

# Overseas Remote Work (Switzerland)

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Practice notes | [Law stated as at 01-Apr-2024](#) | Switzerland

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A Practice Note addressing legal and practical considerations in Switzerland regarding overseas remote employment outside of the country or state of the employer's central workplace where the employee is employed. It addresses issues and considerations both when an employee based and employed in Switzerland seeks to work remotely overseas outside of Switzerland and when an employee based and employed outside of Switzerland seeks to work remotely overseas in Switzerland.

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In an overseas remote work scenario, an employer must review home country and host country considerations for the two relevant territories. This includes employment law issues, regulation, and compliance in areas such as tax and immigration, and practical steps for employers to implement a remote working arrangement properly and successfully. This Note considers legal and practical issues under the laws of Switzerland only, when either:

- The employee is normally employed and based in Switzerland, and it is proposed the employee will work remotely outside of Switzerland (Switzerland as Home Country).
- The employee is normally employed and based outside of Switzerland, and it is proposed the employee will work remotely in Switzerland (Switzerland as Host Country).

This Note assumes the employee remains employed by the employer in the Home Country and is not transferred to employment under an entity in the Host Country or seconded to an entity or client in that overseas country. Accordingly, this Note in general assumes that the employee remains employed by their employer in the original place of employment and works temporarily from their personal workspace overseas for this employer.

Remote work considerations that are not specific to an overseas scenario, must also be reviewed by the employer. See [Employee Mobility Toolkit \(International\)](#) for a list of global remote work resources available in Practical Law.

## Overseas Remote Work Defined

In Switzerland, remote work is most known under the term remote work or simply, working from home.

Although it is important to distinguish whether the remote work is performed in the interest of the employer or the employee (see [Practice Note, Domestic Remote Work \(Switzerland\)](#)), this is not differentiated in purely conceptual terms.

## Preliminary Practical Considerations

Overseas remote work raises several potential questions and challenges employers and employees should consider. These include the following:

- Review home and remote working policies (if any) and consider including sections on working remotely overseas.
- Ensure employees understand they need prior approval before working remotely overseas.
- Consider potential visa or work permit requirements.
- Consider potential social security and tax implications the overseas remote work could have, in particular for the employer.
- Consider (also from a regulatory perspective) whether it is practically possible to undertake the role remotely outside of the home country.
- Ensure any agreement with the employee regarding overseas remote work is clear and in writing. This agreement should include expectations during the overseas remote work and return to home country.
- Ensure the parties comply with data protection and that data protection arrangements and agreements are in place.
- Ensure employees understand overseas remote work requires employees to have a proper internet connection and the equipment and materials required for their work.
- Consider whether there could be any difficulties when communicating with the employee or managing the employment relationship (for example, issuing instructions and controlling the employee's work) in particular due to a potential time difference.
- Consider potential implications from an insurance law point of view.

The employer and employee should seek local legal advice regarding any immigration, social security, tax, regulatory, and employment obligations they might have in the host country.

## Switzerland as the Home Country

### Legal Restrictions

Swiss law allows overseas remote work, and an employer can have employees working remotely outside of Switzerland under the following conditions:

The employer and the employee comply with the relevant immigration law provisions in the host country.

The employer and the employee comply with any employment, social security, or tax obligations in the host country.

There are currently no employment laws in Switzerland directly or indirectly regulating employees' overseas or domestic remote work. There are also no proposals to implement such regulations. Therefore, employees do not have a right to work remotely outside of Switzerland and likewise an employer cannot obligate the employee to work remotely overseas (or in Switzerland), unless mutually agreed.

However, many employers have introduced remote work regulations. Due to social security and tax implications, employers do not usually allow remote work outside the canton or Switzerland, or they only allow it to a limited extent, and usually based on a case-by-case assessment.

