Cross-border dimensions

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Swiss creditors in Singapore proceedings

A Swiss creditor of a Singapore platform may prove in the Singapore liquidation or scheme without any Swiss proceeding. The proof is filed with the liquidator in the ordinary way, with the claim valued in Singapore dollars at the date of the winding-up order. A Swiss creditor with a proprietary claim should assert it early, by letter to the liquidator and if necessary by application to the court, because the liquidator will treat all balances as debts unless challenged. The Singapore moratorium under s 64 binds the Swiss creditor in respect of acts in Singapore. It does not prevent the Swiss creditor from attaching Swiss assets of the debtor in Switzerland, since Swiss courts do not give effect to a foreign restructuring moratorium without recognition under Art. 166 ff. PILA, which a s 64 moratorium does not obtain.

Singapore proceedings in Switzerland

Switzerland recognises a foreign bankruptcy decree, and since 2019 a foreign composition or similar proceeding, under Arts 166–175 PILA. The decree must have been issued in the state of the debtor's seat or of its centre of main interests, must be enforceable there and must not be contrary to Swiss public policy. Recognition opens a Swiss ancillary bankruptcy over the debtor's Swiss assets, unless the Swiss

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court dispenses with it because no privileged Swiss creditors exist. A Singapore liquidator who needs access to a Swiss bank account of the platform must take this route, which takes several months and involves the Swiss bankruptcy office. A Singapore scheme moratorium has no Swiss effect. A Singapore scheme itself is recognised only through the Art. 166 ff. route as a composition.[1]

Singapore recognition of Swiss proceedings

A Swiss bankruptcy of a Zug AG or GmbH with Singapore assets is recognised in Singapore under the Model Law as a foreign main proceeding if Switzerland is the centre of main interests, which for a Swiss-incorporated company is presumed. The Swiss bankruptcy office or a court-appointed administrator qualifies as a foreign representative. Recognition brings a stay and allows the foreign representative to take control of Singapore assets, including tokens at Singapore exchanges, by application to the court.[2] The FINMA-ordered liquidation of an unlicensed Swiss crypto firm under Art. 37 FINMASA qualifies as a foreign proceeding for these purposes, because it is a collective proceeding under the supervision of a public authority, although no Singapore decision has yet addressed a FINMA liquidation.

Issue	Singapore	Switzerland
Customer tokens in custodian's bankruptcy	Trust analysis on terms of service; regulatory segregation for licensees since 2023	Statutory segregation right Art. 242a DEBA; Art. 16 BankA for banks
Debtor-in-possession moratorium	s 64 IRDA, days, conditions on disclosure	Composition moratorium Art. 293 ff. DEBA, with administrator
Displacing management	Judicial management (Part 7 IRDA)	Bankruptcy; FINMA liquidation for licensees
Recognition of other hub's proceeding	Model Law, Third Schedule IRDA	Arts 166 ff. PILA, ancillary bankruptcy
	None in Switzerland	None in Singapore

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Issue	Singapore	Switzerland
Effect of moratorium abroad		
Scheme / composition binding dissenters	75 % in value, majority in number, per class	Composition agreement Art. 305 DEBA majorities
Distribution in kind of tokens	Permitted in schemes; practised	Segregation in kind under Art. 242a; otherwise realisation
Court specialisation	Single judge handled all 2022–2023 cases	Cantonal bankruptcy courts; FINMA for licensees

Notes

1. Swiss Private International Law Act (PILA; IPRG), SR 291, Arts 166–175, as amended with effect from 1 January 2019. ↩
2. Insolvency, Restructuring and Dissolution Act 2018, Third Schedule, Arts 15–21 of the Model Law as enacted. ↩

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