

Liability and disputes

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The relationship between an asset manager and its client is a mandate under the Code of Obligations, under which the asset manager owes the client a duty of diligence and loyalty. An asset manager that violates the investment guidelines agreed with the client, that makes unsuitable investments, that fails to diversify the portfolio or that acts in a conflict of interest is liable for the resulting loss.¹ The Financial Services Act has added a public law dimension. Its rules of conduct can inform the standard of care under private law, and its ombudsman procedures offer clients an alternative to litigation.

Disputes between clients and asset managers, family offices and trustees are heard by the courts of the seat of the defendant or, where the contracts provide for arbitration, by arbitral tribunals. The courts of Zug hear a share of these disputes proportionate to the number of firms in the canton. Disputes about trusts, which involve questions of foreign trust law, are often heard by the courts of the jurisdiction whose law governs the trust. Swiss courts nevertheless have jurisdiction under the Private International Law Act where the trustee is domiciled in Switzerland or where the trust instrument so provides.²

1 Notes

1. Art. 398 OR, text via swissrights.ch: the agent is liable for the faithful and diligent performance of the business entrusted to him. Urs Schenker, "Zwischen Marktrisiko und Haftung", Walder Wyss, 2011, walderwyss.com: case law of the Federal Supreme Court on asset management (BGer 4C.295/2006, E. 5.2.2; BGE 107 II 238, E. 5b; BGer 4C.323/2004) measures the damage as the difference between the actual value of the portfolio and the value of a hypothetical portfolio managed in accordance with the contract, including in cases of violated investment guidelines. ↩

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2. Art. 149b IPRG (SR 291), text consulted via [swissrights.ch](https://www.swissrights.ch): in trust matters the choice of forum in the trust provisions prevails, if made in writing or another form evidenced by text; the chosen court may not decline jurisdiction where a party, the trust or a trustee is domiciled in its canton or substantial trust assets are located in Switzerland; failing a valid choice, the Swiss courts at the domicile of the defendant, at the seat of the trust or at a Swiss place of business have jurisdiction. ↩

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