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## Part 8: Freezing Orders

### Article 271

#### A. Grounds for attachment

<sup>1</sup> The creditor may have assets of the debtor which are located in Switzerland attached for a due claim, insofar as such claim is not covered by a pledge:

1. if the debtor has no fixed domicile;
2. if the debtor, with the intention of evading their obligations, hides their assets, flees or makes preparations to flee;
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 immediately;
4. if the debtor does not live in Switzerland, and none of the other grounds for an attachment order can be invoked, provided the claim has a sufficient connection with Switzerland or is based on a recognition of debt pursuant to article 82 paragraph 1;
5. if the creditor holds a provisional or definitive loss certificate against the debtor
6. if the creditor holds a title for the definitive setting aside of the objection to the payment order against the debtor.

<sup>2</sup> In the cases numbered 1 and 2 above, an attachment order may also be requested for a claim which is not yet due; the attachment order triggers maturity vis-à-vis the debtor.

<sup>3</sup> In the case referred to in paragraph 1, number 6, the court is to also decide on the enforceability of a foreign judgment to which the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of October 30, 2007 applies.

## Article 272

## B. Attachment grant

<sup>1</sup> The court at the place of the debt enforcement or at the place where the assets are located grants the attachment if the creditor credibly shows that:

1. they have a claim;
2. there are grounds for an attachment;
3. there are assets belonging to the debtor.

<sup>2</sup> If the creditor is domiciled abroad and does not designate a place of service in Switzerland, the debt enforcement office is deemed to be the place of service.

## Article 273

## C. Liability for damages caused by attachment

<sup>1</sup> The creditor is liable to the debtor and to third parties for any damage caused by an unjustified attachment. The judge may order them to provide security.

<sup>2</sup> The action for damages may also be filed with the court at the place where the attachment was granted.

## Article 274

## D. Attachment order

<sup>1</sup> The court instructs the debt enforcement officer or another official or employee to execute the attachment and serves them with the attachment order.

<sup>2</sup> The attachment order contains:

1. the name and domicile of the creditor as well as those, if applicable, of their representative, and of the debtor;
2. the claim for which the attachment is granted;
3. the ground for the attachment;
4. the specifications of the assets to be attached;
5. reference to the creditor's liability and, if applicable, to the security to be furnished.

## Article 275

## E. Execution

Articles 91 to 109 on the garnishment of assets apply analogously to the execution of attachments.

## Article 276

### F. Attachment deed

<sup>1</sup> The officer or employee entrusted with the execution of an attachment draws up the attachment deed by certifying the execution of the attachment on the attachment order, indicating the attached assets as well as an estimate of their value, and immediately hands it over to the debt enforcement office.

<sup>2</sup> The debt enforcement office immediately serves the creditor and the debtor each with a copy of the attachment deed and informs third parties whose rights are affected by the attachment.

## Article 277

### G. Security provided by the debtor

The debtor may continue to dispose freely of the attached assets provided they furnish sufficient security so that in the event of a garnishment or a declaration of bankruptcy either the attached assets or, in lieu thereof, other assets of equal value are available. Such security may be provided by way of deposit, joint and several surety or other, equivalent security.

## Article 278

### H. Opposition to the attachment order

<sup>1</sup> Any person whose rights are affected by an attachment may file an opposition with the judge within 10 days of learning of the attachment order.

<sup>2</sup> The judge hears the parties and renders the judgement without delay.

<sup>3</sup> The decision on the opposition to the attachment order may be challenged by way of objection under the Civil Procedure Code, CPC. New facts can be asserted before the appellate court.

<sup>4</sup> Neither the opposition nor the objection prevent the attachment from deploying its effects.

## Article 279

### I. Validation of the attachment

<sup>1</sup> If the creditor has not already instituted debt enforcement proceedings or brought a court action prior to the attachment grant, they must do so within 10 days of service of the attachment deed.

<sup>2</sup> If the debtor files an objection to the payment order, the creditor must, within 10 days of being served with the creditor's duplicate of the payment order, either apply for the setting aside of the objection to the payment order or file a court action to have their claim confirmed. If the creditor is rejected in the set-aside proceedings, the court action must be filed within 10 days of the notification of this judgment.

<sup>3</sup> If the debtor does not file an objection to the payment order, the creditor must apply for continuation of the proceedings within 20 days of the date on which they were served with the creditor's duplicate of the payment order. If the objection to the payment order is set aside subsequently, the deadline commences with the legally effective setting aside of the objection. Debt enforcement proceedings are continued either by garnishment or by bankruptcy, depending on the person of the debtor.

<sup>4</sup> If the creditor has brought a court action for confirmation of their claim without previously instituting debt enforcement proceedings, they must initiate debt enforcement proceedings within 10 days of notification of the judgment.

<sup>5</sup>The periods of this article do not run:

1. during the opposition proceedings and the appeal proceedings against the judgment on the opposition;
2. during the procedure for a declaration of enforceability under the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of October 30, 2007 as well as during the appeal proceedings against the judgment on the declaration of enforceability.

#### Article 280

##### K. Lapse

The attachment lapses if the creditor:

1. fails to comply with the deadlines provided for by article 279;
2. withdraws the action or the debt enforcement or allows them to lapse; or
3. has their claim definitively dismissed by the court.

#### Article 281

##### L. Provisional participation in an existing garnishment

<sup>1</sup> If, after the issuance of the attachment order, the attached assets are garnished in favor of a third party before the creditor who was granted the attachment is in a position to file an application for garnishment, the latter by law automatically provisionally participates in such garnishment.

<sup>2</sup> The creditor may deduct the costs arising from the attachment directly from the proceeds of the realization of the attached assets.

<sup>3</sup> In all other cases, the attachment confers no privileges.