3.4.4. Contract law

Contract vs agreement

Lawyers normally use 'agreement', rather than 'contract' in the titles of contracts. 'Contract' is more of a generic term meaning the overarching agreement between two or more parties creating mutual rights and obligations that are enforceable by law. A 'contract' comprises offer, acceptance and consideration (something of value passing from one party to the other). The term 'contract' therefore encompasses more than just the written document setting out the agreement.

When translating the title of a contract use 'agreement' irrespective of the term used in the source text.

Vertrag über die Verarbeitung personenbezogener Daten

Contrat du traitement des données

Data Processing **Agreement** ✓

Data Processing **Contract** ✗

Recitals

'Recitals' are a set of paragraphs at the beginning of a contract setting out background information that the parties regard as relevant.

'Recitals' are often called 'Präambel' or 'préambule'. Do not translate as 'preamble', as this term is normally used in statutes and treaties rather than in contracts. (See also 'Swiss legislation' in 3.1 'Names of laws').

Präambel

1. Der Partner ist eine IT-Firma, die den Auftraggeber betreffend IT-Projekte berät. Die Parteien erwägen eine technische Zusammenarbeit.
2. Für den Eintritt in nähere Verhandlungen ist die Offenbarung von vertraulichen Informationen notwendig.
3. Um sicherzustellen, dass die von einer Partei jeweils offenbarten Informationen vertraulich behandelt werden, wird nachfolgende Vereinbarung geschlossen.

<p>In English contracts, the recitals are frequently introduced by the conjunction 'WHEREAS' (upper case), meaning 'given the fact that' in this context. This formula is rather archaic. The heading 'recitals' or 'background' is therefore preferred in translations.</p>	<p>Recitals</p> <ol style="list-style-type: none"> 1. The Partner is an IT company that provides advice on IT projects to the client. The parties are interested in collaborating on a technical project. 2. The Parties will be required to disclose confidential information for the purpose of entering into further negotiations. 3. The Parties hereby enter into the following Agreement to ensure that the information disclosed is kept confidential.
<p>Definitions</p> <p>See section 2.4.1 above</p>	
<p>Obligation, discretion, authorisation and permission and prohibition</p> <p>Contracts are full of obligations, prohibitions, permissions and authorisations. Make sure you use the right language to achieve the intended effect of each provision. See section 2.3 'Expressing obligation, discretion, authorisation, permission and prohibition'.</p>	

Problematic contract law terms

Breach, violation, contravention, infringement

Breach

Use breach when translating 'Verletzung', 'Verstoss', 'violation', 'rupture', etc. in the context of contracts.

'Breach', 'infringement', 'violation' and 'contravention' all denote the act of someone who fails to comply with the law or fulfil an obligation. However, 'breach' is the term most commonly used in contracts to describe a failure to perform a duty or promise that forms all or part of the contract.

Violation

'Violation' is less neutral than 'breach'. It often connotes a deliberate or flagrant disregard of the law or failure to perform an obligation. For example the violation of a treaty suggests positive, or even aggressive, action.

Contravention

A general term for an act contrary to the intent of the law or in defiance of what is regarded as right, lawful or obligatory. Not generally used in contracts.

Unter **Verstoss** gegen ihre vertraglichen Verpflichtungen verkaufte XYZ mit der Marke Christian Dior versehene Waren an das als Discounter tätige Unternehmen ABC.

En **violation** de ses obligations contractuelles, XYZ a vendu à ABC, une entreprise exerçant une activité de soldeur, des produits revêtus de la marque Christian Dior.

In **breach** of its contractual obligations, XYZ sold to ABC, a company operating a discount store business, goods bearing the Christian Dior trade mark. ✓

In **violation** of its contractual obligations, XYZ sold to ABC, a company operating a discount store business, goods bearing the Christian Dior trade mark. ✗

In **infringement** of its contractual obligations, XYZ sold to ABC, a company operating a discount store business, goods bearing the Christian Dior trade mark. ✗

<p><i>Infringement</i></p> <p>Predominantly an intellectual property term meaning an act that interferes with one of the exclusive rights of a patent, copyright, or trademark owner.</p>	<p>Die Gerichte sind befugt, schnelle und wirksame einstweilige Massnahmen anzuordnen, um die Verletzung eines Rechts des geistigen Eigentums zu verhindern.</p> <p>Les autorités judiciaires seront habilitées à ordonner l'adoption de mesures provisoires rapides et efficaces pour empêcher qu'un acte portant atteinte à un droit de propriété intellectuelle ne soit commis.</p> <p>The judicial authorities shall have the authority to order prompt and effective provisional measures to prevent an infringement of any intellectual property right from occurring. ✓</p> <p>The judicial authorities shall have the authority to order prompt and effective provisional measures to prevent a violation of any intellectual property right from occurring. ✗</p>
<p><i>Condition, covenant, representation, warranty</i></p> <p>These are the terms most frequently used to refer to the various types of contractual obligation. Each has a distinct meaning.</p>	

Condition

In legal English, a 'condition' is (1) a future uncertain event on which the existence or extent of an obligation or liability depends and (2) an essential or material contract term that, if breached, gives the other party the right either to terminate or affirm the contract or sue for damages.

'Condition' is therefore not a synonym of 'clause' or 'provision'. Do not translate 'Bedingung' or 'condition' (fr) as 'condition', unless it is clear that 'condition' in the senses of (1) and (2) above is meant.

Translate 'Allgemeine Geschäftsbedingungen' and 'conditions générales' as 'General Terms and Conditions' **not** 'General Conditions' or 'General Business Conditions'.

Covenant

A formal agreement or promise in a contract to do or not to do a particular act.

Specifically, 'covenants' are a set of provisions in a financial contract, such as a loan agreement, requiring the borrower to meet certain conditions or prohibiting the borrower from performing certain actions.

In general, avoid the term 'covenant' except in financial agreements.

Der Schiedsrichter trifft seine Entscheidung unter Berücksichtigung der von den Staaten anerkannten allgemeinen Rechtsgrundsätze im Einklang mit den **Bedingungen** des Vertrags.

Le tribunal arbitral décide en conformité avec les **conditions** de la convention à la lumière des principes généraux de droit reconnus par les États.