The applicable social security agreements are important to determine the social security status and the possible social security consequences of overseas remote work. In this context and at least in relation to Switzerland and the EU/EFTA, a multilateral agreement between Switzerland and certain EU/EFTA states (including Germany, Austria and France) came into force in July 2023 allowing employers to handle the social security status more flexibly for cross-border commuters. Under that agreement, people who work in the state where their employer is based can perform up to 50% cross-border teleworking (maximum 49.9% of working hours) remotely in their country of residence (using IT resources). In such cases, the responsibility for social insurance remains with the state where the employer is based. This is only applicable if the Agreement on the Free Movement of Persons with the EU or EFTA applies. In addition, restrictions apply for certain categories of employees.

## Applicable Laws and Employee Rights

There is no law, statute, code, or regulation that expressly states that Switzerland's employment laws only apply to employees physically working in Switzerland. The employment laws of Switzerland can apply to employees working remotely outside of Switzerland; however, this does not happen automatically.

The *Federal Act on Work in Industry, Trade, and Commerce*, 822.11 (Labour Code) is public law and therefore the principle of territoriality applies. This means the Labour Code and its ordinances can only be enforced in relation to matters in Switzerland territory. In employment relationships governed by Swiss law, the courts apply the Labour Code often *mutatis mutandis* to employees working outside Switzerland, unless the parties agree that the laws of another jurisdiction apply.

### Applicable Law

The applicable law is determined in accordance with Article 121 paragraphs 1 and 2 of the *Federal Act on Private International Law* (PILA)) when:

- The parties did not sign an agreement.
- The employment relationship has a connection to a country other than Switzerland because of the overseas remote work.

Article 121 sets out Swiss international private law and provides:

- The law the parties choose (in line with Article 121) governs the employment relationship. If Swiss law governs the employment agreement, Swiss law continues to apply unless there are strictly mandatory employment laws in the host country.
- The employment contract is subject to the law of the country where employees habitually or regularly perform their work (Article 121, paragraph 1, PILA). See *The Place Where the Employee Habitually Works*. This is usually the place where the company is located or the place where the employee performs substantial work. If employees habitually perform their work in more than one country, the law of the employer's place of business or, in the absence of such a place of business, the employer's domicile or habitual residence governs the employment contract (Article 121, paragraph 2, PILA).
- The parties should note that irrespective of their agreement to the PILA, mandatory employment laws of the host country may apply.

**The Place Where the Employee Habitually Works**

- When considering whether an employee regularly performs their work in a particular jurisdiction, their regular place of work does not change if they are temporarily employed in another country (Article 8 No. 2, [Regulation \(EC\) 593/2008 \(Rome I\)](#)). The decisive factors to determine whether the employee is temporarily employed are:
- Whether the employee is expected to resume working in the home country after working abroad.
- The duration of time the employee spends working abroad. Generally, the longer the employee spends working remotely overseas in the host country, the more likely it is that the habitual place of work is deemed to be the host country.

**Recording an Agreement in Writing**

It is recommended, but not required under Swiss law to record the terms of any overseas remote work arrangement in writing (in a written addendum to the employment agreement or similar). Such agreement should in general include the following, but the parties need to determine the exact content on a case-by-case basis:

- The (intended) duration of the overseas remote work arrangement, including provisions on termination of the overseas remote work.
- Travel cost arrangements.
- Immigration law considerations.
- Agreement on social security and taxes.
- Agreement on any additional or required insurances.
- The governing law or the parties' agreement that employment remains subject to Swiss law. If the employee's employment agreement is governed by Swiss law, it is common for the overseas remote working agreement to also be explicitly governed by Swiss law, subject to strictly mandatory employment law provisions of the host country.
- The employment benefits that apply during the arrangement (including costs of living in the host country).
- The employee's obligation in connection with the overseas remote work (for instance, working time, confidentiality, necessary technology, and other arrangements to enable the employee to work effectively in the host country).
- A provision on the necessary work material and equipment during the overseas remote work. If the employer provides the material and equipment, a provision on its return on termination of the overseas remote work.
- A provision on who bears the costs incurred due to the overseas remote work (which primarily depends on whether the overseas remote work is performed at the request of the employer or the employee).
- A provision stating the employee continues to work only for the Swiss employer under their control and direction.
- A provision prohibiting the employee from:
  - entering into contracts with local customers while in the host country; and
  - holding themselves out as having an authority to enter into contracts on the employer's behalf.

