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Sanctions and Asset recovery in Switzerland: When awards become unenforceable

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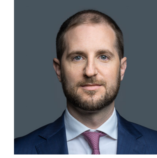

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The Swiss Federal Supreme Court has upheld the lifting of an attachment sought by an award creditor controlled by a sanctioned Russian entity. Decision 5A_172/2025 of 28 January 2026 confirms that – not only do sanctions delay enforcement – they may also defeat attachment proceedings. It also clarifies how "control" is assessed under Swiss sanctions law and confirms that Switzerland's enforcement?friendly regime has clear and enforceable limits where sanctions apply.

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No attachment in Switzerland for sanctioned entities in certain circumstances

In January 2024, an Angolan diamond mining company, 41 per cent of whose share capital is held by a Russian entity subject to Swiss sanctions, applied to the District Court of Aarau (the "**District Court**") for the attachment of its debtor's assets. This application was based on an award from the London Court of International Arbitration (awarding the creditor GBP 340,563.52 as compensation for procedural costs (the "**Award**").

The attachment was granted on an *ex parte* basis. Following the debtor's opposition, the District Court confirmed the attachment based on the Award, in November 2024.

The debtor appealed this decision to the Cantonal Appellate Court of Aarau (the "**Appellate Court**") and argued that:

- The creditor was controlled by a sanctioned Russian entity, which held 41 per cent of its shares.
- Under Art. 15 para. 2 of the Ordinance on measures in connection with the situation in Ukraine of 4 March 2022 ("**Ukraine Ordinance**"), it is prohibited to transfer funds to listed sanctioned entities or to make funds available to them, whether directly or indirectly, and that this prohibition extends to entities owned or controlled by sanctioned persons.
- Performance of the claim has accordingly become impossible and the Award claim cannot be enforced.

In its decision ZSU.2024.159 of 24 January 2025, the Appellate Court held **that the Award creditor was controlled by a sanctioned Russian entity** within the meaning of the Ukraine Ordinance. Although the sanctioned shareholder held only 41 per cent of the shares, the Appellate Court applied guidance on "control" from the Swiss State Secretariat for Economic Affairs ("**SECO** ") and considered that the factual influence of the sanctioned entity over the creditor's management was decisive.

It found that Russian representatives linked to the sanctioned shareholder had continuously occupied key executive and board positions since the company's incorporation – in particular in finance and production. This demonstrated that the company was managed on a unified basis, satisfying the control criterion

set out in the SECO guidance. The Appellate Court therefore concluded that the creditor fell within the scope of Swiss sanctions, notwithstanding the absence of a formal majority shareholding.

On that basis, the Appellate Court ruled that the statutory payment ban under the Ukraine Ordinance made payment of the Award legally impossible. This constituted an objective legal impossibility under Art. 119 Swiss Code of Obligations, leading to the **extinction of the monetary claim**.

The Award creditor argued that it could validly discharge its debt by paying the Debt Collection Office without breaching sanctions and that, accordingly, there was no legal impossibility. The Appellate Court held that this would still amount to indirectly placing funds at the disposal of a sanctioned entity. It also rejected the Award creditor's other arguments and held that neither the exceptions for access to justice nor SECO authorisations applied to payments by third parties to sanctioned entities.

On that basis, the Appellate Court concluded that the attachment lacked a valid underlying claim and had to be lifted in full.

The Swiss Federal Supreme Court (the "**Supreme Court**") rejected the Award creditor's appeal. Although it did not examine whether the claim had become extinguished (as the Appellate Court held), it found that it was not arbitrary to regard the attachment of assets in favour of a sanctioned entity as an undesirable form of assistance or a prohibited means of indirectly making assets available to sanctioned creditors. The Supreme Court therefore confirmed the lifting of the attachment.

It should be noted that the Supreme Court's scrutiny was limited by procedural rules to the compatibility of the challenged decision with constitutional rights. There was therefore no fully-fledged review of the merits of the cantonal decision.

Has this approach now become the rule in Switzerland?

Cantonal courts have not had a uniform approach to applications for the enforcement of foreign decisions or awards by sanctioned entities. So, for example, the Cantonal Appellate Court of Geneva recently held that a Russian bank subject to Swiss sanctions was nevertheless entitled to enforce Russian judgments against a Swiss?resident debtor in Switzerland.

While the decision of the Swiss Federal Supreme Court has now significantly clarified the legal framework, there remains, in most cases, room for argument.

First, the nature of the appeal meant the Supreme Court decision only confirmed that the Appellate Court's decision was not arbitrary: it did not address whether the claim became extinct or whether its enforcement was merely stayed. Neither did it rule that the approach should control every case. It is therefore not excluded that the reverse approach would also be considered non-arbitrary. As a result, this decision has only a limited harmonising effect.

Second, the notion of an entity being "controlled by a sanctioned entity" is not clear cut. It admits nuance and requires a fact?specific assessment. Such arguments, however, presuppose a detailed factual presentation, supported by documentary evidence, including that of the creditor's shareholder structure, the composition of its management and its governance.

Third, to obtain an *ex parte* attachment based on a foreign award or judgment, the creditor must merely make a plausible demonstration, supported by documentary evidence, that:

- it has a claim against the debtor which is due and is not already secured by a mortgage or pledge (personal guarantees being excluded);
- there is a ground for attachment under the Swiss Debt Enforcement and Bankruptcy Act; and
- there are assets belonging to the debtor in Switzerland that can be attached.

Moreover, the creditor is under no obligation of full and frank disclosure. It can therefore refrain from spontaneously disclosing and addressing potential sanctions-related concerns.

As a result, when the attachment request is based on a seemingly enforceable foreign award or judgment, the court ruling on an *ex parte* basis and upon a *prima facie* assessment of the plausibility of the creditor's case will tend to consider that the award or judgment is sufficient evidence of the first two requirements.

To counterbalance this tendentially pro-enforcement regime, a debtor anticipating imminent *ex parte* enforcement actions against his assets should consider filing protective briefs. These documents allow prospective defendants to raise any objection to a possible *ex parte* injunction ahead of its issuance. Sanction-related objections may be raised, with supporting documents. Courts subsequently seized with an *ex parte* attachment request would then review the case with the benefit of arguments raised in the protective briefs and potentially reach a more nuanced decision.

Conclusion

This case illustrates that, while Switzerland offers a comparatively enforcement?friendly regime, that regime has clear limits, especially where sanctioned entities (or entities controlled by them) are concerned. Although the Supreme Court decision has now clarified the applicable legal framework, outcomes will still vary depending on the specific facts of each case.

In any event, to avoid missteps – and given that the element of surprise is available only once – creditors should seek advice at an early stage to identify the most appropriate enforcement strategy in Switzerland. Defendants seeking to avail themselves of defences deriving from sanctions should consider taking preventive or proactive measures, where appropriate, notably by filing protective briefs.