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Update Letter Nr. 109

Freezing/attachment orders in Switzerland: FAQ (1-10)

2. Mai 2018

Considering an attachment order in Switzerland? Our FAQs give you helpful links and an initial overview of the requirements, consequences and costs.

1. Where can I get information quickly about attachment orders in Switzerland?

There is a free database www.attachment.ch - powered by www.vischer.com. Procedures and prerequisites can be found in the Vischer overview ("[Attachment in Switzerland](#)" in English, "[Arrest - Verfahren und Voraussetzungen](#)" in German, "Le séquestre - Procédure et conditions" in French, "Условия и порядок наложения ареста на имущество — контрольный список" in Russian and "אמצעים להגנת רכוש זר — תנאים ודרישות" in Hebrew).

2. What is the real benefit of successfully obtaining an attachment order?

Most attachment proceedings are terminated by a settlement agreement. The creditor that successfully attached the debtor's assets usually holds a strong negotiating position.

3. Can the assets of a debtor be attached in Switzerland?

Yes. The assets of a debtor can be attached, provided that the conditions according to art. 271 ff. of the Debt Collection and Bankruptcy Act (DEBA) are presented to the court and a claim seems to exist. The court decides without hearing the debtor in an ex parte (summary) proceeding.

4. What kind of assets can be attached?

All assets belonging to the debtor can be attached, i.e. bank accounts (claims against the debtor's bank), real estate property, shares, art, cars, jewelry, salary etc. Assets formally belonging to third persons can be attached under special circumstances (see also "[Piercing the corporate veil in debt enforcement](#)").

5. Can assets outside Switzerland be attached by a Swiss court?

No. Swiss attachment orders are restricted to assets in Switzerland (territoriality principle).

6. What are the typical constellations for attachment proceedings in Switzerland?

There are two typical attachment constellations: a) the debtor does not live or has no legal domicile in Switzerland provided the claim has a sufficient connection with Switzerland or is based on a recognition of debt by the debtor (art. 271 para. 1 no. 4 DEBA); b) the creditor already holds an enforceable judgment of a Swiss or foreign state court or an Arbitral Award (art. 271 para. 1 no. 6 DEBA).

7. Can a debtor raise an objection against the attachment order?

Yes. The debtor can initiate the objection proceeding within 10 days of being served with the attachment deed by the Debt Collection Office (art. 278 DEBA). The court renders a new decision about the attachment considering the arguments of both the creditor and the debtor. Appeals to the cantonal High Court and to the Federal Supreme Court are possible.

8. Does the creditor have to validate the attachment?

Yes. The creditor is obliged to validate the attachment order within 10 days of being served with the attachment deed by the Debt Collection Office (art. 279 DEBA). The validation proceeding usually starts with a payment order issued by the Debt Collection Office. In case of opposition by the debtor, the creditor has to initiate the ordinary validation claim before the competent State Court or Arbitration Court in Switzerland or abroad within 10 days. If the attachment is already based on an enforceable judgement, the validation proceeding to set aside the opposition takes place in Switzerland.

9. When will the creditor be paid out of the attached assets?

The attachment proceeding will be terminated according to the DEBA system. If the debtor is a legal entity incorporated in Switzerland, a bankruptcy proceeding starts. The creditor that successfully attached the debtor's assets has no preferential rights. If the debtor is a private Swiss person or a foreign debtor, the assets will be seized and sold.

10. What are the costs of an attachment proceeding?

The court costs for an attachment order and for the objection proceeding are limited: CHF 2'000 (1st instance) and CHF 3'000 (2nd instance). This calculation is not applicable in the Supreme Court proceeding. Moreover, party costs have to be paid by the losing party. Enforceability proceedings generate additional costs.

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