

Cross-border insolvency in Switzerland: opportunities for asset recovery

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Introduction

In cross-border asset recovery, bankruptcy in civil law jurisdictions is often viewed as a last resort – a procedural endpoint rather than a strategic entry point. Yet, Swiss bankruptcy law can serve as an efficient means to trace, freeze and eventually recover assets that would otherwise remain beyond reach.

By unpacking the legal framework, procedural pathways and practical tools available in Switzerland, we aim to demonstrate how foreign bankruptcy decrees can unlock access to hidden assets and compel disclosure. In doing so, we offer a roadmap for turning the Swiss insolvency regime into an opportunity for proactive asset recovery.

Unlocking the tools: recognition of foreign bankruptcy proceedings as a starting point

Before a foreign bankruptcy decree can have legal effects on assets located in Switzerland, it must be recognised by Swiss courts under the Swiss Federal Act on Private International Law (PILA),^[1] in particular Articles 166 et seqq. PILA.^[2]

Until recognition occurs, a foreign liquidator cannot perform acts on Swiss territory that give effect to a foreign bankruptcy decree. Such conduct could contravene Article 271 of the Swiss Criminal Code (CC), which criminalises unauthorised acts taking place on Swiss territory on behalf of foreign states.^[3] Additionally, a foreign liquidator has no standing to sue before the Swiss courts until the foreign decree has been recognised.^[4]

Upon recognition, Swiss courts render a judgment (usually ex parte).^[5] The decision is reported in the Swiss Official Gazette of Commerce (SOGC) (*Schweizerisches Handelsamtsblatt SHAB/Feuille Officielle Suisse du Commerce* or FOSC) and the relevant cantonal publication gazette(s).^[6] Such a public announcement lists the name and domicile/seat of the foreign debtor, the date of the Swiss judgment, the foreign bankruptcy administrator and the effects of the Swiss judgment.

The publication also includes an invitation to creditors (*Schuldenruf/appeal aux créanciers*) to submit claims and an invitation to debtors or persons holding property of the debtor to provide information on assets belonging to the estate.

The statutory deadline for the submission of claims and the provision of information is one month (Article 232(2)-(4) of the Swiss Debt Enforcement and Bankruptcy Act (DEBA). This deadline is only indicative, save for debtors and the holders of property of the estate (under threat of criminal prosecution).

Swiss courts also notify the debt enforcement office (*Betreibungsamt/Office des Poursuites*),^[7] the bankruptcy office (*Konkursamt/Office des Faillites*)^[8] and the relevant public registers, such as the land registry and the commercial registry (Article 169(2) PILA).

How foreign bankruptcies extend their reach to Swiss assets

The recognition of a foreign bankruptcy decree subjects the foreign debtor's assets located in Switzerland to the legal consequences of bankruptcy under Swiss law (Article 170(1) PILA).

Substantive effects

The Swiss bankruptcy estate (having legal capacity in its own right) comprises all of the assets belonging to the debtor that are located in Switzerland at the time of recognition.^[9] The estate notably comprises assets that are subject to an attachment obtained prior to such recognition (Article 199(1) DEBA), as well as assets that are subject to avoidance (clawback) actions (Article 200 DEBA).

The main features of Swiss bankruptcy are as follows:

- the debtor loses the ability to dispose of its assets forming part of the estate. Any such disposition would be invalid towards the creditors who have already submitted claims;
- any pre-existing debt enforcement proceedings against the debtor are cancelled, and pre-existing litigation is, in principle, suspended (Articles 206 et seq. DEBA);
- recognition accelerates all claims against the bankruptcy estate, and these become due.^[10] Any accruing interest is halted;^[11] and
- upon publication of the Swiss judgment, debtors of the estate can no longer fulfil their obligations by paying the debtor (Article 205 DEBA).

Procedural effects

Upon recognition, local bankruptcy proceedings are opened. They are limited to the foreign debtor's assets in Switzerland. Such proceedings are usually referred to as 'ancillary'.