- Special confidentiality provisions: additional practical confidentiality measures are often needed if an employee works somewhere other than the employer's office.
- If the parties intend the overseas remote work to last for a longer duration of time, they should consult a local lawyer in the host country and have them review the overseas remote work arrangement.

## Managing, Monitoring, and Terminating the Employee

### Managing an Employee Working Remotely

An employee working overseas under an employment agreement governed by Swiss law remains subject to their contractual obligation and the direction of their employer. Similarly, a manager based in Switzerland can manage an employee working outside of Switzerland. The manager and the employee should define daily or weekly times to exchange information, and any overseas remote work arrangement should clearly state and define the employee's obligations while working abroad (for example, working time, availability, and data security).

### Monitoring

Employers are prohibited from installing surveillance systems at the workplace when used only to monitor the behaviour of the employees (Article 26, *Ordinance 3 Implementing the Labour Code, 822.113*). However, monitoring systems can be justified by:

- The employer's interest to supervise the employees' productivity and suitability for the job.
- Other objective and legitimate reasons, in particular security requisites, compliance with internal rules, work's organisation, and quality improvement.

Employers must ensure monitoring systems:

- Do not affect the health and freedom of movement of employees.
- Respect the principle of proportionality.

This means systems that enable secret, identity-based monitoring, or are permanently monitoring are not allowed.

Although Article 46 of the Labour Code is not directly applicable to employees working remotely overseas, the principles set therein should be observed.

Any employee monitoring must be in line with applicable data protection laws in Switzerland (see *Data Protection Toolkit (Switzerland)*). If an employer intends to put in place monitoring systems for overseas employees, it should conduct a review of its data protection policies to examine whether such monitoring is allowed. It should also consider whether it is necessary to take additional steps (update the policies, inform the employee, or obtain employee's consent). Employers must also review whether the host country's mandatory data protection laws apply and limit their ability to monitor employees working in that country.

For more information, see *Practice Note, Global Employee Monitoring: Overview*.

### **Disciplinary Measures and Recalling the Employee Back to the Home Country**

Under Swiss law, an employer (through the home country's human resources or manager) can discipline an employee working remotely overseas (including a termination). The employer can hold disciplinary meetings remotely. Under Swiss law, recording these meetings is only allowed with all participants explicit consent. If the employee does not give consent, the employer should draft short minutes of the meeting and provide the employee with a copy. If the written form is required for certain disciplinary measures (for instance, termination notice), the employer's authorised signatories must sign the respective document wet-ink or with qualified electronic signature and send to the employee via e-mail (attached as pdf and with send and read confirmation).

The parties should consult a local attorney in the host country to ensure that the employer's disciplinary procedures comply with any applicable law there.

Swiss law does not give employees a right to work remotely overseas (unless agreed otherwise). Any overseas remote work arrangement should clearly state that such arrangement is temporary and reserve the employer's right to request the employee to return home at any time but in general under observation of a reasonable notice period. If the employee unreasonably refuses, the employer can invoke disciplinary measures including termination (depending on the individual case).

### **Terminating an Employee Working Overseas Remotely Outside Switzerland**

There are no special considerations for redundancy selection that apply for employees working remotely overseas if the employment is regulated by Swiss law. In such cases, the decision to terminate should be based on appropriate and objective reasons.

The employer can hold any termination meeting remotely. The employer should ensure it has complied with any special form requirements.

The employer should make sure the return of company property on termination is addressed in the overseas remote working agreement.

### **Impact on Employment Benefits in Switzerland**

Swiss law does not require employers to make changes to the employee's salary (amount or currency) or their annual leave entitlement if an employee works overseas remotely, provided that the employee's salary does not breach any host country local law requirements. Therefore, potential changes to the employee's salary or annual leave entitlement due to the overseas remote work can be negotiated between the parties.

Under Swiss law, employee's overseas remote work does not lead to a loss of continuity in service or accrual for contractual benefits purposes.

The employee's continued participation in the employer's pension plan may not be possible depending on the respective pension plan and the applicable social security agreements between Switzerland and the host country. The parties should consult a local lawyer regarding social security and pension considerations before the employee starts to work overseas remotely.

