



## KINSTELLAR

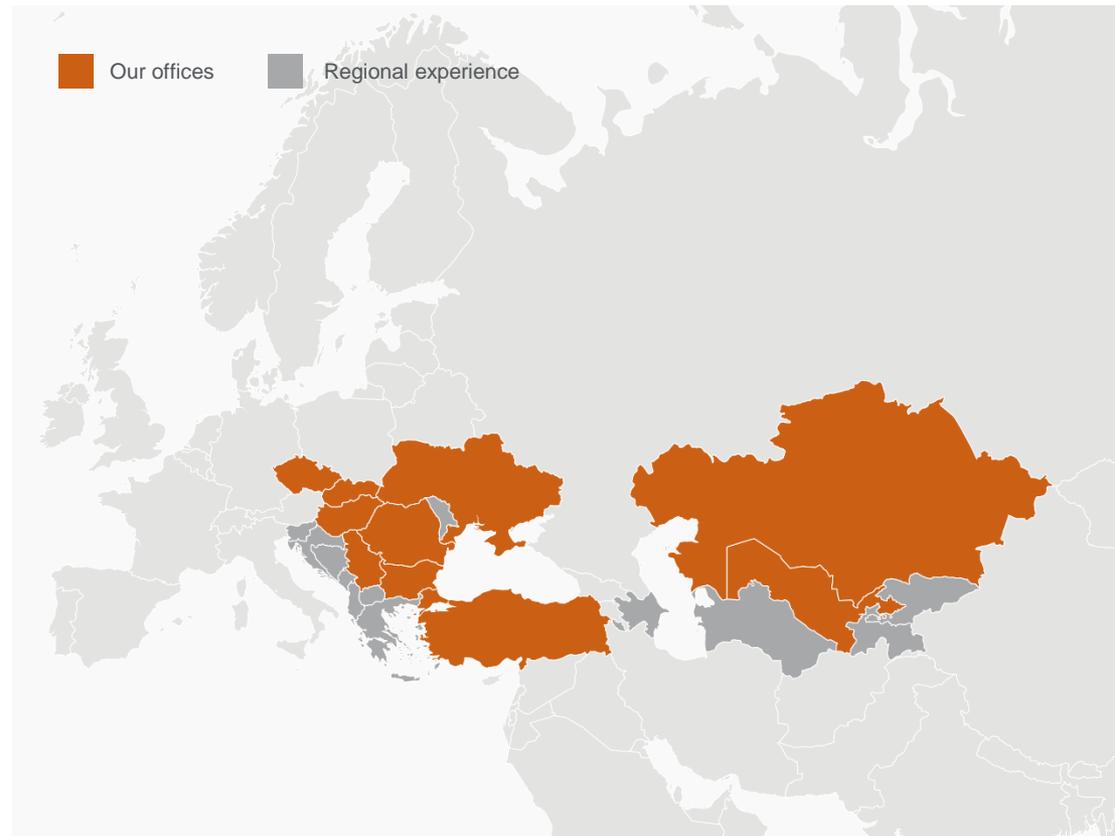
Bilateral legal relationships – legal risks of business in Switzerland, how to deal with them?

March 2020

# Kinstellar: Legal advice in Emerging Europe and Central Asia

**Kinstellar is an international law firm. We focus on emerging economies in Central and South Eastern Europe and Central Asia.** Our offices are in **Almaty** and **Nur-Sultan** (Kazakhstan), **Belgrade** (Serbia), **Bratislava** (Slovakia), **Bucharest** (Romania), **Budapest** (Hungary), **Istanbul** (Turkey), **Kyiv** (Ukraine), **Prague** (the Czech Republic), **Sofia** (Bulgaria) and **Tashkent** (Uzbekistan).

**We have strong experience in providing legal advice to clients in jurisdictions where we do not have a local presence working in joint teams with leading local law firms.**



