

## Commercial Property - Switzerland

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### New Code of Civil Procedure amends landlord-tenant dispute resolution

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#### **Introduction**

On January 1 2011 the Swiss Code of Civil Procedure came into effect, replacing 26 cantonal codes of civil procedure and marking the most fundamental change ever to Swiss civil procedure law. The legislature has tried to uphold cantonal civil procedure traditions in the new code, while implementing a more practical, efficient and modern civil procedure law – an ambitious undertaking. The standardisation of civil procedure law across Switzerland should eliminate legal uncertainty. The code provides for three types of court procedure and places greater significance on the pre-procedural and extrajudicial settlement of disputes.

The introduction of the new code will have a major impact on proceedings relating to landlord-tenant disputes.

#### **Repeal and integration of existing provisions**

In addition to repealing the 26 cantonal codes of civil procedure, the new code also repealed a federal statute and several procedural provisions in other federal statutes, in particular Articles 259i and 274 to 274g of the Swiss Code of Obligations regarding lease proceedings. All such procedural provisions are now incorporated into the new code, making it easier for users to understand lease proceedings.

#### **Place of jurisdiction, arbitration and costs**

The new code makes no amendments regarding the default place of jurisdiction – the default jurisdiction remains with the courts where the property is situated. However, in an international context the respondent can also be sued at the place of his or her domicile. The default place of jurisdiction is not mandatory. Once a dispute has arisen, lessees can waive the default place of jurisdiction or submit to another jurisdiction. In matters regarding living accommodation, the parties can choose only the conciliation authority to act as arbitral tribunal; while in matters concerning commercial real property, they can agree freely on an arbitral tribunal.

Court and party costs are still determined by the applicable cantonal tariffs. As a general rule, costs are determined in relation to the amount in dispute and are awarded proportionally to the losing party.

#### **More weight for conciliation proceedings**

Court proceedings are generally preceded by conciliation proceedings, unless:

- the amount in dispute exceeds Sfr100,000 and both parties waive the conciliation proceedings; or
- the defendant is domiciled abroad.

The conciliation authority will attempt to help the parties to reach a mutual agreement in an informal setting. If the parties fail to reach an agreement, the conciliation authority can:

- grant leave to bring the action before the court;
- make a judgment proposal; or
- render a final and enforceable judgment.

In disputes regarding rent deposits, abusive rent rates, lease terminations and lease extensions, the conciliation authority can submit a judgment proposal to the parties. Unless one of the parties rejects it within 20 days, the judgment proposal is deemed to be accepted and has the same effect as a final judgment. If a party rejects the proposal but the action is not brought to the court in time, the judgment proposal is deemed to be accepted and has the effect of a final and enforceable judgment. Provided that the claimant so requests, the conciliation authority has – regardless of the nature of the matter in dispute – the power to render a final judgment if the amount in dispute does not exceed Sfr2,000.

As in such landlord-tenant disputes, the conciliation authority is competent to render either a final judgment or a judgment proposal that might lead to a final judgment, it is advisable for the claimant to file a well-reasoned and documented request for conciliation to make the conciliation authority aware of all of its arguments.

### **Mediation at any time**

The legislature has designed the code to facilitate and encourage the extrajudicial settlement of disputes. The parties now have the option, if they so request jointly, for mediation to take the place of conciliation or court proceedings. Mediation is guided by a neutral third party and aims to help the parties to develop jointly a settlement solution which, in contrast to court proceedings, takes into consideration not only the specific matter in dispute, but also the interests and positions behind it.

According to the new code, the court can recommend mediation to the parties at any time and the parties can apply jointly to the court for mediation at any time. In such case court proceedings are stayed until one of the parties revokes the application or informs the court that the mediation has been terminated. The mediation is confidential and independent of the court proceedings. In particular, the parties' statements cannot be used in subsequent court proceedings, giving the parties the opportunity to address all matters freely during mediation. The organisation and conduct of the mediation are left entirely to the parties. If an agreement is reached, the parties can request jointly that the court ratify the agreement. A ratified agreement has the same effect as a final court judgment.

### **Improved court proceedings**

If a matter cannot be settled with the help of the conciliation authority or by mediation, court proceedings are instigated. The code sets down three types of court proceeding: ordinary proceedings, simplified proceedings and summary proceedings.

Ordinary proceedings generally apply in pecuniary disputes with a value of more than Sfr30,000. Irrespective of the amount in dispute, simplified proceedings apply in landlord-tenant disputes in regard to rent deposits, abusive rent rates, lease terminations and lease extensions. In these cases and in all other landlord-tenant disputes regarding an amount of no more than Sfr30,000, the court must establish the facts *ex officio*, with the effect that the proceedings are generally less formal, making litigation easier for the parties. The other main difference between ordinary and simplified proceedings is that the former are conducted more in writing, while the latter take place using more oral argument, thus making them faster.

### **Comment**

The new code makes the role of the conciliation authority in landlord-tenant disputes more important by giving the authority greater powers. The parties can now agree to enter into mediation at any time during court proceedings, giving more weight to alternative dispute

resolution, which is driven by the parties' interests rather than formal legal arguments. As most landlord-tenant disputes will be handled through simplified court proceedings, court proceedings are expected to become faster.

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