### **Costs of Travel**

Swiss law requires the employer to pay the employee's outbound and inbound travel costs if it requests them to work overseas. The employer must also bear reasonable business-related travel costs for an employee working overseas. For personal trips, for example, to visit the family, the parties should make specific arrangements in the overseas remote working agreement.

If the employee requested to work overseas remotely, (personal) travel costs are usually borne by the employee.

## Work Equipment and Setting Up Workstation

With regards to providing and covering costs for work equipment, there is generally no distinction under Swiss law between employees working remotely in their home country and employees working remotely overseas.

Employers must provide remote workers the necessary work equipment and materials, such as a computer, a telephone, and office equipment or compensate them adequately for such equipment (Article 327, *Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations)*(CO)).

However, the parties can enter a different agreement on the supply and cost reimbursement for work equipment and materials. If employers provide the work equipment, they should ensure their insurance policies cover the equipment being used abroad.

The employer must also reimburse the employee for the necessary expenses and costs incurred by them because of the remote work (Article 327a, paragraph 1, CO). These expenses include, among other things, costs for communication, internet, electricity, heating, and (part of) the rental costs. This provision is generally not subject to the disposition of the parties.

If the employer requested the remote work or if it does not provide a suitable workplace for the employee at its premises, it must reimburse the employee for the necessary costs. The parties can agree on a lump-sum compensation, if it is in writing and covers all necessary expenses incurred.

## Health and Safety

Employers must take measures as are necessary according to experience, applicable according to the state of the art and appropriate to the circumstances of the business to protect the life, health, and personal integrity of their employees, provided that an employer can reasonably be expected to do so in view of the individual employment relationship and the nature of the work performance (Article 328, paragraph 2, CO). The Labour Code and its ordinances set out these requirements in more detail, but none directly or (specifically) apply to an employee working remotely overseas.

The employer must provide a safe and healthy working environment (for example ergonomic workspace) to all its employees, including those employees working remotely. The employer can issue instructions and guidelines for employees to assist in maintaining a safe and healthy workspace. The parties can also agree that the employee is responsible for setting up a safe and ergonomic remote workplace. However, such a provision would likely not fully override the employer's statutory health and safety obligations.

When the employee performs remote work abroad, the employer in Switzerland can also be subject to the local health and safety requirements and obligations of the host country.

## Insurance

Employees in Switzerland must take out private health insurance no later than three months after taking up residence in Switzerland ( Article 3, Paragraph 1, *the Federal Law on Health Insurance*, 832.10 (KVG)) . In exceptional cases, employees may be exempt from the compulsory insurance obligation. This applies in particular to short-term residents (less than three months) or to employees seconded to Switzerland. The prerequisite for exemption is proof the employee is covered by foreign insurance that covers the costs of treatment in Switzerland at least in accordance with the KVG.

Those who work remotely overseas should ensure their private health insurance provides for coverage abroad and should this not be the case amend the existing insurance accordingly. Whether a potential daily sickness benefit insurance of the employer provides compensation for employees working remotely overseas depends on the respective insurance policy. The host country may also require employees or employers to take out health insurance.

Regarding other insurances, for example accident insurance (which is comprised by the mandatory social security insurances under Swiss law), or liability insurance, the employer should check and ensure that these or corresponding insurances are in place in the host country. The employer must also ensure it is complying with mandatory local law regarding applicable social security agreements.

## Regulatory Issues

There may be additional considerations for regulated employers regarding the workplace and location of their employees. Certain provisions may prohibit employees from working remotely overseas. Therefore, a regulated employer must check whether this is the case before sending an employee to work overseas.

## Immigration

A foreign employee with a Swiss work and residence permit may compromise their immigration status if the employee works abroad for a longer period.

A foreign employee has the following limitations if they seek to work and stay outside of Switzerland:

- An employee with a Swiss short-time work permit (L-permit) should not work and stay outside of Switzerland for more than three months.
- An employee with normal work permit (B-permit) should not work and stay outside of Switzerland for more than six months.