11  
offices

250+  
lawyers

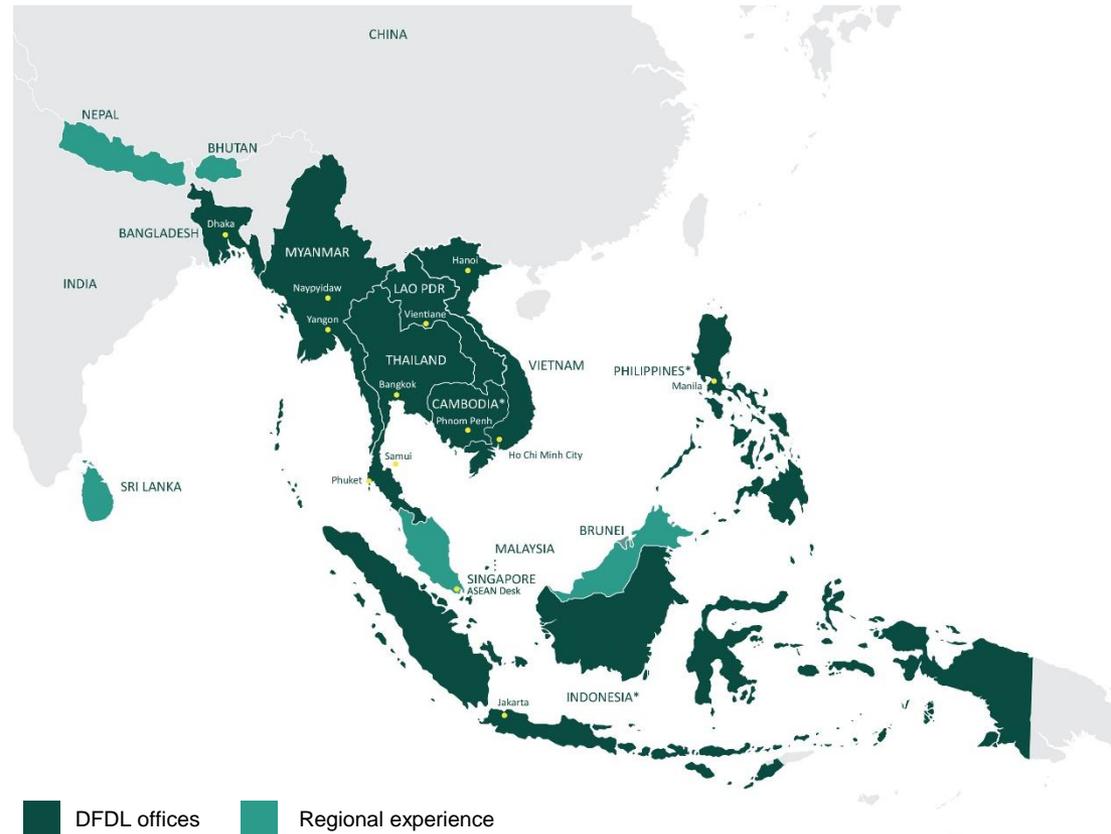
7.000+  
matters

# DFDL: Legal advice in Southeast Asia

**DFDL is an international law firm. We focus on emerging economies in Southeast Asia.**

DFDL practices in **Bangladesh, Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, Vietnam and Singapore** (ASEAN Desk).

As a leading international law firm serving the Southeast Asian region, DFDL has also developed 'desks' to serve those clients from Singapore, China and India and which operate or have business in the DFDL Southeast Asian countries.



 13 offices	 9 countries	 150+ advisers
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# What We Do

The range and breadth of our specialist practices and sectors set us apart in Emerging Europe and Central Asia.

## Sectors

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- Asset Solutions
- Aviation
- Automotive & Industrials
- Banks & Financial Institutions
- Energy & Natural Resources
- Industrials
- Infrastructure
- Life Sciences & Healthcare
- Private Equity
- Real Estate
- Technology, Media & Telecommunications

## Practices

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- Banking, Finance & Capital Markets
- Competition & State Aid
- Compliance, Risk & Sensitive Investigations
- Dispute Resolution
- Employment & Labour Law
- Energy & Natural Resources
- Infrastructure & Projects
- Intellectual Property
- M&A & Corporate
- NPLs & Distressed Assets
- Real Estate, Construction & Planning
- Restructuring & Insolvency
- Tax
- Technology, Media & Telecommunications
- White Collar Crime



## Out of Area

But certainly not out of our depth. Quite the contrary.

We have experience in **close teamwork with legal counsel in jurisdictions where we do not have our own office**. Kinstellar Prague would be your **single point of contact** in order to ensure the unified approach.

