

SWISS INVESTMENT REPORT* 21

JANUARY 2019



* The Swiss Investment Report is provided by Wenfei Attorneys-at-Law Ltd. (“Wenfei”), a Swiss law firm which has gained extensive experience in providing services in Greater China.

The Swiss Investment Report is especially designed for Chinese Investors, who are intending to extend their business to Switzerland or Europe or are already doing business in Switzerland.

The Swiss Investment Report provides background information on the Swiss investment-related legal framework as well as information on current developments in the Swiss legislation from a foreign investor’s perspective.

The most important federal decrees as of 2019 – An overview

- I Introduction
- II Revision on the International Bankruptcy Law
- III Amendments to the Federal Debt Enforcement and Bankruptcy Act
- IV Amendments to Federal Act on Foreign Nationals
- V New Federal Act on Gambling
- VI Conclusion

The most important federal decrees as of 2019 – An overview

I. Introduction

The following provides an overview of the most important new enactments and amendments to existing laws that have either already entered into force in December 2018 or have recently entered into force in Switzerland on January 1st, 2019. The innovations focus on the Federal Code on Private International Law, the Federal Debt Enforcement and Bankruptcy Act, the Federal Act of Foreign Nationals and the Federal Act on Gambling.

II. Revision on the International Bankruptcy Law

At its meeting on September 14th, 2018, the Federal Council enacted the amendment to the Federal Code on Private International Law (CPIL) with effect from January 1st, 2019. The recognition of foreign bankruptcy proceedings and inheritance contracts in Switzerland will be simplified.

In Switzerland the recognition of foreign bankruptcy and estate proceedings is regulated by international bankruptcy law. Recognition requirements have been quite restrictive in the past. In particular the proof of counterclaim and the obligatory auxiliary bankruptcy proceedings have delayed the recognition of foreign bankruptcy decisions and in some cases even made them impossible. Therefore the recognition procedure has now been simplified. The main features of the changes made have already proved their worth in bank insolvency laws, where such provisions exist since 2011.

Since the amendments to the CPIL came into force on January 1st 2019, the proof of counterclaim has been waived. In addition, proceedings opened in the state in whose territory the debtor has the centre of his main interest, may now also be recognised. Furthermore, auxiliary bankruptcy proceedings only need to be conducted if there are creditors in need of protection in Switzerland. In contrast to the old provisions, the position of creditors with a subsidiary in Switzerland will be improved. They are now able to enter their claims within the framework of auxiliary bankruptcy proceedings without having to file an application for the opening of parallel bankruptcy proceeding regarding their subsidiary. This avoids costs and inefficient parallel proceedings. The new law also takes account of the increasing international interdependence of business and enables better coordination of related domestic and foreign restructuring- and bankruptcy proceedings.

Regarding old international treaties on bankruptcy that were concluded by various cantons with individual German principalities in the first half of the 19th century, talks and clarifications with the

German authorities have now begun. According to the dispatch to the new law, the aim of this communication is the abolition of these old treaties.

III. Amendments to the Federal Debt Enforcement and Bankruptcy Act

At its meeting on the September 14th, 2018, the Federal Council enacted an amendment to the Federal Debt Enforcement and Bankruptcy Act with effect from January 1st, 2019. According to the new provision, anyone who is unjustifiably enforced for debts, can ensure that third parties will not be informed about the debt enforcement.

With effect from January 1st, 2019 debt enforcement offices will not provide information on debt enforcements to third parties, if the debtor has submitted a request to this effect within three months since the order for payment has been sent out. If the creditor proves within a period of 20 days that he has initiated proceedings to remove legal proposal in good time, information to third parties will still be provided.

IV. Amendments to the Federal Act on Foreign Nationals

The federal council, at its meeting on August 15th, 2019, approved the second package of amendments to the Federal Act on Foreign Nationals and decided to put it into force on January 1st, 2019. The integration of foreign nationals is to be strengthened through positive incentives and appropriate measures. Among other things, the new provisions provide easier access to the labour market for refugees and temporarily admitted persons. Further on, residence permits can be interlinked with an integration agreement.