An employee with a Swiss residency permit (C-permit) should not work and stay outside of Switzerland for more than six months. (Art. 61, paragraph. 2, *Federal Act on Foreign Nationals and Integration*, 142.20.)

A foreign employee with these Swiss work permits loses their right to the Swiss work and residence permit if they exceed these time limits working outside of Switzerland.

Foreign employees with a C-permit can apply with the competent authorities that the C-permit is maintained even if the employee stays abroad for more than six months, if they can show:

- The stay abroad is temporary.
- They intend to return to Switzerland.



The authorities usually deem these criteria met if the foreign employee is sent abroad by the Swiss employer for a limited time.

Depending on the type of immigration permit, any time spent outside of Switzerland may also have implications on the employee's ability to renew their immigration permit or on their future eligibility for immigration permits such as permanent residency or citizenship.

The employee may also be required to obtain a work and residence permit from the host country to work there and a visa to enter the host country.

## Income Tax and Social Security

Employers (and employees) should consider whether the employee's stay abroad (regardless of the duration) creates risks of social security and income tax liability in the host country. The employer should also consider whether the employee's overseas remote work could create a *permanent establishment* in the host country for tax purposes (see *Social Security*).

### Income Tax

Under Swiss law, the employee is generally responsible for the payment of income taxes. In general, a host country may have primary taxing rights over the income the employee earns in that country. However, double taxation agreements provide for exemptions to this rule if certain conditions are satisfied. For more information, see *Practice Note, Double tax treaties: an introduction*.

Switzerland has concluded double taxation agreements with various countries. Under most of these agreements, a short stay abroad does not result in an income tax liability in the host country if the employee is seconded to the host country by their employer. Whether the overseas remote work qualifies as such secondment is determined on a case-by-case basis.

For more information on international secondments, see *Practice Note, International Secondments (Switzerland)* and *International Secondments: Checklist*.

### Social Security

Social security obligations are generally linked to the place where the employee works, but there can be exceptions to this rule. Bilateral or multilateral social security agreements often provide for special rules if an employee works in another country for a short period. In such cases, the home country's social security laws continue to apply.

The following contributions are mandatory for Swiss employees:

- Old age and disability: This includes AHV (first pillar of old age and survivorship insurance), IV (first pillar for disability), EO (covers salary payment for compulsory military service, maternity leave, and so on).
- ALV (unemployment insurance).
- Occupational and non-occupational accident insurance (the latter in case the employee works more than eight hours per week).
- Pension (second pillar of old age and survivorship insurance): Insurance is mandatory if the employee receives a certain yearly minimum salary of currently CHF 22,050.

The contributions to the AHV, IV, EO, and ALV are borne equally by the employer and the employee. The employer also must pay at least half of the premiums for the pension scheme. Contributions to the occupational accident insurance are borne by the employer and contributions to the non-occupational accident insurance are borne by the employee.

## Permanent Establishment Risk

There is a risk that the employee's remote overseas work creates a permanent establishment in the host country if:

- The employee works remotely overseas for a longer duration.
- The employee's work activities for the employer abroad include entering into contracts with local customers.

The parties should consult a local lawyer to ensure that no such risk exists under the host country laws.

For a discussion on permanent establishment in Switzerland, see *Practice Note, Tax Residency of Companies in Switzerland: Permanent Establishment*.

## Information Security, Data Protection and Data Privacy

If the employee is working remotely in a country that is not considered providing an adequate level of data protection (the EEA, UK, and several other countries are considered adequate; the list is similar to the list of the European Commission), then the employer must perform a two-step-assessment:

- It must determine whether the host country has lawful access laws that are not compliant with Swiss laws.
- If there are such laws, the employer must assess whether it has reason to believe that they apply, in view of the circumstances and the data security measure taken.

Both are comparable to the requirements under the *General Data Protection Regulation (GDPR)*. If the answer to either question is no, then the employee is usually allowed remote access from a data protection point of view, subject to all other prerequisites under Swiss data protection law are fulfilled, such as adequate data security being in place.

