



Schweizerische Eidgenossenschaft
 Confédération suisse
 Confederazione Svizzera
 Confederaziun svizra

Federal Act on Private International Law (PILA)¹

Entered into force on 1 January 2019

Chapter 11 Bankruptcy and Composition

Art. 166

I. Recognition

¹ A foreign bankruptcy decree shall be recognized in Switzerland on application of the trustee in foreign bankruptcy, of the debtor or of a creditor:

- a. if the decision is enforceable in the State where it was rendered;
- b. if there is no ground to deny recognition within the meaning of Article 27; and
- c. if the decision has been rendered:
 1. in the State of the debtor's domicile, or
 2. in the State of the debtor's center of main interests, if the debtor was not domiciled in Switzerland at the moment of opening of the foreign proceedings.

² If the debtor has a branch in Switzerland, the procedure provided for in Article 50, paragraph 1, of the Federal Act on Debt Collection and Bankruptcy of 11 April 1889 (DCB) may be followed until such time as the decision of recognition within the meaning of Article 179 of this Act is published.

³ If a procedure within the meaning of Article 50, paragraph 1, DCB is already pending and the term provided for in Article 250 DCB has not elapsed, the procedure is stayed after the recognition of the foreign bankruptcy decree. Claims that have already been produced are admitted in the schedule of claims of the ancillary bankruptcy in accordance with Article 172. Procedure costs are reported passed on the procedure of ancillary bankruptcy.

Art. 167

II. Procedure 1. Jurisdiction

¹ If the debtor has a branch recorded in the trade registry in Switzerland, the application for recognition of a bankruptcy decree rendered in a foreign country must be brought before the court of the place where the branch is located. In all other cases, the application must be brought before the court of the place where the assets are located in Switzerland. Article 29 applies by analogy.

² If the debtor has branches or assets in multiple locations, the court before which the application was first brought has exclusive jurisdiction.

³ The rights of the bankrupt debtor are deemed to be located at the place of the bankrupt debtor's domicile.

¹ The official text is available in German, French and Italian on www.admin.ch/opc/fr/official-compilation/2018/3263.pdf. This unofficial translation was prepared by Me Antonia Mottironi and Me Justyna Rajpold of Monfrini Bitton Klein, Geneva (for more resources on cross-border insolvency in Switzerland, see www.mbk.law/en/cross-border-insolvency). For a full translation of the Federal Act on Private International Law, see ANDREAS BUCHER, *Commentaire romand de la loi sur le droit international privé*, Helbing Lichtenhahn, Basel, 2011 and BERNARD DUTOIT, *Droit international privé suisse, Commentaire de la loi fédérale du 18 décembre 1987*, Helbing Lichtenhahn, Basel, 2016.

