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Attachment in Switzerland

Procedures and Prerequisites

Prerequisites for attachment – an overview*

	Legal basis	Grounds for attachment	Attachment claim, assets ¹	Standard of evidence	Miscellaneous
1. Debtor without permanent residence	art. 271 (1) no. 1 DEBA	Attachment debtor has no permanent residence in Switzerland or abroad.	a) Unsecured attachment claim, art. 271 (1) and (2) DEBA, b) Attachment debtor's assets in Switzerland, art. 271 (1), art. 272 (2) DEBA.	Prima facie evidence, art. 272 (1) DEBA.	This ground for attachment is rarely invoked.
2. Debtor is a fugitive	art. 271 (1) no. 2 DEBA	Attachment debtor has an intention to evade his obligations.	a) Unsecured attachment claim, art. 271 (1) and (2) DEBA, b) Attachment debtor's assets in Switzerland, art. 271 (1), art. 272 (1) DEBA.	Prima facie evidence, art. 272 (1) DEBA.	This ground for attachment is hard to expound and rarely invoked.
3. Debtor in transit	art. 271 (1) no. 3 DEBA	Attachment debtor is, e.g., a trade show exhibitor.	a) Due and unsecured attachment claim, art. 271 (1) DEBA, b) Attachment debtor's assets in Switzerland, art. 271 (1), art. 272 (1) DEBA.	Prima facie evidence, art. 272 (1) DEBA.	This ground for attachment is rarely invoked.
4. Debtor without residence in Switzerland	4. Debtor without residence in Switzerland	No debt collection forum per art. 46 et seq. DEBA in Switzerland.	a) Due and unsecured attachment claim, art. 271 (1) DEBA, b) Attachment debtor's assets in Switzerland, art. 271 (1), art. 272 (1) DEBA. c) Sufficient connection between the claim and Switzerland or presence of an acknowledgment of debt.	Prima facie evidence, art. 272 (1) DEBA	Prior to the revision as of 1/1/2011, this was the most common ground for attachment, especially at the two "banking centers", Zurich and Geneva. The additional criterion, "... pursuant to an enforceable court judgment ..." was deleted with the introduction of art. 271 (1) no. 6 DEBA.

Contacts



lic. iur. Felix C. Meier-Dieterle
fmd@vischer.com



Dr. Thomas Gelzer, LL.M.
tgelzer@vischer.com



lic. iur. Daniele Favalli, LL.M.
dfavalli@vischer.com



Dr. Christian Oetiker, LL.M.
coetiker@vischer.com



Dr. Thomas Weibel, LL.M.
tweibel@vischer.com

5. Debtor with provisional original certificate of shortfall	art. 271 (1) no. 5 DEBA		a) Due, and unsecured attachment claim, art. 271 (1) DEBA, b) Attachment debtor's assets in Switzerland, art. 271 (1), art. 272 (1) DEBA.	Prima facie evidence, art. 272 (1) DEBA. The attachment claim arises directly from the certificate of shortfall.	This ground for attachment is rarely invoked. This ground for attachment is rarely invoked.
6. Enforceable title against debtor	art. 271 (1) no. 6 DEBA	Presence of an enforceable title, esp. an enforceable judgment from a state, domestic or foreign court or arbitral tribunal.	a) Due and unsecured attachment claim, art. 271 (1) DEBA, b) Attachment debtor's assets in Switzerland, art. 271 (1), art. 272 (1) DEBA.	Prima facie evidence, art. 272 (1) DEBA. The attachment claim arises directly from the enforceable title. Substantiated designation of the assets for attachments under LC [Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters]. ²	This ground for attachment was introduced with the revision as of 1/1/2011. New in particular is the possibility of an attachment based on a (Swiss) judgment against a debtor with residence or registered office in Switzerland. ³ A risk of non-enforcement is not required.
7. State attachment	art. 271 et seq. DEBA, principles of international law.				In addition to the attachment criteria, criteria of international law must be satisfied (iure gestionis, sufficient domestic connection, immunity). ⁴
8. Attachments under public law	Various legal foundations (tax law, international transport agreements, etc.).				This overview does not address attachments under public law.

