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Legal update: What's new in 2025?

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AIBL Luncheon - 31.01.2025

Agenda

- Entry in force of the new Federal Act on Combating Abusive Bankruptcy and revised Swiss Debt Enforcement and Bankruptcy Act (DEBA)
- Update on the 2024 Geneva Mediation Law and Infrastructure
- Update on Arbitration
- Entry in force of the revised Code of Civil Procedure (CPC)
- Entry in force of the Hague Convention on Choice of Court Agreements
- Partial revision of the Value Added Tax Act
- Revision of the Swiss Price Indication Ordinance: simplification of the rules for self-comparison

Entry in force of the new Federal Act on Combating Abusive Bankruptcy (loi fédérale sur la lutte contre l'usage abusif de la faillite)

1. Stricter Eligibility Criteria for Debtors seeking insolvency proceedings

To prevent frivolous bankruptcy filings, the new law requires that debtors demonstrate that they genuinely face financial distress and their financial situation warrants insolvency proceedings.

2. Enhanced Scrutiny

The insolvency authorities will conduct more thorough assessments of bankruptcy applications to determine their legitimacy; Increased scrutiny of their financial records and conduct leading up to insolvency.

3. Sanctions for Abusive Filings

Harsher penalties on individuals and businesses found to have engaged in abusive bankruptcies : fines, criminal charges, or other sanctions and criminal record.

4. Tightened Regulations for Company Officers

Company officers, directors, and board members may be held more accountable for facilitating abusive bankruptcies. There will be legal consequences for individuals who misuse insolvency proceedings to benefit themselves or others at the expense of creditors.

In future, debtors should no longer be able to use abusive bankruptcy to get rid of their financial obligations, such as salary payments, social insurances, taxes, etc. Public law claims are to be pursued in bankruptcy according to the general rules, and bankruptcy proceedings are no longer to be used to compete unfairly with other companies.

The amendments to the law entail adjustments to various laws and ordinances:

- Revised Code of obligations
- Revised Swiss Debt Enforcement and Bankruptcy Act (DEBA)
 - – revised art. 43 DEBA: Companies and associations who do not pay salaries, taxes, social insurances, etc. will now be facing bankruptcy proceedings.
- Revised Swiss Criminal Code
- Revised ordinance on the criminal record
- Revised Federal Act on Direct Federal Tax
- Revised ordinance on the commercial registry
 - Indications that give rise to suspicion of an invalid transfer of shares are listed
 - Clarifications in the dispositions on the registration of the waiver of limited control

Update on the 2024 Geneva Mediation Law and Infrastructure

- 670 mediations financed by the State
- 270 finished within less than 1 year
- 66% settlement agreement (53% complete, 13% partial)
- 75% finished within the first portion of 7,5 hours financed by the State
- Around 75% family law (including estates)

- Reminder:

These state funded mediations are also available for commercial matters provided they have a link with Geneva

Arbitration update

- Revised SIAC rules 2025 and revised schedule of fees (Singapore)
 - Aim: further increasing efficiency in the conduct of arbitration proceedings and enforceability of arbitral awards
 - new streamlined procedure for low value and less complex matters
 - Introduction of right to apply for preliminary determination (to be rendered within 90 days)
 - Emergency arbitrator prior to the filing of the notice of arbitration to obtain effective arbitral interim and conservatory measures – even ex parte
 - Expedited procedure only for dispute between SGD 1 mio (~740'000 USD) and 10 mio (~7,4 mio USD).
 - Identity of third-party funders must be disclosed
 - Limited timeframe for draft award submission
- New: IBA Site Visit Model Protocol
- CH Supreme Court Case law 2024:
 - multi-tiered clause may be binding or not, depending on the parties intention. When the arbitration seat is in Switzerland, Swiss contract law applies to the interpretation of (multi-tiered) arbitration clause.

Entry in force of the revised Code of Civil Procedure

- New Right to refuse cooperation for in-house counsel
- Strengthening of conciliation proceedings
 - Voluntary conciliation proceedings allowed (art. 199 (3) CPC)
 - Establishes lis pendens in Switzerland, but maybe not abroad
 - Interrupts the statute of limitation where debt enforcement is not available in Switzerland or exempt
- Evidence
 - Recognition of private expert opinions as evidence
- Procedural costs
 - The advance on costs now amounts to a maximum of half of the estimated court costs.
- Possibility for Cantons to introduce Swiss international commercial courts
- Cantons are authorised to provide for English as the language of proceedings in international commercial disputes

Entry in force of the Hague Convention on Choice of Court Agreements for Switzerland

- Strengthening of the binding nature of exclusive choice of court clauses (in writing or other form of communication) in international civil and commercial matters
- applies to choice of court agreements concluded after the Convention has entered into force in the state of the chosen court.
 - The Convention is already enacted in the European Union and in the United Kingdom, Mexico, Singapore, Ukraine, Albania, Montenegro and Moldova; and Switzerland
 - The USA, China, Israel, Kosovo and North Macedonia have signed the CCA but are yet to put it into force
- Any non-chosen court must, in principle, suspend the proceedings or dismiss the action as inadmissible, irrespective of where and when *lis pendens* was first established. The Convention does not leave room for the *forum non conveniens* doctrine.
- Swiss legislator is removing the discretion of chosen courts to decline jurisdiction based on insufficient connection to Switzerland. Art. 5 para. 3 PILA will be annulled as of 1 January 2025.
- Not applicable for interim measures
- Recognition and enforcement rules: similar to Lugano convention and PILA – no review on the merits and no review of the jurisdiction of the court of origin
- Lugano convention prevails if both parties are from contracting states

Partial revision of the Value Added Tax Act

- Adaptation to the increasing digitalisation and globalization of the economy
- Introduction of platform taxation (Temu, Shein, Amazon, etc.)
 - to ensure uniform taxation of goods sold via electronic platforms
- Introduction of a legal fiction, whereby a payment by the public sector is considered a subsidy, if explicitly labelled as such, and hence VAT exempt
- Maximum value of imported goods at customs without having to declare goods for application of Swiss VAT : reduced to CHF 150.-
- Modification of the list of goods subject to reduced VAT and exemptions

Revision of the Swiss Price Indication Ordinance: simplification of the rules for Self-comparison

- Unlimited self-comparison will be possible, provided that the price comparison has actually been used for at least 30 days beforehand
- Previously applicable rule for self-comparison continues to apply

Thanks !
Merci!

Any Question?

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