The Arbitrator shall reach his/her decision in accordance with the **terms** of the Agreement in the light of the general principles of law recognised by states. ✓

The Arbitrator shall reach his/her decision in accordance with the **conditions** of the Agreement in the light of the general principles of law recognised by states. ✗

Representation

A presentation of fact, either by words or conduct, intended to induce someone to enter into a contract. For example, the seller of a business might represent that the gross profit was a specific amount for the past few years. If the representation proves to have been untrue when made, the aggrieved party may be able to claim damages for fraudulent misrepresentation.

Unlike in civil law jurisdictions, there is no general duty to disclose information or act in good faith when entering into or fulfilling a contract, so the concept of representation is important in common law countries.

Warranty

A promise that a statement made by a party to a contract is true, e.g. a seller's promise that the thing being sold is as represented or promised. A breach of warranty entitles the innocent party to claim for damages, but not to treat the contract as repudiated.

Vor Vertragsabschluss, hat jede Vertragspartei die **Erklärungen** der anderen Vertragspartei berücksichtigt.

Avant la conclusion du contrat, chaque Partie a dûment tenu compte des **observations** présentées par l'autre Partie.

Prior to entering into the Agreement, each Party gave due consideration to the **declarations** made by the other Party. ✘

Prior to entering into the Agreement, each Party gave due consideration to the **representations** made by the other Party. ✔

Prior to entering into the Agreement, each Party gave due consideration to the **observations** made by the other Party. ✘

Gewährleistung

Die Verkäuferin **gewährleistet** als Spezialistin und in Kenntnis des Verwendungszwecks der gelieferten Ware, dass die Güter die zugesicherten Eigenschaften haben und die gesetzlichen Vorschriften erfüllen.

'Warranty' is often confused with 'guarantee', as in everyday language, a 'warranty' is often a written guarantee issued by a manufacturer to the purchaser promising to repair or replace the product, if necessary, within a specified period of time.

A 'guarantee' can also mean a document provided by a manufacturer saying that the product will be repaired or replaced if it stops working within a specific period of time. In general, it can also mean a promise that something will be done or that something is true. But it is not synonymous with 'warranty' in the sense of a contractual promise, the breach of which entitles the innocent party to claim damages.

In financial and banking contexts, a 'guarantee' is also a formal promise by a guarantor to a creditor to accept responsibility for the principal debtor's debt if that person cannot pay it.

Repudiate, rescind, terminate, withdraw

There are a number of different terms for ending a contract and they all have slightly different meanings:

Repudiate

'Repudiate' means to indicate an intention not to perform a contract; a threatened breach of contract.

Garantie

En sa qualité de spécialiste et en connaissance de l'usage auquel les biens livrés sont destinés, le vendeur **garantit** que ces derniers possèdent les qualités promises et répondent aux prescriptions légales.

Guarantee

As a specialist and in full knowledge of the purpose for which the goods are being supplied, the Seller **guarantees** that the goods have the agreed attributes and that they comply with statutory requirements. ✘

Warranty

As a specialist and in full knowledge of the purpose for which the goods are being supplied, the Seller **warrants** that the goods have the agreed attributes and that they comply with statutory requirements. ✔

Only use 'repudiate' in the narrow sense of 'antizipierter Vertragsbruch'/'rupture anticipée'.

Rescind

'Rescind' means to cancel a contract unilaterally for a legally sufficient reason, such as another party's material breach. The act of rescission undoes the contract as if it had never existed.

'Rescind' is a possible translation for 'zurücktreten', 'anfechten', 'invalidieren', 'annullieren' and 'résoudre'.

Another possible translation for the above terms is 'cancel', which means to end the contract for breach by the other party.

Terminate

'Terminate' has two meanings:

- (1) (intransitive) the contract comes to an end, e.g. at the end of a fixed term;
- (2) (transitive) put an end to the contract other than for the other party's breach pursuant to a termination clause in the contract or a power created by law.

Use 'terminate' as a translation for 'kündigen', 'auflösen', 'résilier', etc.

'Cancel' is not a synonym of 'terminate' (see 'rescind' above).

Im Falle einer Vertragsverletzung oder Nichterfüllung kann die andere Partei den Vertrag jederzeit schriftlich **kündigen**.

En cas de violation ou de non-exécution du contrat, l'autre partie peut **dénoncer** ce dernier par écrit.

In the event of a breach or non-performance of the contract, the other Party may **cancel** the Agreement by giving notice in writing. ✘

'Terminate' can also be used for 'beenden'/'mettre fin' or 'enden'/'prendre fin'. 'Terminate' is a more common legal term than 'expire' or 'end'.

Translate 'Kündigung aus wichtigem Grund' or 'résiliation/dénonciation pour juste motif' as 'termination for good cause'. 'Good cause' means 'a legally sufficient reason' (Black's Law Dictionary).

In the event of a breach or non-performance of the contract, the other Party may **rescind** the Agreement by giving notice in writing. ✘

In the event of a breach or non-performance of the contract, the other Party may **terminate** the Agreement by giving notice in writing. ✔

Die Laufzeit des Vertrages beginnt am XXXX und **endet** am XXXX.

Le contrat entrera en vigueur le XXXX et **expirera** le XXXX.

The Agreement commences on XXXX and **terminates** on XXXX. ✔

Jede Partei ist berechtigt, den Rahmenvertrag und/oder die Einzelverträge bei schwerwiegender Verletzung durch die andere Partei **aus wichtigem Grund** aufzulösen.

In the event of a material breach by the other party, the non-breaching party is entitled to terminate this Framework Agreement and/or any individual agreement **for an important reason**. ✘

In the event of a material breach by the other party, the non-breaching party is entitled to terminate this Framework Agreement and/or any individual agreement **for good cause**. ✔

Withdraw

The meaning is narrower than 'terminate'. It means to withdraw from a contract by exercising a right of withdrawal, especially in the context of consumer rights. 'Revoke' is a synonym, but a less common term.

Use 'withdraw' as a translation for 'widerufen'/'révoquer'.

Appendix, annex, attachment, exhibit, rider, schedule

The above terms are possible translations for 'Anhang' or 'annexe', meaning a document appended to another document. But they all have slightly different meanings:

Appendix

In the past 'appendix' referred to very bulky documents attached to agreements. But nowadays, 'appendix' is frequently used to mean any document attached to another document.

Annex

Also means a document attached to another document, but is not such a common contract term as 'appendix' or 'schedule'.

Attachment

Generally, a file attached to an email.

