NewsLetter LL

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HARMONIZING CIVIL PROCEDURE LEGISLATION

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At present, each of Switzerland's cantons has its own legislation on civil procedure. This leads to onerous and expensive litigation. By harmonising the different laws in this field, the Federal Council has put an end to this fragmentation. The new Federal Code of Civil Procedure (FCCP) draws on the traditions of civil procedure that have developed organically at the cantonal level.
The FCCP provides a variety of types of legal action, each designed to better accommodate the nature of the parties and the dispute concerned. For example, a simplified procedure applies to minor cases, as well as to matters concerning civil law in the social sphere (e.g. landlord/tenant disputes, labour disputes and consumer protection).
The new legislation highly encourages out-of-court settlements. The parties must first make an attempt at reconciliation or go through a mediation process, before they can take their cases to court.
Each individual action inherently bears a conflict of interest: The complainant is seeking fast and cost-effective legal protection, while the respondent is looking for a broad range of defence options. Losing parties want an effective appeals process and winning parties press for the judgment to be enforced immediately. The new FCCP takes a pragmatic middle ground through this potential minefield.
The new FCCP will come into effect on January 1, 2011.

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LIMITATIONS OF POWER FOR FOREIGN RECEIVERS ON SWISS TERRITORY

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During the last decades the economic world has become more and more globalised. In order to ease development of international trade, nations have eliminated trade restrictions as contained in domestic law. Within this international environment most companies run profitable businesses – however, there will always be companies that fail. In this event, bankruptcy and restructuring proceedings are inevitable. It seems that within the field of international insolvency law, there are still legal hurdles posed by domestic law. This is in particular true, as far as Switzerland is concerned.
The Swiss Act on Private International Law states the principle that a foreign bankruptcy decree does not have any effect on Swiss territory, as long as the decree has not been recognised by a Swiss court. Until such recognition, a foreign administrator is left completely powerless on Swiss soil.
Once a foreign decree has been recognised, the foreign administrator is still effectively left unable to act on Swiss territory. In case of recognition, bankruptcy proceedings as ruled by Swiss domestic law are opened and a separate Swiss receiver will be appointed. Only this receiver has the authority to act as official receiver.
As Switzerland is not a member of the European Union, the Council Regulation No 1346/2000 – as issued by the European Union – does not apply. Therefore, in case of insolvency with a connection to Switzerland (e.g. assets of debtor located in Switzerland) the Swiss system must always be taken into consideration – otherwise the foreign receiver will surely face a very unpleasant surprise.

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NO VAT ON THE TRADE OF CO_2-CERTIFICATES

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As of January 1, 2008, Switzerland imposed a pollution tax on CO_2-emissions connected to all natural fuels such as oil, carbon and gas. These emissions can be – or in accordance with the international Kyoto-Agreement to restrict global pollution rather must be – compensated. One possibility to compensate is the trade with CO_2-certificates at either the stock exchange or over-the-counter.
The imposition of VAT on the trade with CO_2-certificates remained an open issue for some time. In accordance with the legal situation within the EU, the Swiss Federal Tax Authority finally decided to generally exempt the trade with CO_2-rights from Swiss VAT, irrespective of whether actual certificates have been issued or the rights have been otherwise registered and also irrespective of whether the reduction is made within the mandatory (Kyoto) – or the voluntary market. While this new ruling went into effect on July 1, 2010, it also applies to all cases still pending with the Federal Tax Authority on that date.
If the reduction is made within the voluntary market, special rules (that came into effect on January 1, 2010) levying the tax burden on donations and other voluntary payments, also apply in the context of the CO_2-reduction trade. Details will have to be checked on a case by case basis.

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„CAN ANYONE BUY SWISS REAL ESTATE PROPERTY?"

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The answer still is: „No". However, restrictions set by the so-called „Lex Friedrich" and „Lex Koller" have been relaxed in recent years. According to the „Lex Koller", foreign nationals may acquire real estate property for the purpose of permanent residence in Switzerland and for establishing a business; however, they remain excluded from investing in residential real estate for investment purposes only. Most recently, persons abroad have become exempt from the permit-requirement-regime in respect to acquisition of listed shares in real estate companies. Furthermore, the requirements concerning appointed heirs have been relaxed. Currently the legislator is examining whether certain tools of land-use- and planning-law might prove to be a more successful substitute for the „Lex Koller" and it is being considered to repeal the latter, in order to more successfully counter a possible excess in demand for second homes (so-called cold beds). The purchase of Swiss property by foreign nationals will always have to be done through a Swiss attorney and a Swiss notary public, both of whom will ensure that the purchase is legal and also convenient for the client before proceeding. They make sure that the seller is in fact the rightful owner of the property he is offering, that the buyer is legally qualified to buy the property and that the deal runs in accordance with the „Lex Koller".

Author: Christopher Tillman

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As a medium sized law firm we offer timely and reliable assistance in a wide range of practice areas. Understanding the business interests of our clients, as well as analyzing and providing efficient solutions for complex legal issues, constitute our core competencies.

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