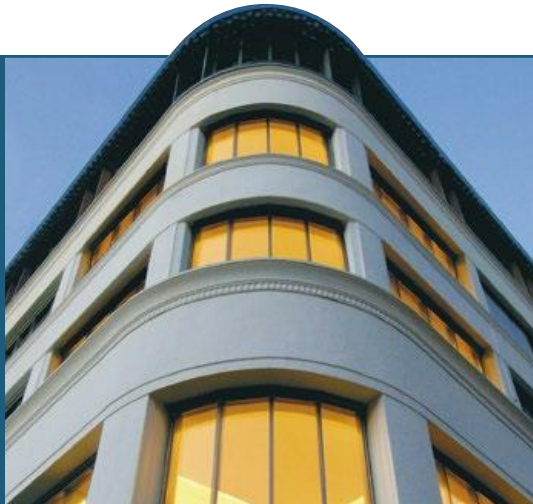


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Receivership Orders in Respect of Assets Held by Offshore Companies in Aid of Asset Recovery

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I. Notions and potential conflicts

- ❖ Receiver / Receivership Order: an unknown concept in Swiss law
 - ❖ A specific feature of UK / US law: broad powers under judge supervision
 - ❖ Similar concept: “*administrateur*”, only in case of bankruptcy proceedings

- ❖ Semi-public authority / public authority?
- ❖ Receiver has no authority in civil law countries (*e.g.* production of evidence, debt collection)
 - ❖ Potential conflict when a foreign receiver acts in Switzerland, *e.g.* local branch of an accounting firm; or even constraint order received in Switzerland

- ❖ Switzerland: art. 271 SCC - Unlawful activities on behalf of a foreign state
 - *§ 1: Any person who carries out activities on behalf of a foreign state on Swiss territory without lawful authority, where such activities are the responsibility of a public authority or public official, any person who carries out such activities for a foreign party or organization, any person who encourages such activities, is liable to a custodial sentence not exceeding three years or to a monetary penalty, or in serious cases to a custodial sentence of not less than one year (...)*

- ❖ Request of mutual legal assistance by the judge of the state of the receiver
- ❖ *In personam* orders v. *in rem* orders
- ❖ Recognition of the nomination of the receiver through the Lugano Convention?

- ❖ The receiver can:
 - ❖ Gain control of an offshore company (“director”) and act on behalf of the foreign company
 - ❖ *E.g.* to facilitate the production of evidence / transfer of assets
 - ❖ Obtain a PoA so as to act on behalf of an offshore company
 - ❖ Engage the services of a foreign + local lawyer so as to act on behalf of the company (*e.g.* Petrobras)

II. Swiss Private International Law (PILA) governing bankruptcy matters

❖ Current situation

- ❖ Recognition of foreign bankruptcy *decisions* (and not *proceedings*, in contrast with EU law) only when rendered in a state that ensures reciprocity and in which the debtor has his permanent address or registered seat
- ❖ An ancillary procedure takes automatically place in Switzerland with each recognition

- ❖ Draft by the Swiss Federal Council
 - ❖ Renunciation to the requirement of reciprocity
 - ❖ Recognition of bankruptcy decisions also rendered where the debtor's main centre of interests is located abroad
 - ❖ Possibility to waive the ancillary procedure
 - ➔ the foreign receiver may, unless otherwise provided, exercise in Switzerland all the powers held by the debtor before the opening of bankruptcy proceedings
 - ➔ possibility to open the procedure where the branch is located

III. Questions?



"I'll take this too."