Die ausführliche Beschreibung der Massnahme ist **Anhang** 1 zu entnehmen, der Bestandteil dieser Vereinbarung ist.

La description détaillée de l'action figure à l'**annexe** 1 qui fait partie intégrante de la présente convention.

A detailed description of the measure is provided in **Annex** 1, which is an integral part of this Agreement. (✓)

A detailed description of the measure is provided in **Appendix 1**, which is an integral part of this Agreement. ✓

Exhibit

In the UK, an 'exhibit' normally means a document or record formally introduced as evidence in court. It can also mean a document attached to a pleading.

In the US, 'exhibit' is also sometimes used to mean a document appended to a contract. But because of the UK meaning, it is best to avoid 'exhibit' as a translation of 'Anhang' or 'annexe'.

Rider

A new clause or amendment subsequently added to a legal document by means of a separate sheet of paper.

Schedule

'Schedule' is commonly used in the UK. It refers to detailed supplementary provisions attached to the main contract, which would destroy the readability of the main text, or which are best treated in isolation away from the broader terms of the transaction.

NB:

In a financial context, translate 'Anhang zum Jahresabschluss' and 'annexe des comptes annuels' as 'notes to the financial statements'.

A detailed description of the measure is provided in **Rider** 1, which is an integral part of this Agreement. ✘

A detailed description of the measure is provided in **Schedule** 1, which is an integral part of this Agreement. ✔

A detailed description of the measure is provided in **Exhibit** 1, which is an integral part of this Agreement. ✘

A detailed description of the measure is provided in **Attachment** 1, which is an integral part of this Agreement. ✘

<p><i>Boilerplate</i></p> <p>Boilerplate clauses are standard clauses commonly included in contracts. Examples are provided opposite.</p> <p>Many boilerplate clauses are similar in English and German/French contracts. There are plenty of examples online which can help you translate boilerplate clauses. But don't just lift the wording. Make sure you accurately reproduce each element of the clause in the source text.</p>	<p><i>Entire agreement</i></p> <p>Clause ensuring that the only terms that apply between the parties are those set out in the contract itself. The intention is to prevent the parties from claiming that any earlier agreements or statements made during pre-contract discussions or negotiations form part of the agreement.</p> <p><i>Governing law</i></p> <p>A clause clarifying which country's law governs the contract.</p> <p><i>Severability</i></p> <p>Clause that severs invalid, illegal, or unenforceable provisions, while preserving the validity of the remainder of the contract.</p>
<p><i>Interpretation clauses</i></p> <p>Interpretation clauses are included in contracts to express how the parties intend the contract to be interpreted.</p> <p>Where a contract is drafted in more than one language, it is advisable to insert a clause stating which language version is the authoritative version. This will ensure, as far as possible, that if there is any confusion or conflict of interpretation, courts will apply the interpretation of the legal terms intended under the parties' choice of law.</p>	<p>Examples:</p> <p>Where a conflict exists between the English version and the German version of any provision hereof, the meaning and legal effect of the German version shall prevail.</p> <p>This Agreement, including any issues arising out of or in connection with it, is governed by Swiss law. English is not the native language of the parties or of their advisers. The parties have agreed to English in the contract as a language of convenience.</p>

<p>An alternative and more thorough approach for cross-system contracts is to include a glossary of the key terms that cause difficulty in translation between the legal systems, with a provision stating that the German or French terms shall prevail in the event of any conflict.</p> <p>You could suggest inserting a language provision to clients in order to ensure that English terms in a contract governed by Swiss law are given a Swiss law rather than a common law interpretation.</p> <p>It is not the translator's job to give legal advice. If you suggest a language clause to clients, always recommend that they consult their legal advisers before inserting such a clause.</p>	<p>This Agreement, its words and phrases are to be interpreted in accordance with Swiss law, having regard to the use of English as language of convenience. Terms in brackets shall have their meaning under Swiss law without recourse to English or any other law.</p>

3.5. Easily confused terms and recommended usages

<p>Act of God</p> <p>Do not automatically translate 'höhere Gewalt' as an 'act of God'. The German term encompasses natural disasters and other events such as war, civil unrest, strikes, etc.</p> <p>However, in legal English an 'act of God' refers to an accident or event that occurs independently of human intervention and that is entirely due to natural causes, e.g. earthquakes or floods.</p> <p>'Force majeure' means an event or effect that cannot be anticipated or controlled and, in particular, an unexpected event that prevents someone from doing something or completing something they have agreed to do. The term includes both acts of nature, e.g. hurricanes, and acts of people, e.g. riots, strikes and armed conflict.</p>	<p>Höhere Gewalt befreit für die Dauer und den Umfang der Störung die betroffene Partei von ihren Verpflichtungen.</p> <p>If performance of the contract is prevented or rendered impossible due to an act of God, the affected party shall be released from its obligations for the duration and to the extent of the disruption. ✘</p> <p>If performance of the contract is prevented or rendered impossible due to force majeure the affected party shall be released from its obligations for the duration and to the extent of the disruption. ✔</p>
<p>Company / partnership</p> <p>Be careful when translating 'Gesellschaft' and 'société'. Do not automatically select 'company', as it is possible that a partnership is meant. This is normally clear in the context. If in doubt, use the neutral term 'entity', or in more general texts 'business'.</p>	<p>Er verfügt auch über grosse Erfahrung bei der Gründung von Gesellschaften, insbesondere für ausländische Mandanten.</p> <p>He also has a great deal of experience in setting up companies and partnerships, especially for foreign clients.</p>

A **company** is an association of persons who come together for a common objective and share its profit and losses. Although day-to-day running of a limited company is the responsibility of its directors, it is legally owned by its shareholders. Shareholders and directors may be completely different people.

A company has a separate legal personality, i.e. it has its own legal rights and obligations, separate to those running and/or owning the company.

A **partnership** is an association of persons who jointly own and carry on a business for profit. A partnership does not have a legal personality separate from each of its individual partners. This means that the partners have unlimited personal liability for the debts of the business.

See TERMDAT for English translations for the various forms of legal entities in Switzerland, e.g. Kollektivgesellschaft, Kommanditgesellschaft, Aktiengesellschaft (AG), Gesellschaft mit beschränkter Haftung (GmbH), Kommanditaktiengesellschaft.