# walderwyss

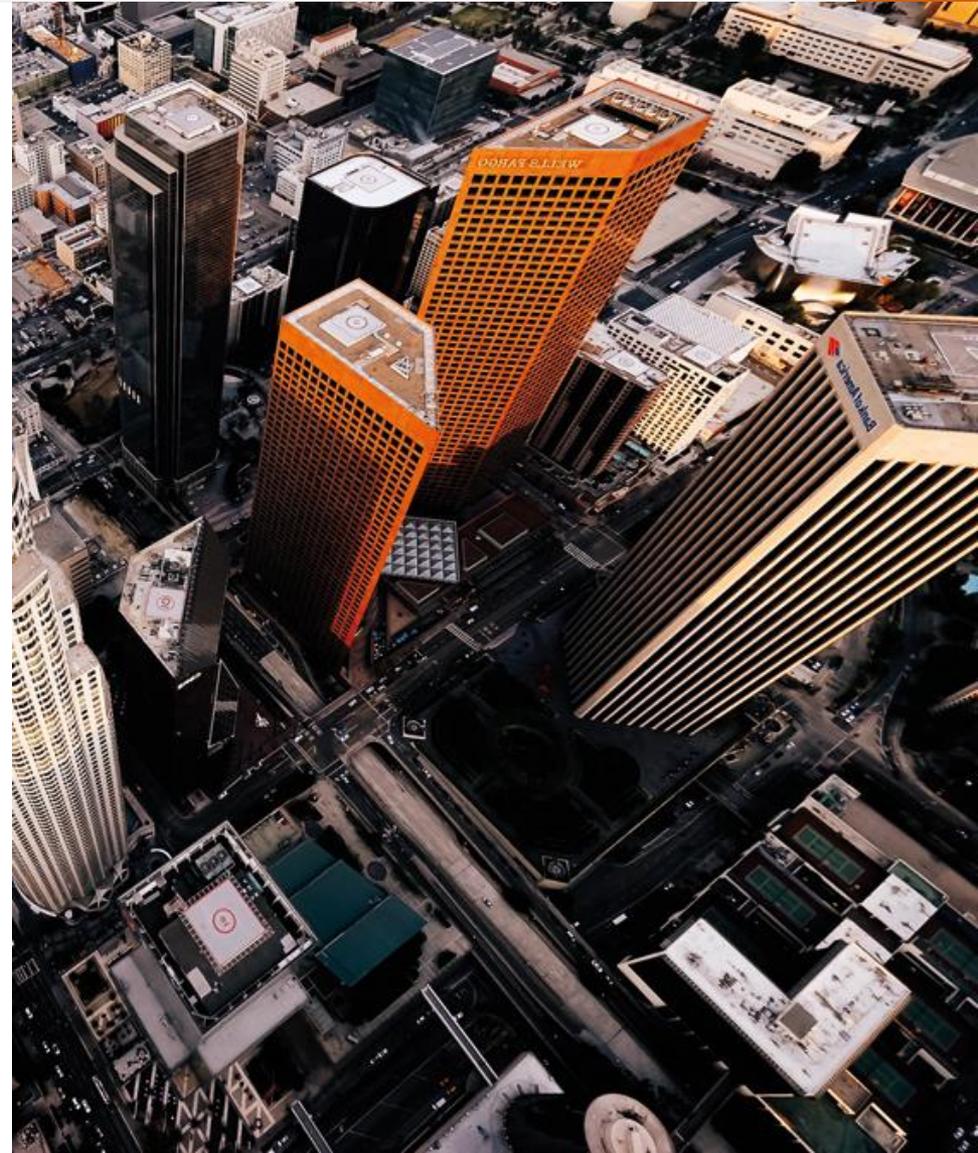
In **Switzerland** we work closely with **Walder Wyss Ltd.**, one of the most successful Swiss law firms.

**Walder Wyss** established a leading position in all relevant areas and is being top-ranked and law firm with one of the broadest footprints in Switzerland by the «Bilanz / Le Temps» ranking 2019 – the most important ranking by leading Swiss publications focused on the legal market in Switzerland.

