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New Swissness Legislation

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[Rz 1] Swiss products and services have an excellent reputation worldwide. They are associated with exclusivity, tradition and high quality. Companies have recognised the value add of the Swiss brand long since and increasingly use the designations «Switzerland», «Swiss quality» and «Swiss made» to promote their products and services. In the past few years this success has also triggered abuse within Switzerland and abroad.¹

[Rz 2] Such abuse weakens the Swiss brand, which is why on 2 September 2015 the Swiss Federal Council implemented the new Swissness legislation. This legislation strengthens the term «Switzerland» as designation of origin and the Swiss cross.²

[Rz 3] The new Swissness legislation comprises the following acts and ordinances:

- Trademark Act (MSchG)³;
- Trademark Ordinance (MSchV)⁴;
- Ordinance on the Use of Swiss Geographical Indications for Food (HasLV)⁵;
- Ordinance on the Register of Designations of Origin and Geographical Indications of Non-Agricultural Products (Non-agricultural GUB/GGA-V)⁶;
- Coat of Arms Act (WSchG)⁷; and
- Ordinance on the Protection of the Swiss Coat of Arms and other Public Signs (WSchV)⁸.

[Rz 4] Some highlights of the Swissness legislation are:

[Rz 5] First, subject to exceptions, food, milk and dairy products with a Swiss indication of origin (i.e. «Swiss» food, milk or other dairy products) must contain at least 80% domestic raw materials (weight), and 100% domestic raw milk respectively (art. 48b MSchG). Other products (e.g. industrial products) are deemed of Swiss origin if not only at least 60% of the manufacturing costs accrue in Switzerland but the activity giving the product its essential characteristics is also performed in Switzerland (art. 48c MSchG). The manufacturing costs include the costs for production and composition, research and development as well as quality assurance and certifications. They do not include the costs for natural products that cannot be produced at the place of origin due to natural conditions, and for raw materials, packaging, transport, marketing and distribution.

[Rz 6] Second, subject to exceptions, the minimum requirement of Swiss raw materials of 80% (of the weight) is based on the *recipe* (not the composition of the food), whereby water is explicitly excluded from the calculation (art. 3 HasLV). Examples of the geographical indication are e.g. «Swiss made» or «Bündner Gerstensuppe».⁹

[Rz 7] Third, the new non-agricultural GUB-GGA-V governs the registration of designations of origin and geographical indications for products *other than* agricultural products, processed agricultural products and wine as well as forestry products and their processing products (art. 1

¹ Botschaft zur «Swissness»-Vorlage vom 18. November 2009 (09.086), tinyurl.com/q5mqyxy (all Internet sources last visited on 24 September 2015).

² Schweizerische Bundeskanzlei, Bundesrat verabschiedet Umsetzungsverordnungen zur Swissness-Vorlage, tinyurl.com/pywjyq9.

³ SR 232.11.

⁴ SR 232.111.

⁵ Based on art. 48 para. 4, art. 48b para. 1 and 4, and art. 50 MSchG (SR 232.11).

⁶ Based on art. 50a MSchG (SR 232.11).

⁷ SR 232.21. Complete revision. BBL 2013 4777 ff.

⁸ Based on WSchG (SR 232.21).

⁹ HasLV, Erläuternder Bericht zum «Swissness»-Ausführungsrecht, Bern, 2. September 2015, S. 3.

non-agricultural GUB/GGA-V). Examples of products that fall within this scope are e.g. textiles or industrial products (watches) or products obtained by extraction (minerals and salt)¹⁰.

[Rz 8] Finally, art. 3 WSchV stipulates that communities as well as organisations and companies that are authorised to display the Swiss coat of arms when performing public functions, are now also permitted to use the Swiss cross for labeling commercial services.

[Rz 9] A suspension of the Swissness legislation due to the Swiss Franc shock as requested by the Committee for Legal Affairs of the Swiss National Assembly¹¹ was rejected by both parliamentary chambers.¹² Hence, the Swissness legislation comes into force (all acts and ordinances simultaneously¹³) on 1 January 2017¹⁴. The extended implementation period of more than one year shall allow the industry enough time to adjust to necessary changes in production and branding.

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¹⁰ GUB/GGA-V, Erläuternder Bericht zum «Swissness»-Ausführungsrecht, Bern, 2. September 2015, S. 3.

¹¹ Medienmitteilung RK-N, Bern, 29. Mai 2015, tinyurl.com/no5nlz.

¹² NZZ, Die Swissness-Regeln stehen, 9. September 2015, S. 16.

¹³ MSchV, Erläuternder Bericht zum «Swissness»-Ausführungsrecht, Bern, 2. September 2015, S. 24.

¹⁴ I.e. not already next year (2016).