<p>Gesellschafter</p> <p>Translate 'Gesellschafter' as 'partner' in the context of partnerships and as 'shareholder' in the context of companies.</p>	<p>Die Möglichkeiten zur Finanzierung einer Kollektivgesellschaft mit Fremdkapital sind beschränkt und in hohem Masse vom Vermögen der Gesellschafter abhängig.</p> <p>Options to finance a general partnership using borrowed capital are limited and largely depend on the assets of the partners.</p>
<p>Associé(e)</p> <p>Translate 'associé(e)' as 'partner' in the context of partnerships.</p> <p>Note the difference between the English terms 'partner' and 'associate', which signify different roles in a law firm. In English-speaking jurisdictions, the word 'associate' often refers to a lawyer (below the status of partner) employed by a law firm.</p>	<p>Chaque associé doit faire un apport dans la société en commandite, qui peut consister en argent, en créances, en d'autres biens ou en travail.</p> <p>Each partner must make a contribution to the limited partnership, which may consist of cash, securities, other assets, or work.</p> <p>Elle était associée dans un cabinet d'avocats d'envergure nationale où elle pratiquait le droit public, le droit de la santé et le droit commercial.</p> <p>She was a partner at a national law firm, practising public law, health law and commercial litigation</p> <p>Caroline joined the firm in 2019 and was appointed an associate in 2021.</p> <p>Rupert qualified as a solicitor in 2005 and has been a partner since 2017.</p>

Competence

There are differences between the terms 'jurisdiction', 'competence', 'competency', 'authority' and 'powers'.

Jurisdiction means (1) a court's power to decide a case or make an order and (2) a national legal system.

Competence is a general term meaning (1) a basic ability to do something and (2) the capacity of an official body to do something.

When used in connection with the courts, 'competence' could therefore mean the court's jurisdictional competence (i.e. jurisdiction) or its compliance with other requirements for exercising its jurisdiction in a given instance (e.g. impartiality, required number of judges). ***It is therefore possible for a court to have jurisdiction but lack competence in a particular case.***

Competency means the mental ability to understand problems and make decisions. It can also refer to the mental fitness of an individual to participate in legal proceedings, e.g. "Counsel moved for, and the court granted, an evaluation of the defendant's competency to stand trial", i.e. the defendant could be mentally unfit to stand trial.

Stellt der Gerichtshof fest, dass eine Klage in die **Zuständigkeit** des Gerichts fällt, so verweist er den Rechtsstreit an das Gericht, das sich dann nicht für **unzuständig** erklären kann.

Lorsque la Cour constate qu'un recours relève de la **compétence** du Tribunal, elle le renvoie à ce dernier, qui ne peut alors décliner sa **compétence**.

Where the Court of Justice finds that an action falls within the **jurisdiction** of the General Court, it shall refer that action to the General Court, whereupon that Court may not decline **jurisdiction**. ✓

Where the Court of Justice finds that an action falls within the **competence** of the General Court, it shall refer that action to the General Court, whereupon that Court may not declare that it lacks **competence**. ✗

Authority or powers, rather than jurisdiction or competence, should be used when referring to the powers of government agencies to decide non-judicial matters, or authorisations or powers conferred on staff within an organisation.

Mit Ausnahme der Fälle von Ziff. 2.3 richten sich die **Unterschriftskompetenzen** für Verträge nach den **Finanzkompetenzen** gemäss der Weisung des EDA über die Finanzkompetenzen.

Except in the circumstances described in section 2.3, the signatory **competencies** applying to contracts are based on the financial **competencies** conferred under the Directive of the Federal Department of Foreign Affairs on Financial Authority. ✘

Except in the circumstances described in section 2.3, the signatory **powers** applying to contracts are based on the financial **authority** conferred under the Directive of the Federal Department of Foreign Affairs on Financial Authority. ✔

Convene

Do not confuse the French 'convenir' (to be suitable, to acknowledge, to agree) with the English 'convene', which means to 'come or bring together for a meeting'.

Les parties pourraient **convenir** d'une conférence pour régler les points sur lesquels elles n'ont pu s'entendre.

The parties could **agree** to a conference to resolve issues on which they have been unable to reach agreement. ✔

The parties could **convene** a conference to resolve issues on which they have been unable to reach agreement. ✘

Damage / damages

Damage and damages have quite distinct meanings and cannot be used interchangeably.

Damages

A sum of money awarded by a court as compensation.

Damage

The actual loss or harm suffered.

The term 'Schäden' often implies financial loss and an English contract, for example, would be more likely to refer to 'loss and damage' rather than 'damage' alone.

There have been cases where it was argued that 'damage' is distinct from 'loss', so translating 'Schäden' as 'loss and damage' covers all eventualities.

In conclusion, the Court of Appeal awarded **damages** of GBP 141,765 plus interest. This compared to the GBP 1,711,800 that would have been awarded by the High Court.

The tort of negligence is concerned with a breach of a duty to take care. A plaintiff must prove that the defendant owed a legal duty of care, that the defendant was in breach of duty, and that the plaintiff has suffered **damage** as a result of that breach.

Sie haftet gegenüber der Bundesstelle nicht für **Schäden**, die direkt oder indirekt auf Handlungen oder Unterlassungen von Dritten.

It shall not be liable to the federal office in respect of **loss or damage** caused directly or indirectly by the actions or omissions of third parties. ✓

It shall not be liable to the federal office in respect of **damages** caused directly or indirectly by the actions or omissions of third parties. ✗

<p><i>Compensation</i> can sometimes mean damages. But it also means payment for work or services rendered.</p>	
<p>Deem</p> <p>In legal English 'deem' means to treat a thing as that which it is not, or as possessing certain qualities that it does not or may not possess.</p> <p>Deem is preferred over terms such as 'considered as' or 'treated as' in prescriptive documents.</p> <p>'Deem' is generally used in the passive.</p>	<p>Die Kostenbeteiligung durch den Arbeitgeber gilt als dem/der Arbeitnehmer/in zugeflossen, auch wenn die Leistung letztendlich der Begleitperson zukommt.</p> <p>Any contribution to costs on the part of the employer is deemed to have accrued to the employee even if the spouse or partner was the ultimate beneficiary.</p>
<p>Doctrine</p> <p>In civil law systems, 'Doktrin/Lehre' or 'doctrine' refers to legal literature or legal theory. In addition to laws, the courts base their judgments on legal literature or theory.</p> <p>In common law systems, a doctrine is a framework, set of rules, procedural step, or test, often established through precedent in the common law.</p> <p>In general usage, a doctrine is a belief or set of beliefs held and taught by a Church, political party, or other group, e.g. 'Catholic doctrine', or a statement of fundamental government policy, especially foreign policy, e.g. the 'Truman Doctrine'.</p>	