- Investment
- Most Common Types of Entities
- Establishing a company
- International Treaties
- Enforcement of Decisions / Judicial Cooperation / Arbitration
- IP protection
- Finance documentation



- Switzerland is a diversified economy that welcomes international companies
- Foreign investors can operate **any type of business under the same conditions** as local investors
- In 2017, Switzerland took first place in the World Economic Forum (WEF) ranking for the ninth consecutive year
- Switzerland's per capita gross domestic product is the **second largest in the world**
- Switzerland has a **liberal economic environment** and an economic policy based on the free market



# Most Common Types of Entities

- Stock Company / Aktiengesellschaft (AG)
- Limited Liability Company / Gesellschaft mit beschränkter Haftung (GmbH)
- Branch of a foreign company
- Limited Partnership for Collective Investment



## **Stock Company / Aktiengesellschaft (AG)**

- Minimum share capital of CHF 100,000 (approx. EUR 94,000)
- Founded by one or more shareholders
- Supreme body is Board of Directors, which must have at least 1 member

## **Limited Liability Company / Gesellschaft mit beschränkter Haftung (GmbH)**

- Minimum share capital of CHF 20,000 (approx. EUR 19,000)
- One or more directors

## **Branch of a foreign company**

- To establish a branch, a public deed and other documents must be registered at the Commercial Registry
- Authorized representative with legal residence in Switzerland must be appointed
- No minimal capital

## SHARES

- There are no restrictions on foreigners owning shares

## REAL ESTATE

- Residential properties (and land reserves) cannot be owned by foreigners not resident in Switzerland



## Business and trade

- Convention on the OECD
- Marrakesh Agreement establishing the World Trade Organization
- Convention establishing Multilateral Investment Guarantee Agency
- **UN Convention on Contracts for the International Sale of Goods (Vienna Convention)**

## Dispute resolution

- **ICSID Convention (Washington Convention)** - Convention on the Settlement of Investment Disputes between States and Nationals of other States

## Transport and logistic

- Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention)
- Convention concerning International Carriage by Rail
- Convention on International Transport of Goods Under Cover of TIR Carnets (TIR Convention)

## Energy

- Energy Charter Treaty (ECT)

ECT provides for protections very similar to those of BITs. ECT survives the doubts regarding the Intra-EU BITs as the EU itself is a Party to the ECT.

## Finance

- Agreement of the International Monetary Fund (IMF)

- Member state of the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC) and European Bank for Reconstruction and Development (EBRD) (recipient of funds)

## Terrorism and Corruption

- UN International Convention for the Suppression of the Financing of Terrorism

- UN Convention against Corruption

- Agreement on the **Promotion and Reciprocal Protection of Investments** between the Swiss Confederation and the Czech and Slovak Federal Republic (1993)
  - creates favourable conditions for investments
  - promotion and protection of foreign investments in order to foster the economic prosperity
  - most favoured nation treatment clause (MFN) and national treatment clause
  - due compensation in the event of any expropriation (only in public interest and non-discriminatory)
  - free transfer of profits
  - dispute resolution mechanism – **BIT arbitration**
- Convention between the Czechoslovakia and the Swiss Confederation on **Recognition and Enforcement of Foreign Arbitral Awards**
  - Mutual recognition and enforcement of judgments and arbitral awards, including preliminary orders

- Bilateral treaty between the Czechoslovakia and the Swiss Confederation on Mutual **Legal Aid in Civil and Commercial Matters**
  - ✓ sets out cooperation of courts, including commercial disputes, such as delivery of documents and evidence taking
  - ✓ **Documents** issued or verified in the required form and bearing the stamp of the competent authority or official as prescribed by the law of one party **do not require further verification** in the territory of the other party.
  - ✓ This applies **also to signatures on documents** and signatures, which were verified pursuant to the law of one of the parties.
  - ✓ Public documents issued in the territory of one party will, before the state authorities of the other party, have the evidential value prescribed by the law of the party, in the territory of which the instrument was issued.
- Convention between the Government of the Czech Republic and the Federal Council of the Swiss Confederation for **the Avoidance of Double Taxation** and the Prevention of Fiscal Evasion with respect to Taxes on Income and Property (1996)

# Enforcement of Decisions / Judicial Cooperation / Arbitration

## Enforcement of Decisions

- Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (**Lugano**, 2007)
- **Bilateral** treaty between Switzerland and the Czechoslovak Republic on the reciprocal enforcement of judgements (1926)

