



Improved Protection for Whistleblowers

As a consequence of Sarbanes Oxley legislation in the United States, all major Western jurisdictions improved their legislation on whistleblowing over the last years. In Switzerland, the National Parliament now mandated last fall the Federal Government to present proposals for extended whistleblower protection. The government is expected to send proposed legislation into consultation in Q4/2008.

Switzerland wants to keep its liberal dismissal regime which is considered to be a competitive advantage in attracting international business to Switzerland. The Swiss Government will therefore present a liberal and cautious whistleblower protection solution.

Proposal legislation will strengthen the position of the whistleblower and may at the same time provide inducements for reporting of potential misbehaviour. The proposal will most probably confirm that justified whistleblowing and any subsequent lay-off constitutes a case of abusive dismissal (what concept was partly disputed so far).

Presently, the penalty in a case of abusive dismissal is up to six monthly salaries. However, reinstatement is not part of abusive dismissal protection in Switzerland. Proposed legislation might include the presumption that an abusive dismissal is given if business does not provide for internal complaint structures. In other words: if reporting to internal complaint managers in an institutionalized way is not possible, the employee may lack good reasons to go public with a particular grievance.

Still open is the issue as to whether the federal government will simultaneously propose to extend the sanctions for abusive dismissal. The government also examines the question whether governmental workers should be obliged to report suspected crimes and other misdemeanours.

October 2008

Dr. Thomas Rihm

For further information please contact Dr. Rihm (t.rihm@thouvenin.com)