

Debt enforcement and bankruptcy law revisions enter into force

18 January 2019 | Contributed by [Pestalozzi Attorneys at Law Ltd](#)

Recognition and enforcement of foreign bankruptcy rulings Protection against unjustified debt enforcement proceedings

On 1 January 2019 various revisions to the Private International Law Act and the Debt Enforcement Bankruptcy Act entered into force. The revisions aim to:

- improve and facilitate the recognition and enforcement of foreign bankruptcy rulings; and
- enhance protection against unjustified debt enforcement proceedings.

Recognition and enforcement of foreign bankruptcy rulings

The enforcement of foreign bankruptcy rulings in Switzerland has been widely criticised for being difficult and impractical. For instance, under the old law, only foreign bankruptcy rulings rendered at the bankrupt's seat or registered office could be recognised in Switzerland. This precluded the recognition of many bankruptcy rulings originating from the European Union, where insolvency proceedings can be opened at the centre of main interest in addition to the bankrupt's seat or registered office (EU Insolvency Recast Regulation (2015/848)).

The reciprocity requirement has also been criticised. Previously, the Swiss courts recognised foreign bankruptcy rulings only if the country in which the ruling was rendered reciprocally recognised Swiss bankruptcies. While the requirement aimed to incentivise international collaboration, in practice it made the recognition proceeding for foreign bankruptcy rulings significantly more complicated.

Further, the Private International Law Act required the conduct of mandatory ancillary insolvency proceedings to recover assets located in Switzerland, irrespective of whether privileged and secured creditors existed in Switzerland.

The revised Private International Law Act, which entered into force on 1 January 2019, addresses these (and further) issues. In a nutshell, Swiss law now recognises foreign bankruptcies opened at the bankrupt's seat or registered office or its centre of main interest. Another significant change towards simplified recognition is the abolition of the reciprocity requirement. Further, ancillary insolvency proceedings are no longer necessary if no protected Swiss creditors respond to the call for creditors. Where ancillary insolvency proceedings are still mandatory, the proceedings will be conducted in summary form, which will reduce their duration and cost.

The revised Private International Law Act also brings changes to:

- branch bankruptcies in Switzerland;
- foreign bankruptcy administrator competences; and
- foreign avoidance action recognition.

To prevent the parallel running of ancillary and branch bankruptcy proceedings, separate branch bankruptcy proceedings are no longer possible after the recognition of a foreign bankruptcy ruling in Switzerland; if the branch bankruptcy has already been opened, the proceedings will be stayed. The

AUTHORS

**Beat
Mumenthaler**



Lukas Rusch



revisions also enhance the authority of foreign insolvency administrators within Switzerland. In particular, foreign insolvency administrators have the authority to transfer assets to a different state and bring lawsuits on behalf of foreign bankruptcy estates, provided that the applicable foreign law grants the same authority to the insolvency administrator. Further, foreign rulings on avoidance actions are now recognised under the Private International Law Act as a decision with a close connection to insolvency proceedings. Under the old law, such decisions were excluded from the scope of the Private International Law Act and the Lugano Convention.

Protection against unjustified debt enforcement proceedings

Creditors can initiate debt enforcement proceedings in Switzerland against a debtor by filing a request with the competent debt enforcement office. No actual proof for the existence of a claim is required to initiate debt enforcement proceedings. After receipt of the creditor's request, the debt enforcement office issues a payment order to the debtor without verifying the existence of the alleged claim. The payment order and its current status are recorded in a debt collection register for five years. The register can be accessed by anyone with a legitimate interest. An entry in the register, even if unjustified, can have severe consequences for the debtor and its credit rating.

Under the old law, the possibilities for a debtor to remove an adverse entry in the debt collection register were limited. Although debtors could object (also without proof) to a claim within 10 days of receipt of the payment order, this would not remove the entry in the register. There was no remedy to force the creditor to proceed with the debt enforcement or to prevent the disclosure of the register to a third party. The revised Debt Enforcement Bankruptcy Act, which, together with the revised Swiss Private International Law Act, entered into force on 1 January 2019, addresses these issues surrounding unjustified debt enforcement proceedings.

Under the revised Article 8a of the Debt Enforcement Bankruptcy Act, debtors may apply to the debt enforcement office within three months of receipt of the payment order to request that the payment order no longer be visible in the debt collection register to third parties. Having received the debtor's application, the debt enforcement office will request proof from the creditor that it has continued the enforcement proceedings. If the creditor fails to furnish such proof, the payment order is no longer visible in the register to third parties (irrespective of whether a creditor's claim is justified). However, the expiry of the 20-day deadline to furnish proof does not affect a creditor's right to continue debt enforcement proceedings against a debtor.

Further, the revised Debt Enforcement Bankruptcy Act enhances debtors' possibilities to request a revocation of unjustified debt enforcement proceedings against them. Under the old law, the Swiss courts decided that debtors had no legitimate interest for negative declaratory actions where a creditor needed a favourable court decision first to continue debt enforcement proceedings. Revocation actions were therefore limited to cases where a debtor had failed to object to the payment order in a timely manner. Under the revised Article 85a of the Debt Enforcement Bankruptcy Act, debtors may request the revocation of debt enforcement proceedings at any time, irrespective of the circumstances.

Further, the revised Article 73 of the Debt Enforcement Bankruptcy Act gives debtors the right to request evidence from creditors relating to all outstanding claims (ie, not just the claims underlying debt enforcement proceedings, as was the case under the old law).

For further information on this topic please contact [Beat Mumenthaler](mailto:Beat.Mumenthaler@pestalozzilaw.com) or [Lukas Rusch](mailto:Lukas.Rusch@pestalozzilaw.com) at Pestalozzi Attorneys at Law Ltd by telephone (+41 44 217 91 11) or email (beat.mumenthaler@pestalozzilaw.com or lukas.rusch@pestalozzilaw.com). The Pestalozzi Attorneys at Law Ltd website can be accessed at www.pestalozzilaw.com.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).