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Attachment procedures – an overview



Approval of attachment⁵

Prosecution of attachment⁶

Execution of attachment⁷

Other procedures⁸

	Approval of attachment ⁵	Approval of attachment ⁹	Objection against attachment	Legal remedy against denial of attachment	Attachment security	Prosecution through debt collection	Prosecution through provisional clearance to proceed	Prosecution through final clearance to proceed	Prosecution through regular action	Legal remedy against debt collection order	Third party claim proceeding	Damages
1. Purpose	Provisional court-ordered seizure of certain assets of the attachment debtor in anticipation of later enforcement, art. 271 et seq. DEBA. ¹⁰	Review of the attachment approval decision by the attachment court, objection by attachment debtor or affected third party, art. 278 (1) DEBA.	Review of the attachment denial decision by the higher cantonal court, art. 309 item b no. 6 in conjunction with art. 319 item a CCP.	Lodging of security by the attachment creditor as condition for upholding the attachment and as cover in case the attachment debtor or the affected third party suffers a loss from an unjustified attachment, art. 273 DEBA. ¹¹	Beginning of the actual enforcement procedure, art. 38 DEBA. ¹²	Judicial finding on whether the attachment claim exists and is proven by an acknowledgment of debt or a public deed art. 82 DEBA.	Judicial finding on whether the attachment claim exists and is proven by a domestic or foreign court judgment or arbitral award, a substitute for a judgment, or a public deed, art. 80 DEBA (CCP, PILA, LC).	Judicial finding on whether the attachment claim exists.	Objection against any order by the debt collection office in the attachment execution proceeding owing to violation of law or unreasonableness, art. 275 in conjunction with art. 17 DEBA. ¹³	Judicial finding on whether third parties can assert their own (better) rights to the attached assets, art. 275 in conjunction with art. 106 et seq. DEBA.	Judicial finding on whether the attachment debtor or the affected third party suffered a loss from an unjustified attachment, art. 273 DEBA.	
2. Proceeding	Summary proceeding, art. 251 item a CCP.	Summary proceeding, art. 251 item a CCP.	Summary proceeding, art. 251 item a CCP.	Summary proceeding, art. 251 item a CCP.	Summary proceeding, art. 251 item a CCP.	Summary proceeding, art. 251 item a CCP.	Summary proceeding, art. 251 item a CCP.	Regular or simplified proceeding, art. 219 et seq., art. 243 et seq. CCP (see also art. 257 CCP).	Federal and cantonal rules of procedure, art. 20a DEBA.	Regular or simplified proceeding, art. 219 et seq., art. 243 et seq. CCP.	Regular or simplified proceeding, art. 219 et seq., art. 243 et seq. CCP.	
3. Material jurisdiction	Based on cantonal law, art. 3 and 4 CCP.	Attachment court of first instance, art. 278 (1) DEBA.	Based on cantonal law, art. 3 and 4 CCP.	Based on cantonal law, art. 3 and 4 CCP.	Debt collection office.	Based on cantonal law, art. 3 and 4 CCP.	Based on cantonal law, art. 3 and 4 CCP.	Based on cantonal law, art. 3 and 4 CCP.	Supervisory authority of the debt collection offices, art. 13 (1) in conjunction with art. 17 (1) DEBA.	Based on cantonal law, art. 3 and 4 CCP.	Based on cantonal law, art. 3 and 4 CCP.	
4. Territorial jurisdiction	Regular or special place of debt collection or location of assets, art. 272 (1) DEBA (place of attachment). ¹⁴	Place of attachment.	Place of attachment.	Place of attachment.	Regular or special place of debt collection, art. 46 et seq. DEBA.	Internationally under PILA, at the regular or special place of debt collection, art. 84 DEBA. Internationally under LC, at the regular or special place of debt collection, art. 84 (1) DEBA. ¹⁵ Nationally at the regular or special place of debt collection, art. 84 (1) DEBA.	Regular or special place of debt collection, art. 84 (1) DEBA.	Internationally under PILA, at the venue pursuant to PILA, art. 4, art. 112 et seq. PILA. Internationally under LC, at the venue pursuant to LC, art. 2 et seq. LC. Nationally at the venue pursuant to CCP, art. 9 et seq. CCP.	Place of debt collection.	Venue pursuant to art. 109 (1)–(3) DEBA in conjunction with art. 46 CCP.	Internationally under PILA, at the venue pursuant to PILA, art. 112 et seq., art. 129 PILA. Internationally under LC, at the venue pursuant to LC, art. 2 et seq., art. 5 no. 3 LC. Nationally at the venue under CCP or the place of attachment, art. 9 et seq., art. 37 CCP, art. 273 (2) DEBA.	