<p>Where legal literature or scholarship is meant, it is better to use phrases such as 'legal commentators', 'legal opinion', 'legal literature' or 'legal theory'.</p> <p>Note the alternative use of 'doctrine' (in the common law sense) in this sentence:</p>	<p>Das Gericht hat allerdings hervorgehoben, dass die Anwendung des Eintragungshindernisses bzw. Ungültigkeitsgrundes des Art. 3 anders als nach der Lehre nicht vom Bestehen eines konkreten, gegenwärtigen oder ernsthaften Freihaltebedürfnisses abhängt.</p> <p>Toutefois, à la différence de la doctrine, la Cour a souligné que l'application du motif de refus ou de nullité prévu à l'article 3 ne dépend pas de l'existence d'un impératif de disponibilité qui soit concret, actuel ou sérieux.</p> <p>Contrary to the view expressed in the legal literature, however, the Court emphasised that the application of the ground for refusal or invalidity provided for in Article 3 does not depend on the existence of a requirement that availability be real, present or genuine.</p> <p>The District Court noted that the <i>forum non conveniens doctrine</i> permits a court to dismiss a case even where it has jurisdiction over the subject matter.</p>
<p>Domicile</p> <p>Take care when translating 'Domizil', 'Wohnsitz'/ 'domicile', as the underlying concepts of 'domicile' and 'residence' vary from legal system to legal system. In common law, 'domicile' often describes a person's link to a legal system not to a country.</p>	<p>Nach 3 Monaten in Ihrem neuen Land müssen Sie gegebenenfalls Ihren Wohnsitz bei der zuständigen Behörde (oft das Rathaus oder die örtliche Polizeistelle) anmelden und eine Anmeldebescheinigung beantragen.</p>

<p>Domicile and residence are not synonymous. For example, 'domicile' can mean the place to which a person intends to return even though currently residing elsewhere.</p> <p>Possible translations: residence, abode, place of residence, legal residence, place of business, domicile (in a tax context).</p>	<p>After 3 months in your new country, you may be required to register your residence with the relevant authority (often the town hall or local police station), and to be issued with a registration certificate. ✓</p> <p>After 3 months in your new country, you may be required to register your domicile with the relevant authority (often the town hall or local police station), and to be issued with a registration certificate. ✗</p>
<p>Duty of care / due diligence</p> <p>Be careful when translating 'Sorgfaltspflicht' or 'obligation/devoir de diligence'. There is a difference between 'duty of care' and 'due diligence'.</p> <p>A 'duty of care' is the requirement, under the law of negligence, to adhere to a standard of reasonable care in performing acts that could foreseeably harm others.</p> <p>'Due diligence' can mean (1) generally, the diligence reasonably expected from a person or entity in satisfying a legal requirement or discharging an obligation and (2) in corporate transactions, a prospective buyer's investigation and analysis of a target company, a piece of property, or a newly issued security.</p>	<p>Eine Verletzung der Sorgfaltspflicht sei hingegen der Zollbehörde anzulasten, die im Zeitraum von sechs Monaten 29 Anmeldungen akzeptiert hätten, die nunmehr für falsch gehalten würden.</p> <p>Elle estime que ce sont, en revanche, les autorités douanières qui doivent endosser la violation du devoir de diligence dès lors que, dans une période de six mois, elles auraient accepté 29 déclarations qui seraient à présent considérées comme erronées.</p> <p>By contrast, the customs authority, which over a period of six months accepted 29 declarations which are now regarded as being incorrect, should be held responsible for a breach of its duty of care. ✓</p>

<p>In banking, 'customer due diligence' is part of the 'Know Your Client' requirements. It involves verifying clients' identity and evaluating their risk profile for suspicious account activity.</p>	<p>By contrast, the customs authority, which over a period of six months accepted 29 declarations which are now regarded as being incorrect, should be held responsible for a breach of its due diligence obligation. ✘</p> <p>Die Abteilung Legal & Compliance der Bank überwacht die Einhaltung der bankaufsichtsrechtlichen Regelungen und der Sorgfaltspflicht.</p> <p>The bank's Legal & Compliance department monitors compliance with the supervisory requirements and due diligence obligations. ✔</p> <p>The bank's Legal & Compliance department monitors compliance with the supervisory requirements and duty of care. ✘</p>
<p>Effective / valid (in relation to 'rechtskräftig')</p> <p>Effective means that a law, contract, order, etc. is in operation at a given time.</p> <p>Valid means 'legally sufficient' or binding.</p> <p>Do not automatically translate 'rechtskräftig' as 'legally effective' or 'legally valid'. Rechtskräftig sometimes means 'legally binding' or 'having the force of law'. But in respect of a judgment it can also mean 'final' or 'non-appealable'.</p>	<p>Mit Urteil vom 27. Januar 2019 erklärte das Gericht die dagegen erhobene Klage für unbegründet. Dieses Urteil ist rechtskräftig.</p> <p>Le tribunal a, par jugement du 27 juin 2019, déclaré non fondé le recours formé par le requérant au principal contre cette décision. Ce jugement est définitif.</p>

	<p>By a judgment of 27 January 2019, the Court declared the action brought by Mr X against that decision to be unfounded. This judgment is final. ✓</p> <p>By a judgment of 27 January 2019, the Court declared the action brought by Mr X against that decision to be unfounded. This judgment is non-appealable. ✓</p> <p>By a judgment of 27 January 2019, the Court declared the action brought by Mr X against that decision to be unfounded. This judgment is legally effective. ✗</p>
<p>Execute / perform</p> <p>Be careful when using the terms 'execute' and 'perform'. They are not synonyms in legal English.</p> <p>'Execute' can mean to complete a contractual obligation. But it is also a legal way of saying 'sign'. It means "to make a legal document valid by signing" (Black's Law Dictionary). It also means to enforce and collect on a money judgment (see note on 'Enforcement, execution, implementation' in section 3.4.2. 'Civil law and civil procedure').</p> <p>Use 'perform' if successfully completing a contractual obligation is meant. 'Performance' of a contractual obligation usually results in the party's release from past or future liability.</p>	<p>Son champ d'activités englobait principalement les tâches suivantes: élaboration des projets de contrats et vérification de leur exécution efficace, effective et ciblée dans le respect des dispositions contractuelles.</p> <p>His main tasks were as follows: drafting contracts, ensuring that contracts were performed in an efficient, effective and targeted manner, and checking compliance with the terms of the contract. ✓</p> <p>His main tasks were as follows: drafting contracts, ensuring that contracts were executed in an efficient, effective and targeted manner, and checking compliance with the contractual provisions. ✗</p>