Since the employee continues to be employed by the employer under a Swiss law contract, no additional contract is necessary. However, the employer should instruct the employee to legally challenge any lawful access request when working remotely even if it is not entitled to inform the employer.

In the data protection notice, the employer should also mention that personal data may eventually be disclosed to countries where the employees work remotely.

Many companies require their employees not to have company data stored locally but work entirely remote (for example, in a terminal session).

For more information, see *Data Protection Toolkit (Switzerland)*.

## Intellectual Property

Under Swiss employment law, inventions, designs, developments, and improvements which the employee makes or contributes to while performing their employment activity and contractual duties belong to the Company. The employer, however, is entitled to inventions and designs which the employee makes while performing their employment activity, but not during the performance of their contractual duties (so-called opportunity inventions), only if:

- The parties agreed to it in writing.
- The employer pays the employee an adequate compensation for such inventions.

(Article 332, paragraph 4, CO.)

The employment agreement or a separate Intellectual Property agreement usually contains a corresponding provision.

If the employment agreement does not contain a clear and complete intellectual property clause, the parties should consider including one in the overseas remote working agreement to avoid disputes about the applicable intellectual property law. The employer should also consider seeking legal advice in the host country regarding any overriding intellectual property laws.

For more information, see [Practice Note, Inventor Remuneration \(Switzerland\)](#).

## Switzerland as the Host Country

### Legal Restrictions

There are no Swiss employment laws regulating remote workers working from overseas in Switzerland. An employee employed outside of Switzerland can work remotely in Switzerland, however, mandatory employment law provisions may apply to employees working in Switzerland remotely, for example minimum wage requirements (if any).

The employee must also comply with required immigration permits to work in Switzerland. The employer and the employee also need to comply with any tax, social security, and employment law obligations in Switzerland.

### Applicable Law and Employee Rights

In case of a secondment (which is not assumed in the present Note), the employer and employee must comply with the [Act on Accompanying Measures for Posted Workers Employees and on the Control of Standard Employment Contracts Stipulated Minimum Wage, 823.20](#) (Swiss Posted Workers Act).

For more information on international secondments, see [Practice Note, International Secondments \(Switzerland\)](#) and [International Secondments: Checklist](#).

In other cases, the parties only need to comply with the absolutely mandatory Swiss labour law provisions (so-called *ordre public*). These include provisions on:

- Minimum salaries (if any).

- Maximum working hours and rest periods.
- Health and safety.
- Non-discrimination.

Otherwise, Swiss courts determine the governing law according to the PILA (see [Applicable Laws and Employee Rights](#)).

### **Applicable Laws**

Assuming the employment agreement and the overseas remote work agreement are governed by the home country's law, the applicable law continues to be the home country's law, but the parties must also observe absolutely mandatory Swiss employment law provisions.

If the employment agreement and the overseas remote working agreement do not contain a choice of law, the employee's habitual place of work becomes decisive to determine the applicable law. Swiss courts do not deem an employee's habitual workplace to have changed if the employee is temporarily employed in Switzerland (that is if the employee is expected to return to work in the home country after the overseas remote work arrangement). The longer the employee is working in Switzerland, the more likely it is they will be deemed to be habitually working in Switzerland.

### **Recording an Agreement in Writing**

The written agreement is mostly a matter of the employee's home country laws and therefore the parties should seek home country advice, subject to the application of mandatory Swiss laws (see [Applicable Law and Employee Rights](#)). Depending on the duration and nature of the overseas work in Switzerland, the parties can have a Swiss lawyer review the written agreement to ensure its compliance with mandatory Swiss laws.

### **Equal Treatment Risks**

Swiss law would likely allow the employee to rely on whichever law provides them with the greater protection. Otherwise, the law agreed between the parties would likely apply.

Given that the employee works remotely in Switzerland but not at a Swiss entity any equal treatment risk is highly unlikely.

## **Managing, Monitoring, and Terminating the Employee**

### **Managing an Employee working remotely**

An employee working remotely in Switzerland under a home country employment agreement or an overseas remote working agreement remains subject to their contractual obligations to and direction of their employer (unless agreed otherwise).

