



## Insolvency Law Newsletter Switzerland

# Jersey Insolvency Decree Recognized in Switzerland

### Introduction

As a general rule, Swiss law does not provide for any direct application of a foreign insolvency on assets located within Switzerland or for bringing claims in Swiss courts, applying a strict principle of territoriality. Consequently, a foreign insolvency administrator is not competent to file claims against a Swiss debtor or to collect assets located in Switzerland, except where the foreign insolvency has been recognized in Switzerland by way of a formal recognition proceeding and in which case it will be the Swiss insolvency office that will be competent for the collection and liquidation of assets.

Upon application by the insolvency debtor or an insolvency creditor to the competent court in Switzerland, at the place of assets belonging to the insolvency debtor, the court will recognize the foreign insolvency decree, provided (i) the decree was issued at the seat or domicile of the debtor, (ii) the decree is enforceable, (iii) there are no grounds for refusal under Article 27 Swiss Private International Law Act ("SPILA") (due process and no violation of ordre public) and, (iv) the country in which the insolvency decree was issued applies the principle of reciprocity (Art. 166 SPILA).

Under the principle of reciprocity, the court will examine, whether the issuing country will recognize a Swiss insolvency decree and treat Swiss insolvency creditors equal to domestic creditors. Unequal treatment of insolvency creditors, based upon nationality and/or residency may be viewed as a violation of Swiss ordre public. The requirement of reciprocity - although criticized by some scholars - is aimed at assuring equal treatment of insolvency creditors in an international setting and to foster recognition of Swiss insolvency decrees in foreign jurisdictions.

In case of recognition, the local insolvency authorities will proceed with insolvency proceedings in relation to

the debtor's assets located in Switzerland (Art. 170 SPILA).

### Facts of the case and decision of the local court

In the case of insolvency over a Jersey company with assets in Switzerland, Thouvenin attorneys at law were requested by a creditor to file an application for recognition of the Jersey insolvency decree ("désastre") in Switzerland.

Reciprocity is usually proven to the court by means of a legal opinion to the court from a renowned law firm in the issuing country or by the Swiss Institute for Comparative Law as an independent expert. In the case decided by the district court of Zürich, a legal opinion was rendered by the Swiss Institute for Comparative Law. Based upon the expert opinion, the court found all requirements for recognition including the requirement of reciprocity to be met and recognized the Jersey désastre.

The effect of such recognition was that a Swiss insolvency administrator was put in charge and who will be responsible for the collection of assets in Switzerland, their liquidation. The recognition of the foreign insolvency decree now will also permit the foreign insolvency administrator or insolvency creditors to bring claims for avoidable preferences and/or fraudulent conveyances in Swiss court. According to Art. 171 SPILA, such claims are governed by Swiss law and may be brought by the foreign insolvency administrator as well as an insolvency creditor entitled to bring such claim.

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