<p>Foresee</p> <p>In the context of prescriptive texts, never translate 'vorsehen' as 'foresee', which means 'to be aware of in advance' or 'predict'.</p> <p>Use 'stipulate', 'stipulate', 'provide', 'set out', 'lay down', 'designate', etc.</p>	<p>Sind in der Vereinbarung Vorauszahlungen vorgesehen, so sind Informationen über den/die Zahlungsempfänger zu übermitteln.</p> <p>If advance payments are foreseen in the Agreement, information on the payee(s) shall be supplied. ✘</p> <p>If the Agreement provides for advance payments, information on the payee(s) shall be supplied. ✔</p>
<p>Hereby / herewith</p> <p>Hereby means 'by this means' or 'as a result of this', e.g. 'the Company hereby grants to the Agent the right to use and display the Company's trademarks'. In legal English, especially in contract language, 'hereby' signals that the act described is being accomplished by means of the speech act itself and, ultimately, by the signing of the contract.</p> <p>Herewith means 'with this letter or document', e.g. 'we enclose herewith a copy of the report'.</p>	<p>Der/die unterzeichnete Angestellte bestätigt hiermit, dass die Begleitperson während des jetzigen Auslandsaufenthalts keine Erwerbstätigkeit ausübt.</p> <p>The undersigned employee hereby confirms that their accompanying person is not and will not be engaged in paid employment during the current stay abroad. ✔</p> <p>The undersigned employee herewith confirms that their accompanying person is not and will not be engaged in paid employment during the current stay abroad. ✘</p>

<p>Indemnity / indemnification</p> <p>Indemnity means reimbursement or compensation for loss, damage, or liability. Specifically, it means the right of a party who is secondarily liable to recover from the party who is primarily liable for reimbursement of expenditures paid to a third party for loss or damage.</p> <p>Indemnification refers to the process of indemnifying.</p> <p>The English meaning is therefore narrower than the French 'indemnité' or 'indemnisation', which means 'compensation' or 'damages' generally. For example, 'indemnité de licenciement' should be translated as 'compensation for dismissal', not 'dismissal indemnity'.</p>	<p>Le Tribunal a accordé au plaignant une indemnité pour préjudice moral et le remboursement de ses frais juridiques.</p> <p>The Court awarded the plaintiff compensation for pain and suffering and reimbursement of legal fees. ✓</p> <p>The Court awarded the plaintiff an indemnity for pain and suffering and reimbursement of legal fees. ✗</p>
<p>Jurisprudence</p> <p>Do not translate 'Rechtsprechung' as 'jurisprudence'. 'Jurisprudence' does not mean the body of decisions or judgements handed down by a court.</p> <p>'Jurisprudence' means (1) the study of the fundamental elements of a particular legal system, (2) the study of legal systems in general, (3) judicial precedents considered collectively and (4) the whole of legal knowledge.</p>	<p>Dieser Standpunkt geht auch aus der Rechtsprechung des EGMR hervor, der «politische oder ideologische Kritik am Zionismus und an den Handlungen des Staates Israel», die unter die Meinungsfreiheit fällt, abgrenzt von «rassistische[r] Verleumdung» oder der «Aufstachelung zu Hass», die nicht unter diese Freiheit fallen.</p>

Translate 'Rechtsprechung' as 'case law' 'established case law', 'decisions' or 'decision' (when referring to an individual judgment). Case law means the collection of reported cases that form the body of law within a given jurisdiction.

This view is also reflected in ECtHR **case law**, which draws a line between 'political or ideological criticism of Zionism and the actions of the State of Israel', which is protected by freedom of expression, and 'racial defamation' or 'inciting hatred', which is not. ✓

This view is also reflected in ECtHR **jurisprudence**, which draws a line between "political or ideological criticism of Zionism and the actions of the State of Israel", which is protected by freedom of expression, and 'racial defamation' or 'inciting hatred', which is not. ✗

Bezüglich der **Rechtsprechung** könne die Anwendung der Arbeitsdefinition, obwohl rechtlich nicht bindend, helfen, mögliche Verschleierungsstrategien zu entlarven und dazu führen, dass antisemitische Motivationen bei der Strafverschärfung berücksichtigt werden.

In terms of **court decisions**, although the working definition is non-legally binding, the use of the definition by the courts may help to expose potential avoidance strategies and enable harsher penalties to be imposed once antisemitic motives have been established. ✓

	<p>In terms of <i>jurisprudence</i>, although the working definition is non-legally binding, the use of the definition by the courts may help to expose potential avoidance strategies and enable harsher penalties to be imposed once antisemitic motives have been established. ✘</p>
<p>Mandate</p> <p>An 'Auftrag' or 'mandat' is a type of contract under the Swiss Code of Obligations with no direct equivalent in common law.</p> <p>'Auftrag/mandat' is commonly translated as 'mandate' in other contexts. However, in English 'mandate' more commonly refers to the authority, in politics, to carry out a policy. It is often better to select another term that fits the particular context.</p> <p>Possible translations (depending on context):</p> <ul style="list-style-type: none"> agency contract agency contract services commission order instruction terms of reference authority to act as agent 	<p>Ein öffentlicher Auftrag ist ein Vertrag, der zwischen Auftraggeberin und Anbieterin abgeschlossen wird und der Erfüllung einer öffentlichen Aufgabe dient. Er ist gekennzeichnet durch seine Entgeltlichkeit sowie den Austausch von Leistung und Gegenleistung.</p> <p>A public contract is a contract that is entered into by the contracting authority and the tenderer for the performance of a public task. It involves the payment of money in return for the supply of goods, work or services.</p> <p>Le Conseil consultatif établit son propre règlement intérieur, en conformité avec les dispositions du présent mandat.</p> <p>The Consultative Board shall establish its own rules of procedure, consistent with the provisions of these Terms of Reference.</p>

Material

Translate 'matérielles Recht' or 'droit matériel' as 'substantive law'.

