

Conditions and procedure

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The creditor must make credible (*rendere verosimile*, German *glaubhaft machen*) the existence of the claim, the ground for attachment and the existence of assets belonging to the debtor (Article 272(1) DEBA).¹ The standard of credibility is lower than full proof. It requires the court to consider the facts likely, even if it cannot exclude the possibility that they are otherwise. The application must identify the assets to be attached with reasonable precision. Swiss law does not allow a search attachment (*Sucharrest*), in which the creditor asks the debt enforcement office to freeze all assets the debtor might hold at any bank in Switzerland. In practice, a creditor names the banks where he has reason to believe the debtor holds accounts and gives the basis for that belief, for instance a payment received from a Lugano account, a bank reference in correspondence, or information from earlier business dealings. Attachments of "all assets" held at a named bank in its Lugano and other Swiss offices are generally accepted if the bank is identified and the creditor makes credible that the debtor has a relationship with it.

The court decides in summary proceedings without hearing the debtor. In Ticino, the competent authority is the justice of the peace for claims up to CHF 5,000 and the Pretura for higher claims, at the place where the assets are located.² The court may require the creditor to provide security for the damage the attachment may cause the debtor or third parties (Article 273(1) DEBA). The creditor is liable to the debtor and to third parties for the damage caused by an unjustified attachment. Besides the ordinary forum, the action for damages may also be brought before the court at the place of attachment (Article 273(2) DEBA).³ The attachment order is executed by the debt enforcement office, which serves it on the bank. The bank must then block the assets.

1 The bank as third party and the timing of information

The bank holding the assets is a third party in the attachment procedure. It must block the attached assets as soon as the order is served on it, but its duty to disclose whether and which assets it holds arises only later. Under the consistent case law of the Federal Supreme Court since 1999, the third party's duty to provide information under Article 91(4) DEBA arises only when the period for objection to the attachment has expired or, if an objection has been filed, when the decision on it has become final.⁴ The rule protects banking secrecy against the use of attachment as a means of obtaining information. A creditor who attaches assets at a Lugano bank therefore learns for some weeks only that the order has been executed, and he learns whether it has caught anything only after the debtor has had the opportunity to contest it.

2 Notes

1. Meier (above). ↩
2. Canton of Ticino, form "Domanda di sequestro" (above). ↩
3. Meier (above); DEBA, Art. 273(1) and (2), at [droit-bilingue.ch, https://www.droit-bilingue.ch/de-it/2/28/281.1-273-308.html](https://www.droit-bilingue.ch/de-it/2/28/281.1-273-308.html). ↩
4. Federal Supreme Court, judgment 5A_672/2010 of 17 January 2011, https://servat.unibe.ch/dfr/bger/2011/110117_5A_672-2010.html, with reference to BGE 125 III 391 and BGE 131 III 660. ↩

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