

Crossborder Aspects in Swiss Restructurings





1.1 Are there international treaties and/or cross-border instruments applicable?

Since Switzerland is not part of the European Union, EU regulations and directives, e.g. the European Regulation on Insolvency Proceedings, are not applicable. Switzerland is a contracting state of the Lugano Convention, that clarifies which courts have jurisdiction and simplifies the enforcement of foreign judgments. However, this treaty does generally not apply to insolvency proceedings. Therefore, insolvency and bankruptcy matters with cross-border implications are primarily governed by Chapter 11 of the Swiss Federal Private International Law Act (*Bundesgesetz über das Internationale Privatrecht/ Loi fédérale sur le droit international privé*, **PILA**). This act covers the recognition and enforcement of foreign bankruptcy decrees, composition agreements and similar proceedings.

As of 1 January 2019, the recognition of foreign bankruptcy proceedings in Switzerland based on the PILA has been significantly facilitated by enabling an easier recognition as well as a better coordination of related domestic and foreign reorganisation and bankruptcy proceedings.

1.2 How to recognise a (concurrent) foreign restructuring or insolvency proceeding?

Bankruptcy and composition proceedings under the Swiss Federal Act on Debt Enforcement (*Bundesgesetz über Schuldbetreibung und Konkurs/ Loi fédérale sur la poursuite pour dettes et la faillite*, **DEBA**) may only be initiated for companies incorporated in Switzerland and registered in a cantonal commercial register. A Swiss court does not have the power or authorisation to order the bankruptcy or composition of a company domiciled outside Switzerland, even if such company carries out substantial business activities in Switzerland.

A foreign bankruptcy or insolvency decree has no effects on the debtor's Swiss assets and on court proceedings against the debtor in Switzerland and a foreign bankruptcy administrator must not act on Swiss soil unless the foreign decree is formally recognized by a Swiss court.

Accordingly, foreign bankruptcy decrees or similar proceedings must be recognised by the competent Swiss court at the request of (i) the foreign bankruptcy administration, (ii) the debtor itself or (iii) one of its creditors, before it can be enforced in Switzerland.

In order to be recognised in Switzerland, a bankruptcy decree (a) must have been rendered in the state of the debtor's domicile or where the debtor has its centre of main interests (outside Switzerland), (b) must be enforceable in the state where it was rendered,

and (c) must not be inconsistent with Swiss public policy (*ordre public*) and the fundamental principles of Swiss procedural law. Thus, as soon as the foreign bankruptcy decree has been recognised, it has the same effects as a bankruptcy decree rendered in Switzerland with respect to the debtor's assets located in Switzerland.

Special provisions apply to banks and other financial institutions.

1.3 How can foreign creditors file claims or take action in Swiss restructuring or insolvency proceedings?

Prior to the opening of bankruptcy or insolvency proceedings, foreign creditors may submit their claims in accordance with the same rules as creditors domiciled in Switzerland, i.e. by filing a request for the commencement of debt enforcement proceedings (*Betreibungsbegehren/ requisition de poursuite*) or by commencing litigation against the debtor.

If bankruptcy or insolvency proceedings have already been initiated with regard to a certain debtor, the relevant creditor may submit its claim to the bankruptcy office (*Konkursamt/office des faillites*) or insolvency administrator. In case a creditor's claim is not admitted by the bankruptcy office or insolvency administrator, it may challenge such non-admission in court.

1.4 Can a group of companies be restructured or liquidated in a joint proceeding?

Swiss insolvency law does not provide for joint proceedings for the restructuring or liquidation of a group of companies. Instead, separate restructuring or insolvency proceedings for each relevant member of the group must be initiated at their seat or centre of main interest. The group itself cannot be the subject of insolvency proceedings in Switzerland.

Swiss insolvency authorities are required to coordinate insolvency proceedings that are connected in substance to the extent possible. In this regard, amongst other measures, it is possible to designate a single administrator in insolvency proceedings of related companies within the same group. In addition, the competent courts and the involved authorities in charge of one group entity may, by common agreement, designate a single jurisdiction for all proceedings. This duty to coordinate insolvency proceedings does not extend to insolvency proceedings of group companies outside Switzerland. In practice, however, the Swiss bankruptcy authorities entrusted with the liquidation of a Swiss group member often coordinate their efforts with foreign insolvency administrators and try to settle the mutual claims amicably.

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