

News

Swiss Federal Supreme Court reasserts contractors' duty to advance costs for defects repaired by owners

LALIVE successfully defended an award obtained in arbitration proceedings under the Swiss Rules of International Arbitration in a CHF 80 million dispute between a contractor and its client in one of the largest domestic construction arbitrations in Switzerland to date. The arbitral tribunal, who had found the contractor liable for certain construction defects, ordered the advance payment of repair costs, estimated at some CHF 35 million, for work to be carried out by the owner. The contractor challenged the award, raising the question of the scope of a contractor's obligation to advance the repair costs of construction defects.

According to Art. 366(2) of the Swiss Code of Obligations, subject to particular contractual provisions and under certain conditions, owners are entitled to undertake necessary repair work at the contractor's expense and responsibility if the contractor is unwilling or unable to carry that work out itself.

The contractor challenged the award before the Swiss Federal Supreme Court, arguing, *inter alia*, that the amount of the advance which it was ordered to pay to the owner had been set without prior determination of the repair method. In its ruling, published on its webpage on 4 May 2020 (4A_395/2019), the Swiss Federal Supreme Court rejected the challenge. The Court clarified its case law on a contractor's obligation to pay in advance to the owner the estimated cost of defect repairs to be undertaken by the owner in its stead. This decision provides valuable guidance both for contractors and owners on the division of responsibility and costs in carrying out repairs resulting from construction defects.

LALIVE partner Matthias Scherer and associates Laura Azaria as well as Eleonore Caroit (no longer with the firm) represented the owner both in the Swiss Rules arbitration and in the challenge proceedings before the Swiss Federal Supreme Court.

With yet another victory, the firm continues its successful track record in setting aside proceedings before the Swiss Federal Supreme Court.

For more information about our construction disputes practice, see [here](#).

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