### **Monitoring**

In general, the same principles on monitoring an overseas employee apply as set out when Switzerland is the home country (see [Monitoring](#)). The parties however need to observe Article 26 of the Implementing Ordinance 3 of the Labour Code.

## Disciplinary Measures and Right to Recall the Employee

If the home country laws govern the employment contract and the overseas remote working agreement, the home country disciplinary measures and procedures continue to apply. The employer's right to call back the employee to the home country is also subject to the home country law.

If Swiss law applies, the general principles outlined in *Disciplinary Measures and Recalling the Employee Back to the Home Country* applies.

Employers may consult a Swiss lawyer to ensure the employer's disciplinary procedures comply with any applicable mandatory law especially if the remote employee works in Switzerland for a longer duration. Swiss law is rather liberal in this regard and does not provide severance entitlements to terminated employees.

## Terminating the Employee Working Overseas Remotely in Switzerland

An employee working remotely in Switzerland under a home country employment agreement or an overseas remote working agreement remains subject to the termination procedures and requirements of the home country.

Potential challenges on termination of an overseas remote employee depends on the home country laws and the overseas remote working agreement.

Swiss law is liberal on terminations and where necessary, parties can carry out the termination meeting virtually.

## Work Equipment and Setting Up Workstation

If the employment contract and the Overseas remote working agreement is governed by the home country law, the obligation to provide equipment, an equipment allowance, reimbursing costs incurred due to the remote work in Switzerland is subject to the home country law.

If Swiss law applies to the remote work, the same principles set out when Switzerland is the home country applies (see *Work Equipment and Setting Up Workstation*).

## Costs of Travel

The home country laws regulate the employer's obligations on travel costs and whether these obligations can be subject to an agreement between the parties.

For information regarding costs of travel in case Swiss law applies, see *Costs of Travel* when Switzerland is the home country.

## Posted Workers

The Swiss Posted Workers Act does not cover a foreign employee working temporarily remote in Switzerland, unless the employer formally second the employee to a group company in Switzerland or to a local client in Switzerland (under a

contract for work, mandate agreement). For more on secondments in Switzerland, see [Practice Note, International Secondments \(Switzerland\)](#).

## Regulatory Issues

Regulated employers may need to take additional steps to ensure compliance. Some regulatory provisions may prohibit employees from working remotely overseas. Regulated employers should check whether this is the case before sending an employee to work overseas.

An overseas employer is generally not required to register as an employer if its employee is working remotely in Switzerland. However, the overseas employer may need to pay social security contributions in Switzerland for their employees working remotely in Switzerland. This depends on whether there is an applicable social security agreement with the home country. This may be the case if the home country is the EU, EFTA or the UK.

Even in such cases, the parties may agree for the employee to register with the competent authorities and pay the respective social security contributions. But the employer will remain liable.

If the employee working remotely in Switzerland is subject to the Swiss social security system, they must register with the competent authorities. The parties should consult a Swiss payroll provider if the employee is subject to Swiss social security.

## Immigration

A foreign employee working in Switzerland must either:

- Have a Swiss work and residence permit.
- Notify their work to the competent Swiss authorities.

(Article 1, Federal Law on Foreign Nationals and on Integration and Article 6 Swiss Posted Worker Act.)

The process for obtaining a work permit depends primarily on the following factors:

- The nationality of the individual (EU/EFTA or third-country national).
- The duration and type of work activity.

However, no work permit is required if the employee is as cumulative requirements:

- Working for their foreign employer in Switzerland remotely (that is not for a Swiss entity of the employer).
- Not working on the Swiss market.
- Not working for a Swiss client.

In general, there is no mechanism for an employer to obtain a work permit for an employee working in Switzerland remotely.

The parties need to note that even if no permit is required from an immigration law point of view, the employee or the employer can still be subject to the Swiss social security system.

Employees from certain nationalities must also apply for a visa to travel to and enter Switzerland before they travel.

## **Income Tax and Social Security**

Employers and employees should consider whether the employee's stay in Switzerland (regardless of the duration) creates risks of social security and income tax liability in Switzerland. The employer should also consider whether the employee's overseas remote work could create a permanent establishment in the host country for corporation tax purposes.