As with any Swiss bankruptcy decree, the liquidation of the estate is by default administered by the local bankruptcy office, a government office tasked with administering collective insolvency proceedings. An agent of this office prepares an inventory of the assets, receives claim forms, establishes the classification of creditors, gathers information from third-party debtors or custodians, collects assets and, eventually, oversees the distribution of the proceeds to creditors. The liquidation proceedings are, therefore, by default,^[12] not in the hands of private individuals funded by interested creditors, as may be the case in common law jurisdictions.

It is permissible, however, to appoint a so-called special (non-official) liquidator (*ausseramtliche Konkursverwaltung/administration spéciale*), for instance, an insolvency specialist, who will take care of the liquidation of the ancillary estate in lieu of the bankruptcy office (Article 237(2) DEBA). This requires a corresponding request by the foreign liquidator or a qualified creditor and the provision of security for the foreseeable liquidation costs (Article 170(3) PILA).^[13] Where creditors fund the proceedings, such an appointment may effectively place the liquidation in the hands of a privately selected insolvency professional (comparable to an 'insolvency practitioner' in common law jurisdictions), which can be of particular relevance in complex bankruptcy cases or where specific know-how is required.^[14]

Contrary to main bankruptcy proceedings, the only claims admissible for registration in the schedule of claims in ancillary proceedings are those that are (1) secured by a pledge located in Switzerland,^[15] (2) (unsecured but privileged) of creditors domiciled in Switzerland^[16] and (3) arising from liabilities of a debtor's branch registered in the Swiss commercial registry (Article 172(1) PILA).^[17]

The most salient differences between creditors included in the schedule of claims and those who are excluded from it may be summarised as follows:

- only creditors whose claims fall within the scope of Article 172(1) PILA share in the distribution of assets located in Switzerland;^[18]
- these creditors (as well as the foreign liquidator) are exclusively entitled to challenge the schedule of claims under Article 250 DEBA, including contesting the rejection or incorrect ranking of their own claim or the admission of another creditor's claim (Article 172(2) PILA);^[19]
- further (although there is, to our knowledge, no case law on this point),^[20] only these creditors may apply for an assignment of claims of the estate under Article 260 DEBA;^[21]
- any surplus remaining after the liquidation of the estate must be remitted to the foreign insolvency administration for distribution in the main proceedings, provided the Swiss court has verified that non-privileged creditors domiciled in Switzerland were adequately considered and not subject to discriminatory treatment (see Article 173(3) PILA); and
- if the foreign schedule of claims is not recognised, the surplus is remitted to non-privileged Swiss creditors (Article 219(4) DEBA and Article 174 PILA).

Creditors domiciled or having their seat in Switzerland that do not hold a claim meeting the above requirements may still submit their claims in the Swiss ancillary proceedings.^[22] This allows these creditors to access information gathered by the Swiss bankruptcy administrator, which they may use for recovery endeavours outside of the ancillary proceedings.

As mentioned above, persons holding assets of the debtor are required to disclose information and documents regarding such assets under the threat of criminal prosecution. Of practical importance: banking secrecy offers no relief to this obligation.^[23] The disclosure obligation encompasses all relevant documents pertaining to the banking relationship. Only 'purely internal' documents, such as notes or uncompleted drafts, that are irrelevant to verify the bank's (contractual) performance are excluded from the scope of the disclosure.^[24]

Asset preservation, tracing and recovery: leveraging Swiss bankruptcy tools

Safety measures before publication of the recognition

Any interested party can seek safety measures, even before Swiss courts recognise the foreign bankruptcy decree (Article 168 PILA in connection with Articles 162 et seqq. and Article 170 DEBA). Such safety measures include the creation of an inventory of the debtor's assets, obliging the latter to preserve the same (subject to criminal penalty), or other preservatory measures that the courts consider appropriate (account freeze, seizure of business records, registration of restrictions on the debtor's right of disposal for real property etc).

To obtain safety measures, the applicant must show, on a *prima facie* basis, that the prerequisites for recognition of the foreign bankruptcy decree are met and that the safety measures are necessary due to an imminent, specific threat to the creditors' interests. The mere theoretical possibility of such a threat is not sufficient. The threshold for success is high, especially where third-parties' rights may be affected.

