

kr facts

Debt collection in Switzerland - collection and enforcement of Claims

A creditor in Switzerland or abroad has a claim against a debtor in Switzerland which is undisputed or established by a court decision. What can be done to ensure that the creditor gets his money?

Reminder

The first step regularly consists of the creditor sending the debtor a reminder for the due claim, if necessary with the threat of legal action in case of non-payment. What if the debtor still fails to pay?

Debt Collection

In Switzerland, money claims are to be enforced by way of debt collection and bankruptcy proceedings. The basis for this is the Federal Law on Debt Enforcement and Bankruptcy (SchKG). In a first step, the debt collection procedure is raised. This procedure is comparable to the judicial order for payment procedure in Germany in its sequence and significance.

The procedure is initiated with the debt enforcement request. The creditor can file the debt collection request himself, or a third party commissioned by him, such as a debt collection agency or a lawyer. The debt collection request is to be addressed to the debtor's competent debt collection office at his domicile or residence. In the case of foreign nationals residing in Switzerland, it is relatively easy to clarify the current place of residence; in the case of a Swiss citizen, this clarification can be more complex. The creditor must pay the costs of the debt collection in advance; if the debt collection is successful, the debtor must then reimburse the debt collection costs; these costs are not high, however.

The debt collection office issues a payment order (comparable to the German order for payment) to the debtor. The debtor can file a legal proposal (objection) against the order for payment without stating reasons, whereby the debt enforcement proceedings are suspended for the time being.

If the debtor makes a legal proposal and the creditor does not want to accept the termination of the debt collection proceedings, the creditor must request the court to remove the legal proposal. In court, the creditor can only be represented by a lawyer registered in the register of lawyers, which is why the case must be handed over to a registered lawyer at the latest at this point.

If the debtor does not submit a legal proposal or if the court removes it, the continuation of the debt collection (enforcement) can be demanded. At the end of the proceedings, the debtor's voluntary payment or the payment in the course of the enforcement proceedings is the result. The enforcement authority is the debt enforcement and bankruptcy office. If the debtor is unable to pay, the assets of private persons are seized. If the claim is directed against a company, the company is threatened with bankruptcy and the creditor can file a petition for bankruptcy (insolvency petition).

The initiation of debt collection has unpleasant consequences for the debtor, because a register is kept of all debt collection proceedings, which can be accessed by anyone against proof of interest. Sometimes a last reminder with the threat of initiating debt collection and enforcing the claim, if necessary in court proceedings, has the effect that the debtor pays. This is especially the case if the creditor is abroad, but the threat is made by a Swiss lawyer: This indicates to the debtor that the creditor is taking on the costs and efforts of a foreign debt collection or legal proceedings in Switzerland and that it is now "serious".

The out-of-court costs of the lawyer are - in contrast to the German default cost regulation - not refundable. As a rule, they are much lower than the costs and time required by the German creditor for his own collection efforts. Sooner or later, these efforts regularly end up in the use of professional support in Switzerland anyway, as practice has shown.

The debt collection procedure is fast and cost-effective. If the claim is not disputed and the debtor pays after delivery of the order for payment, collection and legal fees of approximately CHF 500.00 are incurred in Switzerland for a claim of CHF 10'000.00. In this case the creditor has to pay the lawyer's fees, the debtor has to pay the costs of the debt collection office.

Legal opening proceedings if a debt instrument exists

If the debtor disputes the claim pursued by filing a legal proposal (objection), the legal proposal must be eliminated and the so-called opening of the proceedings must be granted. This is done either in ordinary proceedings (ordinary civil proceedings) or in summary proceedings (so-called opening of proceedings). Which procedure is recommended depends on whether and in which document the claim is shown:

German judgments, enforcement orders, court settlements, decisions on the determination of costs and other enforceable public documents can also be enforced in Switzerland on the basis of the Lugano Convention. The prerequisite is a certificate issued by the court in accordance with the so-called Lugano Convention (Annex V or Annex VI). This certificate is issued by the court that issued the decision. The decision must then be declared enforceable in Switzerland. The procedure required for this (exequatur procedure) can be carried out in isolation or as part of another procedure, for example in debt enforcement proceedings.

If there is a court decision or if the debtor has accepted the claim with his signature, the legal opening can be granted in a summary procedure. With the opening of legal proceedings the legal proposal is eliminated, with the decision to open legal proceedings the debt collection can be continued and the debt can be enforced. The opening of legal proceedings is summary: the facts of the case can only be made credible to convince the court, mainly by means of documents. In contrast to the ordinary proceedings, there is no attempt at conciliation before the Justice of the Peace, a single judge usually decides without an oral hearing and the evidence of witnesses or expert opinions is excluded. The legal opening procedure has no equivalent in the German procedural landscape and offers the advantage that it is very fast and, in relation to the ordinary civil proceedings, much more cost-effective. In addition, the roles of the parties are virtually reversed in a legal opening due to a signed acknowledgement of debt: If the debtor wants to assert the non-existence of the claim despite the decision to open legal proceedings against him on the basis of the submitted documents, he must now initiate (ordinary) court proceedings instead of the creditor himself and advance the - in comparison to Germany considerably higher - court costs for this (so-called disqualification proceedings).

The court costs of the legal opening proceedings (appraisal fee) result from the Ordinance on Fees for the Federal Act on Debt Collection and Bankruptcy and depend on the value in dispute. These judgment fees for example, are between CHF 60.00 - 500.00 for a sum in dispute of up to CHF 100,000.00, and the fee is up to CHF 2,000.00 for a sum in dispute of more than CHF 100,000.00. In addition, there are the lawyer's fees - calculated in Switzerland on the basis of the number of hours worked - that are charged. These must be clarified with the lawyer in advance.

The judgment fee as well as the compensation of the parties (judicially awarded share of the attorney's fees) of a trial are to be reimbursed by the sentenced debtor.

Orderly process in the absence of a debt instrument

In the absence of a court decision or a signed acknowledgement of debt, the claim must be enforced in ordinary legal proceedings. The procedure is comparable to the German civil process. In Switzerland, however, apart from a few exceptional cases, an attempt at conciliation before the justice of the peace is mandatory. The costs of the justice of the peace are refundable, but not the lawyer's fees for the mediation attempt. In the ordinary legal proceedings all evidence is admitted. The court and attorney's fees are then to be paid by the losing party. At this point it should be noted that the costs in ordinary proceedings in Switzerland are considerably higher than in Germany.

The temporary securing of receivables

The creditor can secure his claim in parallel with ongoing debt enforcement proceedings. Adequate means of security exist for this purpose. The means of security block the debtor's assets that are covered by its effect, e.g. bank accounts, receivables, investments, warehouses. The debtor can no longer dispose of the seized accounts or objects.

The relevant procedure for securing the claim opens up very efficient possibilities for the creditor to exert pressure on the debtor. The procedure is one-sided, the debtor is not heard before the decision is issued. The procedure has a considerable surprise effect and, as experience has shown, quickly brings "movement" to all matters concerning the claim. The costs are to be advanced by the creditor and paid by the debtor.

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Debt collection and enforcement in Switzerland are calculable for both domestic and foreign creditors, also in terms of costs. It is advisable to consult a lawyer based in Switzerland and specializing in this field, especially in order to initiate proceedings to secure the claim, to be checked and, if necessary, initiated. Swiss law is designed for the efficient enforcement of a claim.

For further information we are at your disposal.

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