CENTRE DE DROIT
BANCAIRE ET FINANCIER

International Sanctions

Swiss governing law does not exclude foreign sanctions

Par Romain Giacobino le 5 August 2026

When drafted in broad terms, a compliance clause also covers foreign regulations and sanctions, even when Swiss law has been chosen as the governing law. The bank may rely on such a clause to freeze the relevant assets on the grounds that it must comply with foreign sanctions, even after the termination of the banking relationship (Federal Supreme Court 4A_455/2025 of May 21, 2026).

In the case at hand, the client company holds cash accounts with a Swiss bank, a time deposit account opened at the Guernsey branch, and two securities accounts held through a chain of European and British custodians.

Article 14 of the general terms and conditions governing the entire banking relationship (hereinafter : the “compliance” clause) provides that the bank is authorized to partially or completely restrict the services provided to the client in order to comply with legal, regulatory, or contractual provisions. In addition, Article 18 provides that all legal relationships between the client and the bank are governed by Swiss law.

One of the client company’s major shareholders is F, which indirectly holds 49 % of the share capital. However, in March 2022, the European Union, the United Kingdom, and subsequently Switzerland added F to their sanctions lists, resulting in the freezing of its assets. The company itself, however, does not appear on any sanctions list.

Following these designations, the bank suspended and then terminated its banking relationship with the company and blocked its assets in a separate account, citing various sanctions regimes, including foreign ones. SECO, however, informed the bank that it had no conclusive evidence that the company was owned or controlled by a person subject to sanctions (the fact that F held less than 50 % of the share capital may explain this finding). This position therefore prompted the bank to also invoke foreign sanctions regimes to justify the freezing of the assets.

The client then filed a lawsuit with the *Handelsgericht* in Zurich, seeking the return of her assets, before appealing to the Federal Supreme Court following the dismissal of her claim.

The judges at Mon Repos therefore examined, in turn, (i) whether the choice of Swiss law in Article 18 of the general terms and conditions nevertheless allows the bank to rely on foreign sanctions to refuse to perform, and (ii) whether the compliance clause remains applicable once the contract has been terminated.

Regarding the first point, the appellant's argument is as follows : a general reference to compliance with legal requirements in a compliance clause should be understood as referring solely to Swiss legal requirements in light of the choice-of-law clause. Since foreign sanctions are not Swiss legal requirements, the bank cannot rely on them to freeze assets located abroad.

The Federal Supreme Court first dismisses the objection based on the choice of law. While Art. 116 LDIP allows the parties to choose the law applicable to the contractual relationship, they remain free to determine the content of their contract within the mandatory limits of the chosen law. Consequently, despite the choice of Swiss law, they are free to provide for a right of refusal on the part of the bank based on foreign provisions.

Regarding the compliance clause itself, the Federal Supreme Court applies the standard methods of contract interpretation. It concludes that the clause must be understood as including foreign provisions, for three reasons : (i) its wording does not geographically limit the provisions in question ; (ii) the bank, which operates internationally, inevitably encounters foreign law ; and (iii) the clause could not achieve its purpose if it covered only Swiss law.

Regarding the applicability of the compliance clause after termination of the contract, the Federal Supreme Court notes that the parties may contractually govern the settlement proceedings following termination of the contract (which our High Court characterizes here as a mixed contract predominantly based on a mandate). Thus, Article 14 of the general terms and conditions must remain in effect during the settlement process ; otherwise, the bank could be compelled to perform an obligation (notably the return of assets) contrary to legal requirements, which would render the compliance clause meaningless.

The key takeaway from this ruling lies in the broad scope that the Federal Supreme Court attributes to the compliance clause despite the choice of law. Although drafted in general terms, this clause effectively allows the bank both to give effect to foreign regulations—including sanctions—and to govern the settlement process.

Such an interpretation confirms that the bank may enforce foreign sanctions against its client despite a choice of Swiss law. However, it raises a problem of predictability for the client, who could find themselves subject to a significant number of foreign legal provisions of which they are unaware, even despite a clear choice of Swiss law in the general terms and conditions.