To increase the chances of obtaining safety measures, it is advisable to think ahead in the jurisdiction in which the main bankruptcy proceeding is taking place. Take, for instance, a situation where Swiss assets formally belong to a third party, but form part of the bankruptcy estate from an economic perspective. We have seen cases where the foreign main bankruptcy decree specifically provides that the assets of a third party (serving as a nominee or 'straw man' for the debtor) form part of the estate. Such statements are extremely helpful to rely on in Swiss applications.

And, because recognition of the foreign bankruptcy decree automatically stays any enforcement actions against the debtor's assets in Switzerland (Articles 206 and 207 DEBA), this benefits all creditors, since it prevents a race to the assets.

Information rights and disclosure tools

Outside of bankruptcy, it is often difficult to obtain sensitive information and data from third parties located in Switzerland.^[25] The most notable barrier is banking secrecy, which is a strong deterrent to unauthorised disclosure because of the threat of criminal sanctions that a breach entails, even for aiding and abetting.^[26]

Even in a litigation context, banking information is hard to access.

There is no pre-trial discovery in civil litigation before the Swiss courts.^[27] Claimants are required to substantiate, in their statement of claim, their factual allegations and specify in detail the need for each piece of evidence to be produced by the defendant or third parties. Where Swiss banks are defendants or where they are third parties holding documents that could be used as evidence, courts seldom order the production of banking documents after balancing the bank's or third parties' interests in preserving secrecy against the claimant's interest in establishing the facts (Article 163(2) and Article 166(2) CPC). The mere interest of the claimant to identify or trace assets belonging to the debtor is generally insufficient. The same balancing test (and, hence, the same hurdle) applies when Swiss banks are requested to produce documents in regard to the execution of a civil mutual legal assistance request in support of foreign civil litigation under Article 11 of the 1970 Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.^[28]

While Swiss banks cannot rely on banking secrecy to refuse disclosing documents requested by Swiss criminal authorities, criminal proceedings are not always applicable to asset recovery matters. For instance, deceitful or dishonest conduct causing financial harm is not necessarily an offence under Swiss law, since criminal fraud requires that the deceitful conduct be particularly cunning (*Arglist/astuce*). This is a high bar.

By contrast, asset holders, including Swiss banks, fiduciaries or trust companies, must disclose the relevant assets and related documents to the Swiss bankruptcy office. The disclosed material becomes part of the bankruptcy office's case file, which any person who can credibly demonstrate a legitimate interest is allowed to access. Creditors who have submitted their claim generally have such an interest.^[29] In our view, this includes unqualified creditors domiciled in Switzerland.

Conclusion

On its face, the provision allowing access to the bankruptcy case file (Article 8a(1) DEBA) is narrow because it refers only to 'minutes and registers'. However, it allows access to all of the files held by the bankruptcy office that relate to the (foreign) debtor, notably banking records disclosed by banks holding assets belonging to the estate. More importantly, even when assets are no longer available, it extends to banking records pertaining to past transactions to allow possible avoidance actions to be taken against recipients.^[30] It also includes transcripts of the deposition of third parties holding assets of the estate whom the Swiss bankruptcy administrator has questioned.^[31]

Bankruptcy, thus, provides a unique opportunity to access such information and documents that are otherwise difficult to access. They may then be used in other jurisdictions or in subsequent proceedings, since there is no general prohibition against the collateral use of evidence under Swiss law.

^[1] The 2007 convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial, otherwise known as the Lugano Convention, does not apply because of the exclusion clause in Art. 1(2)(b).

^[2] The focus of the present article is the tools unlocked following recognition. For the prerequisites for recognition, please see our LALIVE Insight dated 3 June 2025 <https://www.lalive.law/bankruptcy-while-litigating-in-switzerland/> last accessed on 22 June 2026.

^[3] Swiss Supreme Court, case 5A_999/2022, 20 February 2024, consid. 3; Swiss Supreme Court, case 137 III 631, consid. 2.3.1.

^[4] Swiss Supreme Court, case 134 III 366, consid. 9.2.3.

^[5] Swiss Supreme Court, case 149 III 249, consid. 3.2.1; Zurich High Court, case PS180130, 3 October 2018, consid. IV.1.