### **Income Tax**

Under Swiss law, the employee must pay the income taxes.

Switzerland generally has primary taxing rights over the income the employee earns in Switzerland. However, double taxation agreements provide for exemptions to this rule if certain conditions are satisfied.

Switzerland has concluded double taxation agreements with various countries. Most of these agreements stipulate a short stay in Switzerland does not result in an income tax liability in the host country (that is Switzerland). This is the case if the employee is seconded to the host country by their employer. Whether the overseas remote work qualifies as such secondment must be determined on a case-by-case basis.

### **Social Security**

An employee and their employer, respectively, is generally required to make social security contribution at the place where they work, but there may be exceptions to this rule.

Bilateral or multilateral social security agreements often provide for special rules if an employee only works in another country for a limited period. In such cases, the social security obligations stay in the home country.

However, these special rules often apply when an employee is seconded to a Swiss entity or client. Swiss social security law likely applies to an employee who works remotely for their foreign employer in Switzerland, and the employee and the employer (as the case may be) must register with the competent Swiss social security authorities.

### **Permanent Establishment Risk**

There is a risk the employee's remote overseas work creates a permanent establishment in Switzerland depending on:

- Whether the employee works remotely in Switzerland for a longer period.
- The employee's work activities for the employer (in particular if the employee has the authority to enter into contracts with local customers).

The parties should seek legal advice to minimise such risks. The employer can mitigate this risk if it already has a group entity in Switzerland, at least if this entity is in the same canton as the employee's place of work.

## Health and Safety

The employer's obligations on employee health and safety and the question of whether these can be subject to an agreement between the employer and the employee are subject to the home country law. Certain Swiss provisions on health and safety can apply if the obligations by the home country are less stringent than in Switzerland.

For information on the employer's obligations on employee health and safety, see [Health and Safety](#) (Switzerland as the Home Country).

## Insurance

Every person residing in Switzerland must take out health insurance within three months of residing in Switzerland. The Federal Council may extend the insurance obligation to persons not resident in Switzerland, particularly to those who work in Switzerland or have their habitual residence there (Article 3, [the Federal Law on Health Insurance](#), 832.10 (KVG)). However, there are certain exemptions to this rule for cross-border commuters or employees that are seconded to Switzerland by their foreign employer, provided that the host country health insurance provides at least for comparable coverage. Such exemption and sufficient coverage must be applied for and confirmed accordingly. Swiss law does not obligate employers to take out mandatory worker's compensation insurance, unless provided for by an applicable CBA. However, in case of an employee's sickness they must continue to pay the salary for a certain duration depending on the employee's years of service.

The host country employer should check and ensure other insurances (for example, liability insurances) are in place in Switzerland.

## Information Security, Data Protection and Data Privacy

Accessing data remotely in Switzerland from a computer located in a foreign country can be considered a cross-border disclosure of personal data, but this usually does not trigger any cross-border data restrictions. The key exception is if the employee were to collect personal data in Switzerland and forward it to their employer in another country. In such a case, parties must consult the provisions of Swiss data protection law concerning cross-border data transfers. These laws are comparable to those of the GDPR.

If an employee of a foreign company processes personal data of such company in Switzerland, such processing becomes subject to [the Federal Act on Data Protection, 235.1](#) (FADP)). This could expose the company to data protection claims in Switzerland. However, this is rather a theoretical risk that most companies ignore without consequences. However, if there are special circumstances (such as a high risk of litigation or regulatory investigations), parties should consult a data protection lawyer. Employers are also advised to have adequate data security in place in such situations and not have the employees store their personal data on the systems of their host companies in Switzerland.

For more information, see [Data Protection Toolkit \(Switzerland\)](#).

## Intellectual Property



Generally, an overseas employer can ensure it owns the IP rights created by an employee working remotely in Switzerland. Accordingly, the employer must ensure that the agreements entered with the employee provide for sufficient protection.

See *Standard Clause, Intellectual Property Clause for Employment Contract (UK Style) (Jurisdiction Neutral)*.

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