

Enforcement and insolvency in Zug

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When a trader in Zug defaults, its lenders and creditors must enforce their claims under Swiss law. The Federal Debt Enforcement and Bankruptcy Act governs the enforcement of monetary claims, the realisation of pledges and the bankruptcy of companies. A creditor with a claim against a debtor abroad may obtain an attachment of the debtor's assets in Switzerland, such as bank accounts in Zurich or shares in a company in Zug, if the conditions of the Act are met, a type of application on which the courts of Zug frequently decide.¹

The insolvency of a trader raises the question of the rights of the lenders to the goods and receivables that secure their loans, and of the competing claims of other creditors, such as the sellers who have not been paid, the buyers who have paid in advance and the holders of the bills of lading. The failure of Petroplus in 2012, with creditor claims of some 9 billion francs, and the failures of traders in other jurisdictions show how complex such proceedings can become.² For the practitioner, the lesson is that the security of a commodity financing is only as good as the documents, the possession and the legal analysis on which it rests. These must be verified at the time the financing is granted.

1 Notes

1. Art. 271 para. 1 no. 4 and no. 6 SchKG (SR 281.1), droit-bilingue.ch: attachment where the debtor does not live in Switzerland, no other ground applies and the claim has a sufficient connection with Switzerland or rests on an acknowledgement of debt (no. 4), and where the creditor holds a definitive title for setting aside the objection (no. 6). ↩

2. NZZ Folio, "Die Schatzgräber in Zug": Petroplus left 9 billion francs in unpaid creditor claims. ↩

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