^[6] *Amtsblatt des Kantons Zürich* for the canton of Zurich; *Feuille d'avis Officielle* for the canton of Geneva.

^[7] The debt enforcement office is a public authority responsible for initiating and conducting debt enforcement proceedings against individuals or legal entities.

^[8] The bankruptcy office is a public authority (often combined with the debt enforcement office) responsible for administering bankruptcy proceedings once a debtor has been declared bankrupt by a competent authority (court).

^[9] See BSK SchKG-Kren Kostkiewicz, Art. 197 para. 2.

^[10] Exceptions to this rule are claims secured by pledge on the debtor's immovable property.

^[11] Except for claims secured by pledge.

^[12] Upon request and subject to payment of security, ordinary proceedings may be requested in which the creditor's assembly may appoint a special liquidator (*ausseramtliche Konkursverwaltung/administration spéciale* (Art. 237(2) DEBA and Art. 170(3) PILA).

^[13] See BSK IPRG-Bürgi, Art. 170 para. 15.

^[14] See Bürgi, in: *Kurzkomentar Schuldbetreibungs- und Konkursgesetz (...)*, 3rd edition 2025, Art. 237 para. 7a.

^[15] Swiss Supreme Court, case 5A_170/2012, 24 August 2012, consid. 5.1.

^[16] Certain claims of employees or family members of the debtors.

^[17] The foreign bankruptcy administrator can apply to the Swiss courts for a waiver of ancillary bankruptcy proceedings if no claims specified in Art. 172(1) PILA have been submitted. For more details, please see our LALIVE Insight dated 3 June 2025 <https://www.lalive.law/bankruptcy-while-litigating-in-switzerland/> last accessed on 22 June 2026.

^[18] Kren Kostkiewicz, OFK-IPRG/LugÜ Kommentar, 2nd edition 2019, Art. 172 para. 1; BSK IPRG-Bürgi, Art. 172 para. 1.

^[19] CHK-Gassmann, Handkommentar zum Schweizer Privatrecht, Internationales Privatrecht, Art. 1-200 IPRG, 4th edition, 2024, Art. 172, paras. 8 et seq.

^[20] For domestic bankruptcy proceedings, the Swiss Supreme Court held that only creditors who are included in the schedule of claims are entitled to request the assignment of a claim under Art. 260 DEBA. This provision also applies in ancillary bankruptcy proceedings (see Swiss Supreme Court, case 137 III 374, consid. 3). Therefore, we are of the view that the same rules apply in ancillary bankruptcy proceedings, ie, that only

creditors who are included in the schedule of claims under Art. 172(1) PILA may apply for an assignment. To date, we have not identified case law that explicitly confirms this.

[21] It is sufficient that the claim has not yet been finally removed from the schedule of claims to request an assignment; see Swiss Supreme Court, case 149 III 422, consid. 3.4.2.

[22] See Art. 174a(2) PILA and Geneva Court of Appeal, case ACJC/1545/2024, 2 December 2024, consid. 2.1.2.

[23] Swiss Supreme Court, case 146 III 435, consid. 4.1.1; Swiss Supreme Court, Case 86 III 114, consid. 1.

[24] Swiss Supreme Court, case 146 III 435, consid. 4.1.3.

[25] This is a strictly Swiss legal perspective and does not take into account foreign law instruments, such as section 1782 discovery under the United States Code or a UK Bankers Trust order.

[26] See Art. 47(1)(b) Swiss Banking Act.

[27] Apart from the precautionary taking of evidence under Art. 158 of the Swiss Civil Procedure Code (CPC).

[28] Swiss Supreme Court, case 142 III 116, consid. 2.1 and 3.1.1.

[29] See BSK SchKG-Peter, Art. 8a para. 1 *in fine*, para. 10.

[30] Swiss Supreme Court, case 129 III 239, consid. 1 and 2.

[31] See Rigert, Anerkennung von Auskunftsrechten ausländischer Insolvenzverwalter, in: ZZZ, Schweizerische Zeitschrift für Zivilprozess- und Zwangsvollstreckungsrecht, 44/2017-2018, pp 293 et seqq., p 296.

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