The Swiss Parliament already approved the amendment to the Foreign Nationals Act on December 16th, 2016. The amendments were divided into two packages, the first of which entered into force on January 1st, 2018, the second on January 1st, 2019.

Apart from enabling easier access to the labour market for refugees and provisionally admitted persons, the criteria for integration for foreigners have been specified within the corresponding ordinance. Inter alia language skills have been defined that are required for granting or renewing a residence permit. The amendments generally follow the principle: the more rights associated with a status under the Foreign Nationals Act, the higher the requirements.

In addition, the competent migration authorities may now combine a residence permit with an integration agreement and thus show the person concerned what integrative actions he/she is

expected to perform. Such integration agreements become binding and can be sanctioned. If integration criteria are not met, competent authorities may downgrade a settlement permit (Permit C) to a residence permit (Permit B).

V. New Federal Act on Gambling

The new Federal Act on Gambling along with the corresponding ordinances entered into force on January 1st, 2019. The law permits new online games and strengthens protection against gambling addiction. The provisions on blocking access will not come into force until six months later, as licensed online casino games, in fact, cannot be offered before that date.

Before the entry into force the Federal Supreme Court has rejected an appeal regarding infringement of voting rights. The new law was adopted by 72.9% of the votes of the Swiss electorate and combines the previous Federal Act on Casinos and Federal Act on Lotteries. Online games like poker or roulette are now permitted, while unauthorised gaming sites will be blocked (from July 1st, 2019). The Federal Council will decide on applications for licenses that authorize online casinos i.e. online roulette in the first half year of 2019.

In particular, the new legal provisions and its executive ordinances define framework conditions for small poker tournaments outside casinos in such a way, that the tournaments are both safe and attractive for players. The maximum entry fee is CHF 200 and the total sum of the maximal entry fees may not exceed CHF 20'000. Further, the maximum sum of all stakes for small lotteries and lucky draws must not exceed CHF 50'000, for small games that are supposed to provide financing for individual events of supra-regional importance the maximum sum is CHF 500'000.

The new law and ordinances should further strengthen prevention and protection against gambling addiction. Not only casinos, but also lottery companies will be obliged to exclude gambling addicts. In the online sector in particular, there are concrete measures to protect players from the danger of gambling. The Federal Department of Justice and Police also brought the revised ordinance on casinos and the new ordinance on money laundry into force into force on January 1st. 2019. These ordinances set the legal provisions regarding the technical aspects of casinos and due diligence obligations of organisers of major gaming events regarding the combat of money laundering and terrorist financing.

VI. Conclusion

In conclusion, the revision of the Federal Code of Private International Law has simplified the recognition of foreign bankruptcy proceedings and inheritance contracts. Most important, the proof of counterclaim has been waived, auxiliary bankruptcy proceedings must not always be conducted and proceedings opened in the state in whose territory the debtor has its centre of main interest, may be recognised according to the new law.

The revision of the Federal Act on Foreign Nationals in general embedded the principle: the more rights provided with the permit to stay, the harder to get. The new legal provisions in particular define required language skills and provide means of sanctions to the migration authorities. Granted residence permits may be linked to conditions. The new provisions may, not at least, introduce legal uncertainty for holders of stay permits in Switzerland.

The amendments to the Federal Act on Debt Enforcement and Bankruptcy lead to a new protection for people who have been unjustifiably enforced for debts, by providing them with the possibility to ensure, no information on such unjustified enforcements will be provided to third parties.

The new Law on Gambling replaces the old Federal Act on Casinos and Federal Act on lotteries. The new law permits new online games while prohibits others at the same time. It is also supposed to introduce better protection and prevention for people addicted to gambling. The law was discussed controversially before it became effective, not at least because it marks the time, Swiss authorities are allowed by law to block certain websites.

This document is for general information only and is not intended to provide legal advice.

© Wenfei Attorneys-at-Law Ltd., January 2019

Check the Swiss Investment Report archives on: <http://www.wenfei.com/index.php?id=22&L=0>