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**New Rules for Cross-Border Recognition in Switzerland:**

**A More Facilitative System**

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*Introduction*

When Switzerland enacted its new code on private international law in 1989, containing a section on the recognition of foreign insolvency proceedings, Switzerland was one of the first countries to abandon the predominant principle of territoriality back then. More than thirty years later, with other legislative models in force, such as the EU-Directive, or the UNCITRAL Model Law, it was time to modernize Swiss international Insolvency Law and to abandon some obstacles hindering the recognition of foreign insolvency proceeding in practice.

*New International Insolvency Law enacted on 1 January 2019*

Yet, the new law that came into force on 1 January 2019 is not revolutionary, but it will facilitate recognition, make it less costly and, most important, increase the control over Swiss assets for foreign IP’s, in certain circumstances.

According to the new provisions, the recognition of foreign insolvency proceedings is still not automatic; it still requires formal recognition by a Swiss Court. Under the old law, recognition could only be granted if the petitioner could establish that the State in which the insolvency proceeding took place also grants the recognition of Swiss insolvency proceedings (the so-called reciprocity). The establishment of this element could sometimes be difficult and costly, as it requires the submission of legal opinions. Under the new law, the granting of reciprocity is no longer required for recognition. This also applies to “old” foreign insolvency proceedings, opened before the new law coming into force and which, in light of this obstacle, could not have been recognized in the past.

*Reciprocity and Seat Theory abandoned*

Another obstacle abandoned is the adherence to the strict seat theory. So far, Switzerland only recognized foreign insolvency proceedings opened in the country were the bankrupt company had its registered seat. Under the new law, insolvency proceedings opened in the country of the COMI may also be recognized.

With regard to the effect of recognition, the new law still follows the concept of a modified universalism. As under the old law, recognition generally leads to the opening of secondary proceedings in which the Swiss Bankruptcy Office realizes assets located in Switzerland and distributes the proceeds to certain secured and privileged creditors domiciled in Switzerland (in practice, these privileged creditors are the employees domiciled in Switzerland, having outstanding salary claims registered up to six months before insolvency). Following this, the remaining surplus will then be handed over to the foreign bankruptcy estate, after recognition of the schedule of claims of the foreign proceedings. So far, such ancillary proceedings were mandatory, even if it was clear that there were no secured or privileged creditors.

*The Foreign Insolvency Practitioner can, in given circumstances, act directly*

Under the new law, in such cases it is no longer mandatory to have ancillary proceedings. Upon application from the foreign IP, no ancillary proceedings are opened and the foreign IP can directly act in Switzerland and exercise his powers given to him under the *lex concursus*. He can also take assets located in Switzerland into his possession and bring them abroad. Only in cases where actual enforcement is needed, the foreign IP must rely on the help of the Swiss Bankruptcy office.

Other new provisions that will come into force relate to the recognition of foreign decisions issued in the context of the foreign bankruptcy proceedings, such as a judgment on voidance actions. So far, such decisions could not be recognized.

*Collaboration between the Swiss and the Foreign IP strengthened*

The new law also contains provisions on the collaboration between the Swiss Bankruptcy Office and the foreign IPs, allowing for the conclusion of bankruptcy protocols and enabling direct communications between the IPs in the event of multiple proceedings.