# The revised Swiss Code on Civil Procedure will enter into force on 1 January 2025

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The Federal Council decided on 6 September 2023 that the first major revision of the Swiss Code on Civil Procedure ("CCP"), as the Swiss parliament adopted it on 17 March 2023, will enter into force on 1 January 2025. Hence, everyone should have sufficient time to implement the new rules (e.g. by revising existing decrees and laws) and prepare for them.

The revised CCP encompasses various modifications, the most important of which we will comment in the following (all modifications may be accessed here, German and French only).

- Possibility to establish international commercial courts: The revised CCP allows the cantons to establish international commercial courts. The cantons may declare the commercial court competent if a litigation relates to at least one party's business activity, the amount in dispute exceeds CHF 100'000, the parties agree on the jurisdiction of the commercial court and if at least one party has its seat outside Switzerland when it agreed to the jurisdiction of the commercial court.

  Should the cantons make use of this possibility to establish international commercial courts, litigation in Switzerland would become even more attractive. The international commercial tribunals will have special expertise and experience. The parties will also be able to agree on the exclusive jurisdiction of these specialized courts. This would give the parties the comfort that any future dispute would exclusively be assessed and decided by a particularly suitable and experienced state court.

  Promising candidates for the introduction of international commercial courts are in particular the Cantons of Zurich and Geneva, which both are well-established business-hubs.

- English as language of proceedings in international commercial disputes: In connection with the possibility to establish international commercial courts, the use of English as the procedural language is of preeminent importance. According to the revised CCP, the cantons may introduce English as the procedural language for international commercial disputes (in the sense as explained above) in front of the commercial court and ordinary courts. However, the Swiss Federal Supreme Court will continue to conduct its proceedings

in a national language, whereas the parties can use English in their submissions.

- Reduction of the advance on court costs: In the future, the advance on court costs will generally be limited to half of the expected court costs. In comparison: Under the current law, the courts may request an advance on court costs in the full amount of the expected court costs – in practice, the courts do so without exceptions. The revised regulation should faciliate the access to the courts. However, there are numerous exceptions from the new principle, e.g. in international commercial disputes (cf. above) or in appeal proceedings.

  In contrast, there will be no changes to the cantons' powers to determine the tariffs relevant for the determination of the court costs. Hence, the costs connected with conducting civil proceedings will continue to differ substantially from one canton to the other.

- The state bears the risk of collecting the court costs: In the future, the courts will refund the winning party (resp. the party that is not liable for costs) the advance on costs that it paid. This is in contrast to the current regulation according to which the courts also set off the advance on costs paid by the non-liable party with the court costs. As a consequence, the party not-liable for costs (which was obviously in most cases the winning party) had to re-cover the court costs from the opposing party who was liable to pay costs. The non-liable (usually winning) party thus had to bear the risk of the opposing party's default. Under the revised rule, this risk lies with the state.

- Court hearings by video conference: The courts may in the future conduct oral procedural acts, as for example court hearings, by electronic means, in particular by video conference. However, all parties have to agree and there must be no legal provisions to the contrary.

- Privilege rights for activities of a party's in-house legal department and in-house legal counsels: In the future, a party may refuse to cooperate and produce documents in the context of in-house counsels' activities. Such refusal will require that the party is registered in the Swiss commercial register or in a comparable foreign register, that the legal department is headed by a person admitted to the bar and that the respective activity would be part of the privileged activities if it were conducted by an attorney. In addition, third parties (e.g. an in-house counsel employed with a party) have the same right under the same conditions in the context of their work in the in-house legal department.

- Interim measures against the media – softening of the requirements: One of the requirements to claim a court order for interim measures against a periodically appearing medium will be softened. The looming infringement does not have to cause a "particularly serious disadvantage" to the concerned party any longer. Rather, a "serious disadvantage" will be sufficient. Whether this amendment will lead to a change in case law is yet to be seen. The further requirements for granting an interim measure against a periodically appearing medium (i.e. obvious lack of a justification; the measure is not disproportionate) remain unchanged.

Not part of the revision at hand are matters concerning collective actions (or class actions). The revision of the CCP's provisions on collective actions was separated from the CCP's general revision addressed above. The respective bill is currently pending in the Swiss parliament.

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No legal or tax advice

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