## Enforcement of Arbitral Awards

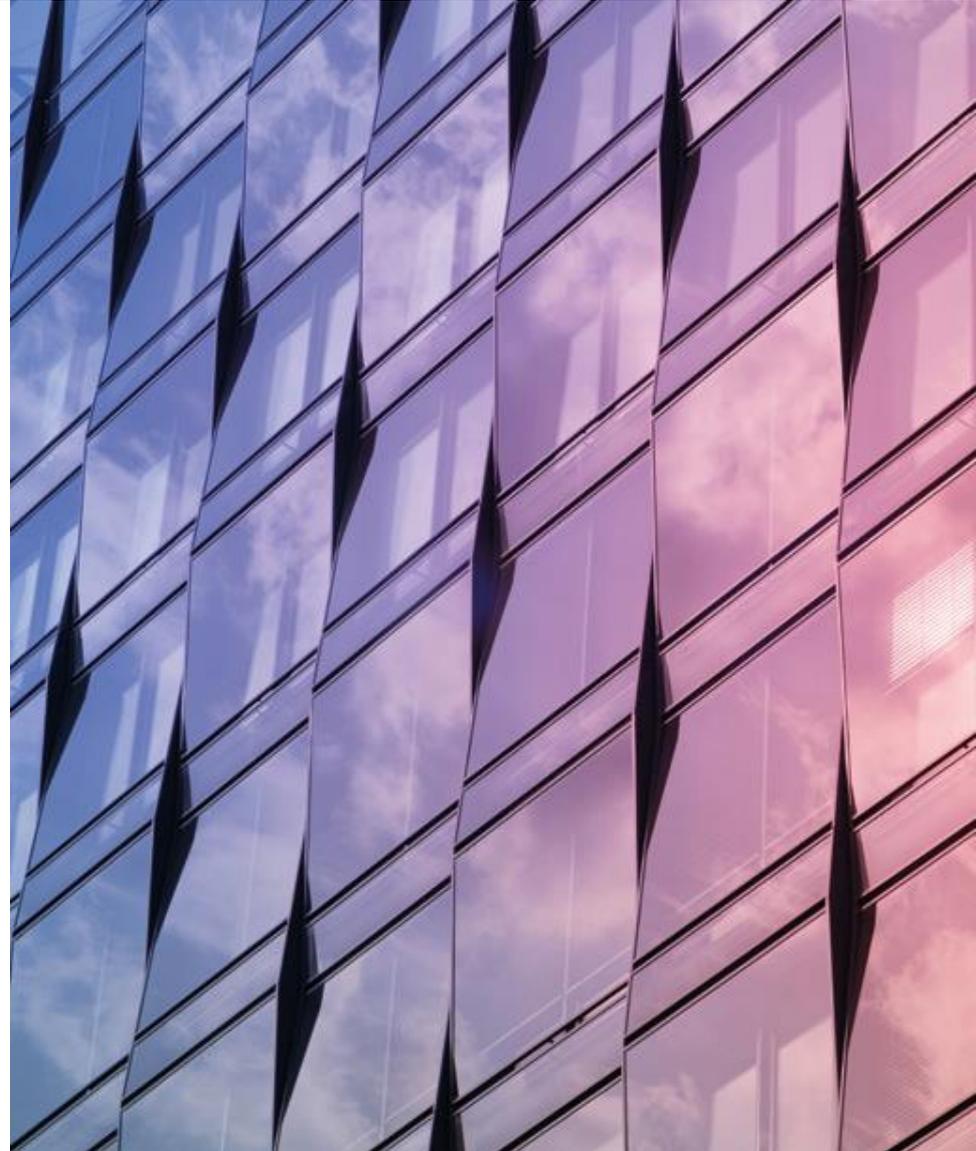
- **Convention on the Recognition and Enforcement of Foreign Arbitral Awards** (New York, 1958)
- **Bilateral agreements** with other contracting states on the issue of enforcement of international awards

- In Switzerland intellectual property (“**IP**”) is protected by federal laws but also by numerous **international treaties**.
- Swiss intellectual property comprises the protection of copyrights, trademarks, patents, designs, topography but also trade secrets and trade names that are subject to the Unfair Competition Act.
- There is no need to apply for copyright protection in Switzerland, but
  - Patents
  - Trademarks
  - Designs
- must be registered with the International Institute for Intellectual Property in Switzerland (“**IFPI**”).

LMA standards are used by financial institutions as a non binding guide

## **Most common securities**

- Real estate mortgage
- Pledge over tangible property/security transfer of legal title
- Pledges, security transfer of legal title and assignments for security purposes



Questions?





Thank you!

KINSTELLAR

**Kamil Blažek**  
Partner  
+420 221 622 160  
[kamil.blazek@kinstellar.com](mailto:kamil.blazek@kinstellar.com)



[www.kinstellar.com](http://www.kinstellar.com)