

Felix C. Meier-Dieterle

+41 44 58 211 34 33
fmd@vischer.com
www.vischer.com
www.attachment.ch

VISCHER AG

Zürich

Schützengasse 1
Postfach 1230
CH-8021 Zürich
Tel +41 58 211 34 00
Fax +41 58 254 34 10

Basel

Aeschenvorstadt 4
Postfach 526
CH-4010 Basel
Tel +41 58 211 33 00
Fax +41 58 211 33 10

Part 8: Freezing Orders

Article 271

¹ The creditor may apply for an order freezing assets of the debtor with respect to an unsecured matured claim:

1. if the debtor has no fixed domicile;
2. if the debtor is concealing his assets, absconding or making preparations to abscond so as to evade the fulfilment of his obligations;
3. if the debtor is passing through or belongs to the category of persons who visit fairs and markets, for claims which by their nature must be fulfilled at once;
4. if the debtor does not live in Switzerland, and none of the other grounds for a freezing order is fulfilled, provided the claim has a sufficient connection with Switzerland or is based on an enforceable court judgement or on a recognition of debt pursuant to article 82 paragraph 1;
5. if the creditor holds a provisional or definitive certificate of shortfall against the debtor

² In the cases of numbers 1 and 2 above, a freezing order may also be made with respect to an unmatured claim; the freezing order accelerates maturity.

Article 272

¹ The court at the place where the assets are situated makes a freezing order if the creditor shows *prima facie* that:

1. he has a claim;
2. there exists a ground for a freezing order;
3. there are assets at hand belonging to the debtor.

² If the creditor is domiciled abroad and does not designate a place for service in Switzerland, the debt enforcement office is deemed place for service.

Article 273

¹ The creditor is liable to the debtor and third parties for damage suffered as a result of an unjustified freezing order. The judge may order him to furnish security.

² The action for damages may also be filed with the court at the place where the freezing order was granted.

Article 274

¹ The judge notifies the freezing order to an enforcement official or another official or employee for execution.

² The freezing order contains:

1. the name and address of the creditor and, if applicable, his representative, and of the debtor;
2. the claim in respect of which the freezing order is made;
3. the ground for the freezing order;
4. a specification of the assets to be frozen;
5. mention of the creditor's liability and, if applicable, of the amount of security to be furnished.

Article 275

Articles 91 to 109 on the seizure of assets apply *mutatis mutandis* to the execution of freezing orders.

Article 276

¹ The official or employer entrusted with the execution of a freezing order draws up a document by certifying the execution of the order on the freezing order itself, indicating which assets are frozen and an estimate of their value, and hands it over at once to the debt enforcement office.

² The debt enforcement office serves the creditor and debtor at once with a copy of the freezing order document and informs third parties whose rights are affected by the order.

Article 277

The debtor may continue to dispose freely of the frozen assets provided he furnishes sufficient security so that in the event of a seizure of assets or a declaration of bankruptcy either the frozen assets or other assets of equal value will be to hand. Such security may be furnished by way of deposit, joint and several guarantee or other, equivalent means.

Article 278

¹ Any person whose rights are affected by a freezing order may file an objection with the judge who made the order within 10 days of learning thereof.

² The judge hears the parties and gives judgement without delay.

³ An appeal to the upper judicial authority may be filed against the judgement within 10 days. New facts may be pleaded.

⁴ Neither the objection nor the appeal prevent the freezing order from deploying its effects.

⁵ During objection and appeal proceedings the deadlines pursuant to article 279 do not run.

Article 279

¹ If the creditor had not already instituted enforcement proceedings or brought a court action prior to applying for the freezing order, he must do so within 10 days of service of the freezing order document.

² If the debtor files an objection, the creditor must, within 10 days of being informed thereof, either apply for the objection to be set aside in summary proceedings, or file a court action to have his claim confirmed. If the application in summary proceedings is rejected, the court action must be filed within 10 days of the judgment.

³ If the debtor does not file an objection, or if an objection has been filed but set aside, the creditor must apply for continuation of the proceedings within 10 days of the date when he is first entitled to (article 88). Enforcement proceedings continue either with the seizure of assets or with bankruptcy, depending on the person of the debtor.

If the creditor has brought a court action for confirmation of his claim without previously instituting enforcement proceedings, he must do the latter within 10 days of notification of the judgment.

Article 280

The freezing order elapses if the creditor:

1. fails to comply with the deadlines provided for by article 279;
2. withdraws the action or the enforcement application or allows them to elapse; or
3. loses the court action, once the judgment has become *res judicata*.

Article 281

¹ If after the drawing up of the freezing order document the frozen assets are seized in favour of a third party before the creditor who was granted the freezing order is in a position to file an application for seizure, the latter is entitled by law to provisionally participate in such seizure.

² The creditor may claim the costs incurred in obtaining the freezing order directly from the amount realised for the frozen assets.

³ In all other cases a freezing order confers no privileges.