



Contract Newsletter Switzerland

Swiss Federal Supreme Court Rules that a Waiver to Raise the Defence of the Expiry of the Statute of Limitation is Valid

Art. 141 Swiss Code of Obligations stipulates that the statute of limitation cannot be waived in advance. In the decision rendered on February 13, 2006 (BGE 132 III 226), the Swiss Federal Supreme Court held that the correct reading of Art. 141 para. 1 Swiss Code of Obligations is that a waiver is permitted, provided such waiver is executed prior to the existence of a claim. According to the Swiss Federal Supreme Court, such a waiver is valid for all statute of limitations and even after the statute of limitations has expired. The waiver shall, however, not extend the period to more than ten years, which is the general period for the statute of limitations set out in Art. 127 Swiss Code of Obligations.

In order to prevent an interruption of the statute of limitations by taking legal action in accordance with the Swiss Debt Collection and Bankruptcy Act or by filing of a complaint with the justice of peace, it has been the practice to request the debtor to execute a waiver to raise the defence of the statute of limitations. With its decision of February 13, 2006, the Swiss Federal Supreme Court clarifies that such a waiver is valid, if made after the debt has come into existence and if such waiver does not extend beyond the period of 10 years set forth in Art. 127 Swiss Code of Obligations.

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