



# UIA 9<sup>th</sup> Winter Seminar

## **Legal Challenges for 2014**

Sale of Goods -  
Aspects of Cross-Border E-Commerce  
in/with Switzerland

Franz Schubiger, LL.M.  
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[pestalozzilaw.com](http://pestalozzilaw.com)

Pestalozzi Rechtsanwälte AG  
Löwenstrasse 1  
CH-8001 Zürich  
T +41 44 217 91 11  
F +41 44 217 92 17

Pestalozzi Avocats SA  
Quai du Mont-Blanc 5  
CH-1201 Genève  
T +41 22 999 96 00  
F +41 22 999 96 01

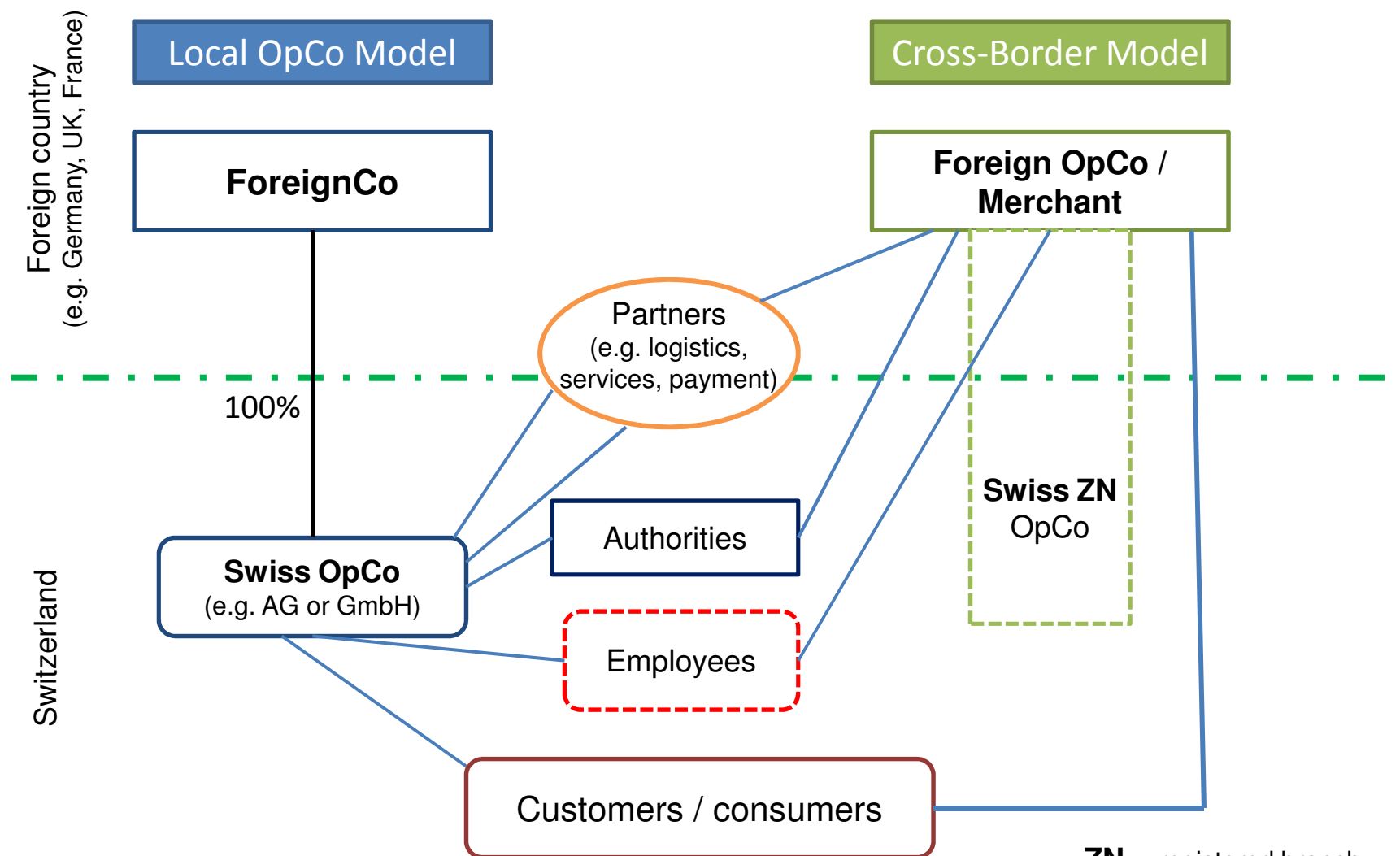
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# Introduction

