



Swiss Legislator Facilitates Cross-Border Civil Proceedings

03.04.2025

Key takeaways

- **The examination or hearing of an individual in Switzerland via telephone or video conference in foreign civil proceedings is no longer subject to prior approval by the Swiss authorities.**
- **To protect Swiss sovereignty and the individual concerned, such examinations or hearings continue to be subject to several conditions.**
- **The participation of an individual in Switzerland in an examination or hearing via telephone or video conference in foreign civil proceedings remains voluntary.**

Introduction

Against the background of advancing digitalization and with a view to implement the possibility of conducting video conferences in Swiss civil proceedings, the Swiss legislator sought to simplify the use of telephone or video conferences in cross-border civil proceedings. Currently, the examination or hearing of an individual in Switzerland by telephone or video conference in the context of foreign civil proceedings requires the prior approval of the Swiss Federal Office of Justice.

Beneficial for individuals residing in Switzerland

As a result of a federal decree recently adopted by the Swiss Parliament, prior approval by the Swiss Federal Office of Justice will no longer be necessary. Removing this approval requirement may make it more appealing for foreign courts to conduct examinations and hearings via telephone or video conference – including not only hearings of evidence but all types of hearings in civil proceedings. This is likely to benefit individuals (and companies) in Switzerland involved in foreign civil cases. For instance, third-party witnesses may be more willing to participate in foreign proceedings if the hearing is held by telephone or video conference. Similarly, Swiss parties to proceedings may find it easier to participate, as they will no longer need to travel abroad for a party examination or hearing. Finally, eliminating the approval process could help speed up foreign proceedings. It is worth noting that, to date, the approval has rather been a formality, as requests for telephone or video conference hearings have been granted in almost all cases.

The removal of the requirement for prior approval does not mean that foreign courts can conduct examinations or hearings by telephone or video conference of individuals in Switzerland without any restrictions. Instead, the federal decree establishes specific conditions that must be met to protect Swiss sovereignty and safeguard the individual involved. It is important to remember that acts of taking evidence are of a sovereign nature, and the Swiss state has a vested interest in regulating such actions.

Participation remains voluntary

The following requirements, among others, must be met for an examination or hearing by telephone or video conference by a foreign court to be permissible. These largely correspond to existing practice.

- The date of the examination or hearing must be notified in a timely manner (i.e. at least 14 days in advance) to the Swiss Federal Office of Justice and the relevant cantonal authority (the “Zentralbehörde”, the authority responsible for handling requests for mutual judicial assistance) in the canton where the individual is residing during the telephone or video conference. The notification can be made by the foreign court, one of the parties involved, their domestic or foreign lawyers, the individual concerned or their lawyers. A notification by e-mail is sufficient.
- The competent cantonal authority must be granted the right to participate in the examination or hearing.
- In the event that the hearing or examination is a hearing of evidence, the individual concerned has a right to be accompanied by a lawyer.
- The individual concerned has the right to be questioned and to respond in their native language. Additionally, upon the individual’s request, key statements made by other participating persons during the telephone or video conference must be translated.
- The technology used must guarantee the protection of personal data against unauthorised tampering.

- The results of the hearing of evidence must be used exclusively for the purposes of the proceedings in the context of which the evidence is taken.

The new system does not represent a weakening of the individual's legal position. Participation in the examination or hearing remains voluntary. This must be demonstrated by a confirmation from the individual concerned, stating that they have taken note of all the requirements for conducting a telephone or video conference and that they agree to participate. This confirmation must be submitted to the Swiss Federal Office of Justice and the relevant cantonal authority, and it may be revoked at any time. It is sufficient to submit the confirmation by e-mail.

If the conditions set out above are not met, the examination or hearing of an individual in Switzerland in foreign civil proceedings by way of a telephone or video conference in principle qualifies as an unlawful activity on behalf of a foreign state according to Article 271 (para. 1) of the Swiss Criminal Code.

New rules apply to all states

The legal basis for taking evidence in Switzerland for foreign civil proceedings is, among other things, the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters dated 18 March 1970 ("Convention"). Articles 15, 16 and 17 of the Convention generally require approval for taking evidence in another state. However, contracting states may choose to waive this requirement. With the federal decree adopted by the Swiss Parliament, the Swiss Federal Council is authorised to amend Switzerland's declaration to Articles 15, 16 and 17 of the Convention, thereby waiving the requirement of prior approval and implementing the prerequisites laid out above.

In principle, the Convention and its provisions apply only in proceedings conducted by the contracting states. However, with this federal decree, the Swiss legislator has amended the Swiss Private International Law Act ("PILA") to extend the application of the rules outlined above to all states, not only contracting states. As a result, the same rules regarding telephone or video conferences in cross-border civil proceedings apply, regardless of whether the state where the foreign proceedings are taking place is a contracting state to the Convention or not.

At the same time, the existing practice allowing foreign authorities to conduct proceedings (or a party representative in US discovery proceedings) to directly request a party staying in Switzerland to submit a document or exhibit has been codified in Article 11 (para. 2) PILA. However, this is only permissible if the foreign authority does not impose any criminal sanctions for non-compliance and if the request is made through channels of mutual judicial assistance. In such cases, the party concerned may comply with the foreign authority's request, while also taking into account, among other things, its confidentiality obligations under Swiss law, such as the duty to protect trade secrets or the confidentiality provisions under the Swiss Banking Act.

It is not yet clear when the new rules outlined above will take effect; this will be determined by the Swiss Federal Council at a later date.

Video conferences in Swiss civil proceedings

Since 1 January 2025, it has been possible to conduct oral procedural acts in Swiss civil proceedings via video conference (for more on this topic, see: [The revised Swiss Code on Civil Procedure will enter into force on 1 January 2025 | Pestalozzi At-torneys at Law](#)). This is subject to the condition that all parties agree and the law does not stipulate otherwise. Mere telephone conferences, i.e. without video transmission, are only permitted in exceptional cases.

If a Swiss court wishes to hear or question someone located abroad as part of Swiss civil proceedings, these rules also apply beyond Switzerland's borders. However, the laws of the relevant country for such cross-border examinations or hearings must be respected. In countries where regulations are based on the principle of reciprocity, the more flexible approach adopted by the Swiss Parliament with respect to video and telephone conferences in foreign civil proceedings as laid out above is likely to make it easier for Swiss courts to conduct cross-border video, or, in exceptional cases, telephone conferences.

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No legal or tax advice

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