

The law of the fair: exhibitor contracts and admission

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Participation in a fair is governed by a contract between the organiser and the exhibitor, usually composed of an application form, general terms of participation and specific regulations for the fair in question. Under Swiss law, such contracts are mixed contracts with elements of a lease of space, a contract for services and, depending on the services offered, a contract for work. Their terms regulate the allocation of space, the payment of fees, the construction and dismantling of stands, liability for damage, insurance obligations, the cancellation of participation and the consequences of a cancellation of the fair itself. The terms of Art Basel generally provide for Swiss law and the jurisdiction of the courts of Basel-Stadt.¹

The admission of exhibitors raises particular questions at a fair with a selection committee. A gallery that is refused admission may lose access to collectors and suffer economic harm. Since Art Basel holds a dominant position among art fairs, a refusal could in theory raise questions under competition law, for example whether a dominant undertaking may refuse to deal with a trading partner without objective justification under Article 7 of the Swiss Cartel Act. Disputes of this kind have occasionally been reported, but the fairs have generally defended their selection procedures as based on objective criteria of quality. A gallery that is refused admission has, in practice, limited legal remedies, because courts are reluctant to review aesthetic and commercial judgements.²

The cancellation of the fair during the pandemic tested the contracts in practice. When Art Basel and the other fairs were cancelled in 2020, exhibitors asked for the return of their fees. The contracts typically contained force majeure clauses, which allowed the organiser to cancel the fair without liability for damages, but which left open the question of the return of fees already paid. Art Basel announced that it would refund most of the fees for the cancelled fairs. In Swiss law, the doctrine of impossibility

of performance under Article 119 of the Code of Obligations would in any case have led to the return of payments for services that could not be rendered, subject to the contractual provisions.³

1 Notes

1. On the legal nature of exhibitor contracts under Swiss law (mixed contracts with elements of lease, mandate and contract for work under the Code of Obligations) and the choice of law and jurisdiction clauses in the regulations of Art Basel, see the exhibitor regulations of Art Basel and the Swiss contract law literature. To be verified. ↩
2. On the possible application of Article 7 of the Federal Act on Cartels and other Restraints of Competition (Cartel Act, CartA, SR 251) to refusals of admission by dominant fair organisers, see the decisions of the Swiss Competition Commission (COMCO) on trade fairs and the competition law literature. To be verified. ↩
3. On the cancellation of Art Basel and other fairs in 2020, the refund of exhibitor fees, and the application of force majeure clauses and Article 119 of the Swiss Code of Obligations (impossibility of performance), see the press releases of Art Basel and the Swiss contract law literature. To be verified. ↩

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