- Cross-border e-commerce
- Characteristics
  - New form of distance selling
  - Virtual
  - Standardized
- Opportunities
  - New sales channels
  - New markets
- Challenges
  - Borders
  - Tax and customs
  - Local laws (e.g. product regulation, consumer protection)
  - Logistics

# Case Study – Setting the Scene



# Case Study – Facts

- Foreign merchant / company  
(e.g. based in Germany, France, UK, Ireland)
- Business model:
  - Business to customer (B2C)
  - Sale of consumer goods / products
- E-commerce / distance selling
- Expansion and international roll-out
- Starting business activities in Switzerland
  - Operation of a Swiss website
  - Sale and delivery of goods to consumers in Switzerland
- Possibly: own personnel in Switzerland

# Structure for Swiss Business

- Establish and operate a local Swiss OpCo
- Operate business with a ForeignCo
  - (1) Own operations with personnel in Switzerland (e.g. registered branch)
  - (2) Operate from abroad, cooperate with local third party service providers in Switzerland
- Duty to register for doing business in Switzerland?
  - Registration in commercial register (depends on structure)
  - Registration for VAT purposes

# Market Entry / Presence (1/2)

- E-commerce / relevant sources of law
- Governmental authorizations / permits
- Restrictions on sale / import / distribution of goods
- Website / domains
  - Top level domain (TLD) „.ch“
  - Switch ([www.switch.ch](http://www.switch.ch))
- Content of website
  - Information / statements must be true
  - Liability for content
  - Terms of use, disclaimer

## Market Entry / Presence (2/2)

- Imprint / legal details for e-commerce
  - Information obligations  
(similar to art. 5 of E-Commerce Directive 2000/31/EC)
  - Clear and complete information about entity and contact details (incl. e-mail address)
  - Basis: Federal Unfair Competition Act (UCA)
- Data protection and data security
  - Privacy policy
  - Cross-border data transfer
- Cookies and tracking tools



# Contracts with Consumers (1/3)

- E-commerce purchase contracts
  - Distance selling
  - Consumer goods (B2C)
- Applicable law
  - International context / Swiss Private International Law Act
  - Sale of goods: choice of law
  - Consumer contracts: no choice of law (art. 120 II PILA)
- Conclusion of contract and form
  - General contract law rules
  - E-commerce specific rules
    - Information on technical steps towards conclusion
    - Adequate technical means for detection/correction of type errors
    - Immediate electronic confirmation of order
  - Non-compliance / remedies


# Contracts with Consumers (2/3)

- Marketing, terms of sale
  - Product information
  - Transparency on price
- General Terms & Conditions (GTC)
  - GTC must be accepted by parties (explicit)
  - Review of Consumer GTC / dual system
    - General contract law control
      - No special regulation in Swiss Code of Obligations
      - Global acceptance of GTC / uncommon provision rule
      - Ambiguity / contra proferentem rule
    - Competition law control
      - Open content control  
(similar to Council Directive 93/13/EEC)
      - Applies only to Consumer GTC!

# Contracts with Consumers (3/3)

- Consumer protection
  - No statutory right of withdrawal in e-commerce
    - No special regulation
    - Mandatory rules for door-to-door transactions not applicable
    - Legislative project pending
    - Difference to Directive 2011/83/EC on consumer rights
  - Frequent: Contractual right of return
  - Trial purchase?
- Completion
  - Delivery (and return) of goods
    - Transfer of risk and title
    - Retention of title?
  - Purchase price; payment methods

# Logistics, other Key Issues

- Self-regulation in e-commerce/distance selling
  - Association of Swiss Distance Selling
  - Minimum standards / Ethical Code (*Ehrenkodex*)
  - Label for online shops: Swiss Online Guarantee 
- Logistics
- Swiss VAT
  - Sale of goods cross-border / Swiss import VAT
  - Assumption: ForeignCo handles import, declaration of VAT
  - Registration with Federal Tax Authority (FTA), VAT number
  - Both models: (1) local OpCo or (2) ForeignCo model
  - ForeignCo (without ZN): issues (fiscal representative, guarantee)
- Customs

# Discussion

## Cross-border e-commerce

- Key points, tips and pitfalls for structuring?
- Common topics in different jurisdictions?
- Need for (further) harmonization of legal framework?

# Contact



Thank you for your attention

**Pestalozzi** Attorneys at Law

Löwenstrasse 1, CH-8001 Zürich, Switzerland

**Franz Schubiger**, LL.M.

Partner, Corporate / M&A

Phone (direct): +41 44 217 92 49

E-mail: [franz.schubiger@pestalozzilaw.com](mailto:franz.schubiger@pestalozzilaw.com)

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