2. Conservatory measures	<p><i>Art. 168</i></p> <p>As from the filing of the petition for recognition of the bankruptcy decree rendered in a foreign country, the court may, on application of the petitioner, order conservatory measures as provided in Articles 162 to 165 and 170 DCB.</p>
3. Publication	<p><i>Art. 169</i></p> <p>1 The decision granting recognition to a bankruptcy declared in a foreign country shall be published.</p> <p>2 Such decision shall be communicated to the Debt Collection and Bankruptcy Office, to the commissioner of the land registry, to the head of the trade registry at the place where the assets are located and, where appropriate, to the Federal Office for Intellectual Property. The same applies to the decisions closing or staying the ancillary bankruptcy proceedings, as well as the decision to revoke the bankruptcy and to waive the ancillary bankruptcy proceedings.</p>
III. Legal effects 1. In general	<p><i>Art. 170</i></p> <p>1 Unless otherwise provided in this Act, the recognition of a bankruptcy decree rendered in a foreign country has the same effect for the debtor's estate located in Switzerland as provided for a bankruptcy under Swiss law.</p> <p>2 The time limits set forth by Swiss law start to run as from the publication of the decision granting recognition.</p> <p>3 A summary liquidation of a bankruptcy shall intervene unless the trustee in foreign bankruptcy or a creditor within the meaning of Article 172, paragraph 1, requests the bankruptcy office, before distribution of the proceeds and providing sufficient security for the costs that will probably not be covered, that the liquidation is effected in the ordinary form.</p>
2. Claw-back action	<p><i>Art. 171</i></p> <p>1 The claw-back action is governed by Articles 285 to 292 DCB. Such action may also be initiated by the foreign trustee in bankruptcy or by one of the creditors entitled to bring such action.</p> <p>2 The opening of the bankruptcy abroad is relevant for determining time limits under Articles 285 to 288a and 292 DCB.</p>
3. Admission and ranking of debts	<p><i>Art. 172</i></p> <p>1 The schedule of claims shall only include:</p> <ul style="list-style-type: none"> a. the claims secured by a pledge defined in Article 219 DCB⁴; b. the claims not secured by a pledge but belonging to privileged creditors who have their domicile in Switzerland, and c. the claims related to a branch of the debtor recorded in the trade registry. <p>2 Only the creditors within the meaning of paragraph 1 as well as the trustee in foreign bankruptcy may bring the action to challenge the schedule of claims as provided in Article 250 DCB.</p> <p>3 Then a creditor has already been satisfied in part in a foreign proceeding connected with the bankruptcy, the amount thus obtained shall be applied, after deduction of the cost incurred, against the distribution to be paid to such creditor in the Swiss proceeding.</p>
4. Distribution a. Recognition of the foreign schedule of claims	<p><i>Art. 173</i></p> <p>1 After distribution of the proceeds within the meaning of Article 172, paragraph 1, any balance shall be remitted to the foreign bankruptcy estate or to those creditors that are entitled to it.</p> <p>2 Such balance may only be remitted after recognition of the foreign schedule of claims.</p> <p>3 The Swiss court having jurisdiction for the recognition of the foreign bankruptcy decree also has jurisdiction for the recognition of the foreign schedule of claims. Such court shall review in particular whether the creditors domiciled in Switzerland have been included fairly in the foreign schedule of claims. Such creditors shall be granted an opportunity to be heard.</p>

b. Non-recognition of a foreign schedule of claims

Art. 174

¹ When a foreign schedule of claims may not be recognized, the balance is distributed among the creditors of the third category according to Article 219, paragraph 4, DCB, provided they are domiciled in Switzerland.

² The same applies when the schedule of claims is not filed for recognition within the time-limit set by the court.

5. Waiver of the ancillary bankruptcy proceedings

Art. 174a

¹ On application of the trustee in foreign bankruptcy, it is admissible to waive the ancillary bankruptcy proceedings if no claim within the meaning of Article 172, paragraph 1, was lodged.

² If the creditors domiciled in Switzerland lodge claims other than the ones defined in Article 172, paragraph 1, the court may waive the ancillary bankruptcy proceedings provided that the foreign proceedings take due account of their claims. The creditors concerned shall be heard.

³ The court may attach conditions and obligations to the waiver.

⁴ If the court waived the ancillary bankruptcy proceedings, the trustee in foreign bankruptcy may, within the limits of Swiss law, exercise all the authority granted by the law of the country where the bankruptcy is opened; the trustee may in particular transfer assets abroad and initiate proceedings. This authority does not include acts of sovereignty, use of means of coercion or dispute resolution.

IIIbis. Coordination

Art. 174b

If there is a nexus between the proceedings, the authorities and bodies involved may coordinate their actions between themselves as well as with the foreign authorities and bodies.

IIIter. Recognition of foreign decisions concerning claw-back actions and other similar decisions

Art. 174c

Foreign decisions closely connected to a bankruptcy decree recognized in Switzerland concerning claw-back actions and other acts detrimental to creditors are recognized pursuant to Articles 25 to 27 if they have been rendered or recognized in the country from which the bankruptcy decree emanated and if the defendant is not domiciled in Switzerland.

IV. Composition and similar proceedings. Recognition

Art. 175

A composition or a similar proceeding approved by a foreign authority shall be recognized in Switzerland. Articles 166 to 170 and 174a to 174c apply by analogy. Creditors domiciled in Switzerland shall be granted an opportunity to be heard.