

Foreign liquidators' powers to collect assets located in Switzerland – first experiences under new legislation

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On 1 January 2019 a revision of the Private International Law Act entered into force with the aim of improving and facilitating the recognition and enforcement of foreign bankruptcy rulings. Under the old legislation, a foreign bankruptcy liquidator or trustee had to petition for ancillary insolvency proceedings before it could collect any assets belonging to the bankrupt estate located in Switzerland. The requirement to conduct ancillary insolvency proceedings was mandatory, irrespective of whether privileged or secured creditors existed in Switzerland.

Following the recent revision, a foreign liquidator now has the option to forgo the often inefficient and expensive ancillary bankruptcy proceedings by filing a petition with the Swiss courts. If granted, the foreign liquidator has the authority to:

- access and collect the assets located in Switzerland (eg, Swiss bank accounts or real estate); and
- act before Swiss authorities (eg, courts and debt collection offices) on behalf of the bankrupt estate.

Nonetheless, a foreign bankruptcy decree or composition agreement must first be recognised by the Swiss courts to have effect in Switzerland. The recognition procedure has also been simplified because:

- the reciprocity requirement has been dropped; and
- recognition is now possible for bankruptcy decrees issued not only at the debtor's domicile, but also at the debtor's centre of main interest.

Recent experiences in applying for leave to proceed without ancillary bankruptcy proceedings have shown that the Swiss courts will normally grant such leave if they are satisfied that no privileged or secured creditors in Switzerland exist. To this end, the court publishes a call for creditors and waits for the set deadline to expire to see whether creditors come forward and register their claims with the court.

In view of the financial crisis caused by the COVID-19 pandemic and the expected wave of bankruptcies, it is good to see that at least assets located in Switzerland can be made available more easily to foreign bankruptcies.

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