Substantive law is the part of the law that creates and defines rights and duties, as opposed to procedural law which prescribes the steps for having a right or duty judicially enforced.

Do not translate 'matérielles Recht' or 'droit matériel' as 'material law'. In legal English 'material' means significant or relevant, e.g. in relation to evidence or a fact, especially in terms of making a difference in the result to be reached in a given case.

Die Einleitung des schiedsgerichtlichen Verfahrens hat für die Unterbrechung der Verjährung dieselbe Wirkung, wie sie nach dem anzuwendenden **materiellen Recht** für die Klageerhebung beim ordentlichen Gericht vorgesehen ist.

La mise en œuvre de la procédure arbitrale a, quant à l'interruption de la prescription, le même effet que celui prévu par le **droit matériel** applicable pour l'introduction de l'action devant le juge ordinaire

The commencement of arbitration proceedings shall have the same effect, as regards the interruption of periods of limitation, as that attributed by the applicable provisions of **substantive law** to the institution of an action in the ordinary courts or tribunals. ✓

The commencement of arbitration proceedings shall have the same effect, as regards the interruption of periods of limitation, as that attributed by the applicable provisions of **material law** to the institution of an action in the ordinary courts or tribunals. ✗

<p>Material: note the use of 'material' in the sense of 'significant' or 'relevant' in the example opposite.</p>	<p>Nach ständiger Rechtsprechung kann das Vorliegen wesentlicher neuer Tatsachen die Stellung eines Antrags auf Überprüfung einer nicht fristgerecht angefochtenen Entscheidung rechtfertigen.</p> <p>Il est de jurisprudence constante que l'existence de faits nouveaux substantiels peut justifier la présentation d'une demande tendant au réexamen d'une décision qui n'a pas été contestée dans les délais.</p> <p>It is settled case law that the existence of new material facts may justify the submission of a request for re-examination of a decision which was not contested within time.</p>
<p>Mutatis mutandis</p> <p>In prescriptive texts, translate 'sinngemäss', 'analog' and 'par analogie' as 'mutatis mutandis'</p> <p>'Mutatis mutandis' is a Latin phrase commonly used and understood by legal professionals in English-speaking jurisdictions. It means 'all necessary changes having been made' or 'with the necessary changes'.</p>	<p>Soweit diese Weisungen keine anderslautenden Bestimmungen enthalten, sind die entsprechenden Bestimmungen des schweizerischen Obligationenrechts sinn-gemäss auf die Residenzen und die Dienstwohnungen anwendbar.</p> <p>Dans la mesure où les instructions ne prévoient pas d'autres dispositions, les dispositions du Code suisse des obligations sont applicables par analogie aux résidences et logements de service.</p>

<p>The phrase is used in prescriptive documents to draw the reader's attention to differences between a statement and a similar but different earlier statement. It refers to matters that are essentially the same but can be altered according to need, e.g. "the provisions of the Council's Rules of Procedure shall apply <i>mutatis mutandis</i> to the proceedings of the Committee".</p> <p>See also section 3.6 'Latin terms'.</p>	<p>Unless otherwise provided in this directive, the relevant provisions of the Swiss Code of Obligations apply <i>mutatis mutandis</i> to residences and service accommodation. ✓</p> <p>Unless otherwise provided in this directive, the relevant provisions of the Swiss Code of Obligations apply <i>analogously</i> to residences and service accommodation. ✗</p> <p>Unless otherwise provided in this directive, the relevant provisions of the Swiss Code of Obligations apply <i>accordingly</i> to residences and service accommodation. ✗</p>
<p>Person</p> <p>'Natürliche Person' or 'personne physique' can be translated by 'natural person'. However, this term is not widely used in English. In many texts 'individual' may be clearer.</p> <p>Do not translate 'juristische Person'/'personne morale' as 'legal person'. In legal English, a 'legal person' can be an individual, company, or other entity which has legal rights and is subject to obligations.</p> <p>Translate 'juristische Person'/'personne morale' as 'legal entity'. Do not automatically use 'corporation' or 'company' as the entity concerned may not be an incorporated company. It could be a partnership, trust, company, association, or other organisation.</p>	

<p>As a result, be careful when translating the single term 'Person' in legal texts. Check whether 'Person' means an individual or legal entity (or both) in the context and translate accordingly.</p> <p>In the texts from which the examples opposite were taken, 'Person' could include an employed or self-employed individual or any type of legal entity.</p>	<p>Das EDA finanziert nur einen Teil der Gesamtkosten, die Person erbringt eine angemessene (finanzielle) Eigenleistung.</p> <p>The FDFA only covers a percentage of the total costs. The individual or entity concerned provides an appropriate (financial) contribution. ✓</p> <p>The FDFA only covers a percentage of the total costs. The person provides an appropriate (financial) contribution. ✗</p> <p>Die Banken wissen, dass Gelder und weitere Vermögenswerte sanktionierter Personen sofort gesperrt und gemeldet werden müssen.</p> <p>Banks are aware of their obligation to freeze and report funds and other assets held by sanctioned persons. ✗</p> <p>Banks are aware of their obligation to freeze and report funds and other assets held by sanctioned individuals and entities. ✓</p>
<p>Prescribe / proscribe</p> <p>Prescribe means to state authoritatively or lay down as a rule that an action or procedure must be carried out.</p>	<p>International law prescribes that interpreters take 'ordinary meaning' into account when interpreting an international treaty.</p>

<p>Proscribe means to forbid or condemn something.</p>	<p>The ECtHR has affirmed that Article 3 proscribes the expulsion of persons to places where they face a real risk of torture.</p>
<p>Principal</p> <p>Do not automatically translate 'Auftraggeber' as 'principal'.</p> <p>In legal English, 'principal' has a narrow meaning, i.e. someone who authorises another person to act on his or her behalf as an agent.</p> <p>Translate 'Auftraggeber' to fit the context. Possible translations: client contracting authority company employer purchaser or use the (company) name of the 'Auftraggeber'</p>	<p>Der Auftraggeber behält sich das Recht vor, in den Büros, Fabrikationsstätten und Lagerräumen des Auftragnehmers zu jeder Zeit durchzuführen und mangelhaftes Material zurückzuweisen.</p> <p>The Principal reserves the right to carry out inspections in the offices, production sites and warehouses of the Supplier at any time and to reject defective material. ✘</p> <p>The Client reserves the right to carry out inspections in the offices, production sites and warehouses of the Supplier at any time and to reject defective material. ✔</p>
<p>Respectively</p> <p>Do not automatically translate 'beziehungsweise' (bzw.) or 'respektiv' as 'respectively'. These terms have a range of meanings:</p>	<p>Die Zusammenarbeit wird jeweils für zwei Jahre bzw. anhand eines Briefwechsels vereinbart.</p>