<p>5. Prayers for relief</p>	<p>That all assets of the attachment debtor, especially receivables, current account balances, and cash holdings in domestic and foreign currency, securities, custody account balances, precious metals, other assets, and all restitution claims from custody account agreements and trusts, especially account no. ..., in the name and/or aliases of the attachment debtor at Bank XY (exact address) be attached, all to the extent attachable until coverage of the attachment claim of CHF ... plus interest at ... % since ... and costs.</p>	<p>That the attachment order of ... (case no. ..., attachment no. ... by the Debt Collection Office of ...) be set aside (objection by debtor) or that the attachment order concerning the assets belonging to a third party be set aside (objection by third party); with costs plus VAT to be borne by the attachment creditor.</p>	<p>That the decision by the lower court of ... be set aside and that an attachment order pursuant to the prayer for relief brought before the lower court ... be approved; with costs awarded against the public treasury.</p>	<p>That the attachment creditor be ordered to furnish security in the amount of CHF ... within 10 days of service of the court decision with an entity to be designated by the court, as security for any loss suffered by the debtor (third party) from the unjustified attachment (...), under threat of lifting the attachment in case of non-compliance; with costs plus VAT to be borne by the attachment creditor.</p>	<p>Regular petition for debt collection (for the attachment claim) plus attachment costs already incurred, art. 68 in conjunction with art. 281 (2) DEBA.</p>	<p>That provisional clearance to proceed be granted in debt collection no. ... by the Debt Collection Office of ... (payment order of ...) for CHF ... plus interest of ... % since ... and the attachment costs of ..., with costs (incl. attachment costs of CHF ...) plus VAT awarded against the defendant.</p>	<p>1. That the judgment by the District Court of ... / by the Arbitral Tribunal of ... dated ... be declared enforceable.¹⁶ 2. That final clearance to proceed be granted in debt collection no. ... by the Debt Collection Office of ... (payment order of ...) for CHF ... plus interest of ... % since ... and the attachment costs of 3. With costs (incl. attachment costs of CHF ...) plus VAT awarded against the defendant.</p>	<p>1. That the defendant be ordered to pay the plaintiff EUR/CHF ... plus interest of ... % since ... (attachment claim). 2. That the objection in debt collection no. ... by the Debt Collection Office of ... (payment order of ...) be set aside, with costs (incl. attachment costs of CHF ...) plus VAT awarded against the defendant.</p>	<p>1. E.g., that the attachment no. ... (attachment order by the District Court of ... dated ...) by the Debt Collection Office of ... dated ... be set aside with regard to the following assets affected by the attachment ... 2. That the Debt Collection Office of ... be instructed to release the assets in the first prayer for relief from attachment. 3. With costs to be settled pursuant to art. 20a DEBA.</p>	<p>E.g., that the plaintiff's ownership of assets no. ... with an estimated value of ... attached in attachment no. ... by the Debt Collection Office of ... (attachment order no. ... by the District Court of ...) against the attachment debtor ... for a claim of CHF ... (plus interest and costs) be affirmed and that those assets consequently be released from attachment, with costs plus VAT awarded against the defendant.</p>	<p>That the defendant (attachment creditor) be ordered to pay the plaintiff (attachment debtor/third party) EUR/CHF ... plus interest of 5% since ...; (alternatively that the court cashier be instructed to pay the amount awarded by the court directly to the plaintiff [attachment debtor/third party] from the attachment security in the attachment proceeding [attachment order of ..., case no. ...]); with costs plus VAT awarded against the defendant.</p>
<p>6. Advance for court costs and party costs</p>	<p>Advance from attachment creditor for court costs and, depending on canton, fees of the debt collection office, art. 98 CCP, art. 21 SF DEBA, see art. 101 (2) CCP.</p>	<p>Advance from attachment creditor for court costs, art. 98 CCP.¹⁷ In the further objection proceeding pursuant to art. 278 (3) DEBA, advance by the party pursuing the objection (attachment creditor, attachment debtor, third party). No advance for party costs, art. 99 (3) item c CCP.</p>	<p>Advance from attachment creditor for court costs, art. 98 CCP.</p>	<p>Advance from attachment debtor/third party for court costs, art. 98 CCP. In the further objection proceeding pursuant to art. 278 (3) DEBA, advance by the party pursuing the objection (attachment creditor, attachment debtor, third party). No advance for party costs, art. 99 (3) item c CCP.</p>	<p>Advance from attachment creditor for debt collection costs, art. 68 (1) DEBA.</p>	<p>Advance from attachment creditor for court fee, art. 49 (2) SF DEBA. No advance for party costs, art. 99 (3) item c CCP.</p>	<p>Advance from attachment creditor for court fee, art. 49 (2) SF DEBA. Advance from attachment creditor for court costs for the ex-aequatur proceeding, art. 98 CCP, art. 52 LC. No advance for party costs, art. 99 (3) item c CCP.</p>	<p>Advance from attachment creditor for court costs and party costs, art. 98 et seq. CCP.</p>	<p>Advance from attachment creditor for court costs and party costs, art. 98 et seq. CCP.</p>	<p>Advance from attachment debtor/third party for court costs and party costs, art. 98 et seq. CCP.</p>	
<p>7. Attachment security (lodging of security), art. 273 DEBA</p>	<p>Set by the court (optional), depending on the possible loss suffered by the attachment debtor or an affected third party because of an unjustified attachment.</p>	<p>Set, reduced, or increased by the court (optional).</p>	<p>Set by the court (optional).</p>								

