

Mediation and disputes with clients

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Disputes between institutions and their clients form an aspect of the regulatory framework that is often neglected. They concern losses suffered on investments, unauthorised transactions, retrocessions, execution errors or the termination of relationships. The Financial Services Act requires providers to join an ombudsman's office when they serve private clients, which offers a route to amicable settlement before any court proceedings.¹

Court litigation falls within the jurisdiction of the Geneva civil courts, whose case law in banking matters is abundant, and of the Federal Supreme Court. The most frequent questions concern the manager's liability for losses suffered, the scope of the instructions given by the client, the validity of hold-mail clauses and complaint clauses, and the consequences of breaches of the rules of conduct.² Foreign clients may also bring proceedings before the courts of their own country where the rules on jurisdiction allow it, which exposes institutions to proceedings in a variety of jurisdictions.

The revision of the Civil Procedure Code that came into force in 2025 allows the cantons to create international commercial courts and to admit English in certain proceedings, which could strengthen Switzerland's attractiveness for the resolution of international financial disputes.³ Arbitration, which Part F will examine, offers another route, in particular for disputes with institutional clients and professional counterparties.

1 Notes

1. PwC and Association suisse des gérants de fortune (Swiss Association of Asset Managers), "Le nouveau régime de surveillance des gestionnaires de fortune : mise en œuvre", 27 August 2021. ←
2. Federal Supreme Court, judgment 4A_471/2017 of 3 September 2018, commented on at the Centre de droit bancaire et financier (Hirsch, 18

October 2018, cdbf.ch): the hold-mail clause (fiction of receipt) is valid subject to abuse of rights, and is distinct from the complaint clause (fiction of ratification); abuse found in the case at hand, the bank having knowingly exceeded the 25% equity limit set by the client, but the fiction of ratification upheld, the client having become aware of the transactions during half-yearly visits without complaining within the one-month period. ↩

3. Federal Council, press release of 6 September 2023 (admin.ch): entry into force of the amendment to the Civil Procedure Code set for 1 January 2025; MLL Legal, “Révision du code de procédure civile suisse au 1er janvier 2025” (mll-news.com): the revision “creates the basis allowing the cantons to declare the commercial court competent for certain categories of international commercial disputes”, the cantons being able to provide for proceedings “also in English” in those cases; advance on costs limited to half of the foreseeable court costs; strengthening of conciliation. ↩

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