<p>(1) 'or'</p> <p>(2) 'and'</p> <p>(3) 'and/or'</p> <p>(4) 'respectively', as in 'Peter and Jane were given apples and pears respectively', i.e. Peter received apples and Jane was given pears.</p> <p>(5) 'that is to say', 'more specifically', 'or rather', 'more precisely'.</p>	<p>Each cooperation arrangement will be agreed for a period of two years, respectively on the basis of an exchange of letters. ✘</p> <p>Each cooperation arrangement will be agreed for a period of two years or on the basis of an exchange of letters. ✓</p> <p>Die zwei Verträge sind seit dem 1. September resp. dem 14. Oktober 2021 in Kraft.</p> <p>The two agreements entered into force on 1 September and 14 October 2021 respectively. ✓</p> <p>The two agreements entered into force on 1 September respectively 14 October 2021. ✘</p> <p>Wo sinnvoll und effizient werden die IKT-Vorgaben auf Stufe Bund berücksichtigt respektiv eingesetzt.</p> <p>Where appropriate and practicable, ICT requirements are assessed and/or implemented at federal level. ✓</p> <p>Where appropriate and practicable, ICT requirements are assessed, respectively implemented at federal level. ✘</p>
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	<p>Derartige Ausschlüsse schränken das Potenzial des Europäischen Forschungsraums ein, indem sie bestimmte Mitgliedstaaten (bzw. deren wissenschaftliche Einrichtungen) von der Mitwirkung am vernetzten Forschungsprogramm ausschliessen.</p> <p>Exclusions such as these also limit the potential of the European research area by ruling out certain Member States (or rather their academic establishments) from involvement in the networked research programme. ✓</p> <p>Exclusions such as these also limit the potential of the European research area by ruling out certain Member States (respectively their academic establishments) from involvement in the networked research programme. ✗</p>
<p>Trust / trustee</p> <p>Do not translate 'Treuhänder' or 'fiduciaire' as trustee unless it is clear that a common law trust is meant. Instead, use 'fiduciary' or 'fiduciary agent'.</p> <p>A common law trust is a specific legal relationship involving a settlor, trustee and beneficiary. It is different from a Swiss 'Treuhänder'/'fiducie' arrangement which is based on a bilateral contract. Translating 'Treuhänder'/'fiducie' as 'trust' could misleadingly imply a common law trust structure.</p>	<p>Wer fremde Vermögenswerte annimmt oder hilft, diese anzulegen oder zu übertragen, ist der Geldwäschereigesetzgebung unterstellt. In diese Kategorie fallen beispielsweise Kredit- und Leasinggeschäfte, die Vermögensverwaltung, die Tätigkeit als Treuhänder, als Zahlungsdienstleister oder als Geldwechsler.</p>

	<p>Quiconque accepte des valeurs patrimoniales appartenant à des tiers ou aide à les placer ou les transférer est soumis à la législation sur le blanchiment d'argent. Font par exemple partie de cette catégorie les opérations de crédit et de leasing, la gestion de fortune, l'activité en tant que fiduciaire, que service de paiement ou que bureau de change.</p> <p>Accepting assets or providing assistance in the investment and transfer of assets are subject to the rules set out in the Anti-Money Laundering Act. This includes credit and leasing transactions, asset management, fiduciary activities, payment service providers and 'bureaux de change'.</p>
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3.6. Latin terms

<p><i>Translating and using Latin terms</i></p> <p>Many Latin terms and phrases used in common law are not found in civil law and vice versa.</p> <p>Some standard Latin terms used in common law and civil law countries are listed below:</p>	<p>Some Latin terms in common law:</p> <p><i>ab initio</i> from the beginning</p> <p><i>inter alia</i> among other things</p> <p><i>mutatis mutandis</i> all the necessary changes having been made; with the necessary changes</p>
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Latin phrases should generally be italicised. But avoid using italics for commonly used legal expressions such as 'bona fide', 'de facto', 'ad hoc', 'mutatis mutandis' and 'inter alia'.

Some Latin terms used in Swiss legal texts may not be readily understandable to English-speaking legal professionals and/or readers. It may therefore be necessary to add an English translation or explanation in brackets.

Use the Latin phrase 'mutatis mutandis' as a translation of 'sinngemäss', 'analog' and 'par analogie' (see 'Mutatis mutandis' in section 3.5 above).

obiter dictum

a remark made in passing by a judge that is not necessary to resolve the case and therefore does not set a legal precedent for future decisions

prima facie

on the face of it; sufficiently based on the evidence as to be accepted true

res judicata

an issue that has been definitively settled by judicial decision

ultra vires

acts by a company that are beyond the scope of the powers granted in its objects clause or articles of association

Some Latin terms in civil law:

culpa in contrahendo

fault in conclusion of a contract

ex nunc

from now on

ex tunc

from the beginning

nemo potest venire contra factum proprium

no one can act in a way contrary to their own prior actions

<p>The Latin term 'inter alia', meaning 'among other things', is frequently used in English contracts, legislation, and rules and regulations. It can therefore be used in prescriptive texts as a translation of 'unter anderem', 'u.a.', 'insbesondere', 'entre autres', 'entre autres choses' and 'notamment' (as appropriate in the context).</p>	<p><i>nulla poena sine culpa</i> no punishment without fault</p> <p>Der Betreiber verfügt über ein internes Kontrollsystem, welches <i>unter anderem</i> die Einhaltung der gesetzlichen, regulatorischen und unternehmensinternen Vorschriften gewährleistet.</p> <p>L'exploitant met en place un système de contrôle interne garantissant <i>notamment</i> le respect des dispositions légales, des dispositions des autorités de surveillance et de contrôle et des prescriptions internes de l'entreprise.</p> <p>The operator shall have a system of internal controls which, <i>inter alia</i>, ensures compliance with statutory, regulatory and internal company rules and regulations.</p>
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