

LITIGATION

New rules facilitating the taking of evidence in Switzerland in cross-border civil matters

1. Summary

With effect from 1 January 2026, Switzerland has adopted new rules aimed at facilitating the taking of evidence in Switzerland for the purposes of foreign civil proceedings. The main changes are:

1. Witness testimony and party depositions by videoconference for foreign civil proceedings no longer require a prior authorization from the Swiss Federal Office of Justice ("FOJ"); they only need to be announced.
2. The Federal Act on Private International Law ("PILA") now includes a provision that expressly permits a party to foreign civil proceedings to voluntarily produce evidence if certain conditions are met.

To coincide with the introduction of the new provisions, the FOJ has updated its [guidelines](#) on international judicial assistance in civil matters. The FOJ has clarified an issue that was causing uncertainty by stating that parties can voluntarily submit documents in foreign civil proceedings even if they are not at their "free disposal" as defined by the Swiss Supreme Court's 'Swisspartners' decision. However, this only applies if the documents are not "intended for the proceedings of a third party (such as criminal or tax proceedings against a customer or employee of the transmitting party)".

These positive developments mean that the 'Swiss Blocking Statute' ([Article 271](#) of the Swiss Criminal Code ; "SCC") has lost some of its relevance in cross-border civil matters.

However, despite the new provisions and guidelines, it may still be unlawful to collect evidence in Switzerland from third parties with the intention of voluntarily presenting it in foreign civil proceedings.

In any event, banking secrecy, trade secrets and other information protected by Swiss law must still be observed where applicable. Legal assistance is required before such information can be disclosed to a foreign civil court or authority.

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2. Witness testimony and party depositions by videoconference

To facilitate the taking of evidence in Switzerland for the purpose of foreign civil proceedings, the Swiss parliament has revised [Article 11](#) of the PILA and has decided that the Swiss government will issue a new declaration in relation to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 28 March 1970 ("HC70"). The changes took effect on 1 January 2026.

A person in Switzerland can now give testimony or be deposed by videoconference for the purposes of foreign civil proceedings, regardless of whether or not the foreign country has ratified the HC70, and without prior authorization of the FOJ, if the following conditions are met:

- Participation in the hearing must at all times remain entirely voluntary (compulsory testimony or depositions can only be achieved through the relevant mutual legal assistance channels).
- The date and time of the hearing must be communicated with reasonable advance notice (notification by e-mail is sufficient) – in general, a minimum of 14 days prior to the hearing – to the FOJ and to the Central Cantonal Authority of the canton where the person being deposed or giving testimony is located, thereby allowing the local Cantonal Authority to participate in the hearing if it wishes to do so.
- The person being deposed or giving testimony has the right to make statements in its native language, and relevant statements made by other persons must be translated if necessary.
- The person has a right to be represented and assisted by counsel and can refuse to answer questions.
- The deposition or testimony can only be used in the context of the foreign civil proceedings for which it was given, excluding other civil, criminal or administrative proceedings (principle of specialty).
- Ordinary Swiss secrecy and confidentiality obligations still apply, such as banking secrecy (Article 47 of the Swiss Banking Act) or other trade and manufacturing secrets (Article 162 SCC and Article 273 SCC) – only a Swiss Court can discharge a witness or party from his or her secrecy obligations under Swiss law.

3. Voluntary production of evidence

The second amendment which entered into force on 1 January 2026 pertains to Article 11 (2) of the PILA. The legislator's stated aim was to "codify the practice" of the Swiss authorities in relation to the '**voluntary**' production of evidence by a party located in Switzerland in foreign civil proceedings.

If the requirements of Article 11 (2) PILA are met, a party is not liable to prosecution under Article 271 of the SCC (which prohibits the carrying out of sovereign acts on behalf of a foreign state on Swiss soil) when executing a foreign authority's request.

Article 11 (2) of the revised PILA states that "a party to [foreign] proceedings who is in Switzerland may be directly requested to transmit submissions or evidence if the request is made without threat of penalty and is served by way of legal assistance" (translation provided by the FOJ in the latest edition of its guidelines).

However, the Swiss government clarified that the request to produce evidence does not need to be notified in Switzerland by way of legal assistance if the party has a domicile for service in the country where the proceedings are being conducted (for example, the recipient is assisted by a local law firm and service can be made to them).

The requirement in Article 11 (2) of the PILA that requests be made "without threat of penalty" is not a new one. For years, it has been the FOJ's practice that evidence may only be produced by a party in foreign civil proceedings where non-compliance with the request has no, or only procedural, consequences for that party. Conversely, if non-compliance triggers a **sanction**, such as contempt of court, the submission cannot be deemed 'voluntary' and the relevant legal assistance channels must be followed.

The novelty of this legal provision lies in what it has **not** codified: it does not include the criterion of 'free disposal' that was adopted by the Swiss Supreme Court in the 2021 'Swisspartners' decision ([BGE 148 IV 66](#)). In its controversial ruling, the Swiss Supreme Court held that "in all circumstances, only files and information that can be freely disposed of may be disclosed [in foreign proceedings]. (...) Identifying information about third parties that is not publicly accessible cannot be freely disposed of" (unofficial translation).

Interestingly, the legislative materials show no indication that the 'Swisspartners' decision or the 'free disposal' criterion were taken into account during the legislative process that led to the revision of Article 11 of the PILA.

This raises the question of whether or not a party still needs to observe the 'free disposal' criterion under the revised Article 11 (2) of the PILA, *i.e.* whether or not information pertaining to third parties (*e.g.* clients and, arguably, employees) can be disclosed in foreign civil proceedings.

In our view, the FOJ has helped clarify the situation. In its guidelines of 1 January 2026, the FOJ considers that parties can voluntarily submit documents in foreign civil proceedings even if the documents are not at their "free disposal" in Switzerland, provided the documents are not "intended for the proceedings of a third party (such as criminal or tax proceedings against a customer or employee of the transmitting party)". In other words, the FOJ dismisses the 'free disposal' criterion, but adds another one which reflects the **principle of specialty**. The principle of specialty is well established in legal assistance in criminal matters, but more controversial in legal assistance in civil matters. Its practical impact in this context remains to be seen.

In any event, the new provision only applies to **civil** proceedings. This clearly excludes criminal and tax proceedings. According to the FOJ, if a public authority is acting in the exercise of public powers or bringing 'civil claims' against an individual to safeguard public interests, the case is not civil within the meaning of the HC70. In our view, this means that Article 11 of the PILA does not apply to foreign proceedings conducted by government agencies such as the U.S. Securities and Exchange Commission (SEC) or the U.S. Federal Trade Commission (FTC).

Moreover, Article 11 (2) of the PILA only applies to **parties** involved in foreign civil proceedings. Therefore, third parties in Switzerland, such as experts or witnesses, cannot invoke this provision. Any request for them to provide evidence should be made via the appropriate legal assistance channels. According to the FOJ, only the invitation to travel abroad does not have to go through mutual assistance channels, provided that it is not accompanied by any threat of coercive measures or that such measures do not automatically result from a refusal.

Unfortunately, the new regulation only mentions the **production** of evidence in foreign civil proceedings. Therefore, it may still be unlawful under Article 271 of the SCC to **collect** evidence in Switzerland from third parties with the intention of voluntarily presenting it in foreign civil proceedings (see the widely criticized but not overruled [BGE 114 IV 128](#)). Caution is therefore still advised in this respect, for example when conducting internal investigations.

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