8. Costs (CHF) ¹⁸	40–2000, art. 48 SF DEBA. 10–400, fees of the debt collection office depending on the canton, art. 20 SF DEBA.	40–2000, art. 48 SF DEBA. 60–3000, art. 48 in conjunction with art. 61 SF DEBA in the further appeal proceeding.	60–3000, art. 48 in conjunction with art. 61 SF DEBA.	40–2000, art. 48 SF DEBA. 60–3000, art. 48 in conjunction with art. 61 SF DEBA in the further appeal proceeding.	7–400, art. 16 SF DEBA.	40–2000, art. 48 SF DEBA.	40–2000 for the clearance to proceed proceeding, art. 48 SF DEBA. Pursuant to cantonal scale of fees for the exequatur proceeding (PILA) and pursuant to art. 52 LC for LC decisions.	Pursuant to cantonal scale of fees.	In principle, no costs, art. 20a (2) DEBA, art. 61 et seq. SF DEBA.	Pursuant to cantonal scale of fees.	Pursuant to cantonal scale of fees.
9. Party costs	No.	Yes, in the objection and further appeal proceeding, pursuant to cantonal scale of fees, art. 105 CCP.	No.	Yes, pursuant to cantonal scale of fees, art. 105 CCP.		Yes, pursuant to cantonal scale of fees, art. 105 CCP.	Yes, pursuant to cantonal scale of fees, art. 105 CCP.	Yes, pursuant to cantonal scale of fees, art. 105 CCP.	No, art. 62 (2) SF DEBA.	Yes, pursuant to cantonal scale of fees, art. 105 CCP.	Yes, pursuant to cantonal scale of fees, art. 105 CCP.
10. Legal remedies ¹⁹	See columns “Objection against attachment” and “Legal remedy against denial of attachment.”	Objection before higher cantonal court, art. 278 (3) CCP in conjunction with art. 309 item b no. 6 and 319 item a CCP; see art. 327a CCP. Objection before Federal Supreme Court, art. 72 (2) item a FSCA.	Objection before higher cantonal court, art. 309 item b no. 6 in conjunction with art. 319 item a CCP. Objection before Federal Supreme Court, art. 72 (2) item a FSCA.	Objection before higher cantonal court, art. 309 item b no. 6 in conjunction with art. 319 item a CCP. Objection before Federal Supreme Court, art. 72 (2) item a FSCA.		Objection before higher cantonal court, art. 309 item b no. 6 in conjunction with art. 319 item a CCP. Objection before Federal Supreme Court, art. 72 (2) item a FSCA.	Objection before higher cantonal court, art. 309 item b no. 6 in conjunction with art. 319 item a CCP. Objection before Federal Supreme Court, art. 72 (2) item a FSCA.	Appeal or objection before higher cantonal court, art. 308 or art. 319 CCP. Objection before Federal Supreme Court, art. 72 (1) FSCA.	Objection before the lower and – if it exists in the given canton – higher supervisory authority, art. 17 et seq. DEBA. Objection before Federal Supreme Court, art. 72 (2) item a FSCA.	Appeal or objection before higher cantonal court, art. 308 or art. 319 CCP. Objection before Federal Supreme Court, art. 72 (1) FSCA.	Appeal or objection before higher cantonal court, art. 308 or art. 319 CCP. Objection before Federal Supreme Court, art. 72 (1) FSCA.

