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Séquestrer les biens d'un débiteur en Suisse tout en demandant l'exequatur d'un jugement étranger à l'encontre de ce même débiteur – un moyen rapide et efficace offert par le droit suisse au créancier



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Seizing a debtor's assets in Switzerland while applying for the exequatur of a foreign judgment against the same debtor - a rapid and effective means available to creditors under Swiss law

Under Swiss law, a creditor who benefits from a foreign judgment in his favour may sequester the debtor's assets located in Switzerland in order to secure the claims recognised in the judgment. It is also possible to obtain exequatur beforehand, which is sometimes overlooked.

A. Receivership

If a creditor's rights are threatened, he can take an urgent protective measure: sequestration.

The purpose of this institution is to be able to immediately freeze assets belonging to the debtor, so that the latter cannot evade enforcement. The debtor's ability to dispose of some of his assets temporarily is thus impaired.

Sequestration is a not inconsequential institution, since it allows the debtor's assets to be accessed immediately and incisively.

The cases of sequestration are exhaustively defined in the law and are six in number:

1. The debtor has no fixed domicile in Switzerland;
2. The debtor, with the intention of evading his commitments, conceals his assets, flees or prepares to flee;
3. The debtor is a transient, or in the category of persons who frequent fairs and markets, if the debt is immediately due and payable by its nature;
4. The debtor does not live in Switzerland;
5. The creditor has a provisional or definitive certificate of default against the debtor;
6. The creditor has a definitive release order against the debtor.

The creditor must demonstrate that the debtor has assets that can be seized in Switzerland, that the claim exists, that it is due, that it is not secured by a pledge and that one of the six cases of sequestration has been met.

If he succeeds in proving these elements, the sequestration judge will then issue a sequestration order unilaterally and without hearing the debtor.

The intended effect of surprise is total, since the debtor is deprived of the disposal of the sequestered assets.

B. Simultaneous enforcement and sequestration (art. 271 para. 1 no. 6 LP)

Creditors who benefit from a foreign judgment in their favour may sometimes encounter difficulties in enforcing it, particularly because the debtor is domiciled in another country.

Swiss law provides for the possibility, in such a situation, of initiating a procedure for recognition and enforcement of the judgment in Switzerland, known as "exequatur", in particular through the Lugano Convention (CL).

A creditor who has a final discharge order against the debtor (art. 271 para. 1 no. 6 LP), most often a court judgment, now has an additional option to the other cases of sequestration, which is to be able to request a declaration of enforceability of a foreign decision produced as a discharge order prior to sequestration (art. 271 para. 3 LP).

In a recent ruling, the Swiss Federal Supreme Court has now settled a controversy that has long been uncertain^[1].

From now on, the Receivership Judge may simultaneously declare the foreign judgment enforceable, even in the absence of any submissions to that effect.

This means that the creditor can now kill two birds with one stone and obtain both the sequestration of the debtor's assets in Switzerland and the enforcement of the judgment in his favour, without even having to request it.

Those wishing to do so will still need to submit a declaration of enforceability of the judgment and a certificate from the country in which the judgment was given in support of their application for a sequestration order. Distinctions are also made according to the country in which the judgment was given, depending on whether or not the country has acceded to the Lugano Convention.

In conclusion, this solution may prove extremely interesting for a creditor who is aware of assets held in Switzerland by the debtor and

who therefore benefits from an effective, rapid and simplified “two-in-one” action, which will enable him to ensure that the judgment obtained abroad is enforced.

[\[1\] ATF 149 III 224](#)

Source :

<https://www.wg-avocats.ch/en/actualites/seizing-a-debtors-assets-in-switzerland-while-applying-for-the-exequatur-of-a-foreign-judgment-against-the-same-debtor-a-rapid-and-effective-means-available-to-creditors-under-swiss-law/>