

Debt enforcement against crypto-assets

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Creditors who wish to enforce a claim against a debtor who holds crypto-assets face practical obstacles. Swiss debt enforcement law allows the seizure of all assets of the debtor, including crypto-assets. The debt enforcement office can seize crypto-assets held by a custodian by ordering the custodian to block them. Crypto-assets held in the debtor's own wallet can be seized only if the office obtains the private key or the debtor transfers the assets voluntarily.¹ Although the debtor is obliged to disclose his assets to the office, with concealment a criminal offence, the office cannot compel the disclosure of a private key by technical means.

Creditors can also use the arrest procedure to freeze assets before a judgment. A creditor who shows that the debtor holds crypto-assets with a Swiss custodian can obtain an arrest order, which the office executes by blocking the assets at the custodian. The procedure has become important in cross-border disputes, in which creditors seek to secure assets in Switzerland against debtors abroad. The concentration of crypto custodians in Zug and Zurich makes the Swiss arrest procedure a useful instrument for creditors pursuing crypto-assets.

1 Notes

1. Debt Enforcement and Bankruptcy Act (SchKG, SR 281.1), droit-bilingue.ch: Art. 91 para. 1 (debtor's duty, under threat of penalty, to attend the seizure and disclose assets) and para. 4 (third parties that hold assets of the debtor must give information to the same extent, under threat of penalty, Art. 324 no. 5 StGB); Art. 99 (on seizure of a claim, the third-party debtor is notified that it can henceforth pay only to the debt enforcement office). ↩

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Online version: helveticaregister.com/zug-debt-enforcement-against-crypto-assets