* This overview is based on a table in the article by Felix C. Meier-Dieterle "Formelles Arrestrecht – eine Checkliste" (Formal Attachment Law – a Checklist), AJP 2002 1224 et seq. An overview of the applicable statutes in attachment law and of the literature and decisions can be found in the expertise database www.attachment.ch.

- 1 In principle, only assets of the attachment debtor can be subject to enforcement. However, assets of third parties may also be attached in exceptional cases (piercing the corporate veil, "Durchgriff").
- 2 Dispatch for the Federal Resolution on Approval and Implementation of the Revised Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters dated February 18, 2009, BBl 2009 1822 et seq.
- 3 A title attachment (art. 271 (1) no. 6 DEBA) is possible based on a Swiss title, foreign State court decisions, foreign arbitral awards (BGE 139 III 135 = Pra 2013 no. 69), and enforceable Swiss and foreign public deeds.
- 4 In the case of an attachment against a foreign state, it is necessary to consider not only general prerequisites for an attachment, but also the principles of limited immunity under International Law (BGE 106 Ia 142).
- 5 In the attachment approval proceeding ("Arrestbewilligungsverfahren"), the attachment court makes a final decision about the attachment of assets.
- 6 In the attachment prosecution proceeding ("Arrestprosequierungsverfahren"), the court makes a final decision about whether the attachment creditor's claim can be enforced. All prosecution steps must, in principle, be carried out within ten days, art. 279 DEBA.
- 7 In the attachment execution proceeding ("Arrestvollzugsverfahren"), the debt collection office executes the court's attachment order.
- 8 In the third party claim proceeding ("Widerspruchsverfahren"), the court makes a final decision about what assets remain under attachment. In the proceeding regarding damages ("Schadenersatzverfahren"), a decision is made about whether the attachment creditor must pay the attachment debtor or a third party damages for an unjustified attachment.
- 9 In the scope of the LC, it is disputed a) whether a declaration of enforceability is an absolute condition for an attachment approval or whether a preliminary assessment of the enforceability is sufficient; b) how the attachment court must rule if the declaration of enforceability is required, but has not been requested (principle of party disposition); and c) in the case of a foreign decision, whether an attachment can be based solely on art. 271 (1) no. 6 DEBA or whether the attachment can also be approved pursuant to art. 271 (1) no. 4 DEBA; see www.attachment.ch – decisions on art. 271 (1) no. 4 and 6 DEBA.
- 10 An attachment is an interim measure, BGE 133 III 589.
- 11 Attachment security is impermissible for an attachment based on an LC decision.
- 12 In the scope of the LC, there is disagreement about whether prosecution through debt collection at the location of the assets is permissible (art. 52 DEBA).
- 13 The competences of the debt collection office are limited, BGE 129 III 203 = Pra 2003 no. 140.
- 14 Since the revision that took effect on January 1, 2011, it is possible to attach assets of the attachment debtor throughout Switzerland at the place of attachment.
- 15 BGE 136 III 566.
- 16 If the claim is based on a foreign judgment and the attachment creditor is demanding a declaration of enforceability, see footnote 9.
- 17 The attachment creditor remains in the role of the plaintiff during the objection proceeding ("Einspracheverfahren"), ZR 2002 no. 4.
- 18 The SF DEBA is applicable (SR 281.35, BGE 139 III 195).
- 19 The grounds for objection are limited in the case of objections before the Federal Supreme Court concerning interim measures, art. 98 FSCA.

CCP	Swiss Code of Civile Procedure	ZPO	Zivilprozessordnung
DEBA	Swiss Debt Collection and Bankruptcy Act	SchKG	Schuldbetreibungs- und Konkursgesetz
FSCA	Swiss Federal Supreme Court Act	BGG	Bundesgerichtsgesetz
PILA	Swiss Private International Law Act	IPRG	Bundesgesetz über das Internationale Privatrecht
SF DEBA	Scale of Fees Swiss Debt Collection and Bankruptcy Act	GebV SchKG	Gebührenverordnung zum Bundesgesetz über Schuldbetreibung und Konkurs
LC	Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters	Lug-Ü	Übereinkommen über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen

