

Practitioner's note: composition proceedings for a sanctioned company in Zug

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The Nord Stream 2 case offers lessons for advisers of companies that become insolvent because of sanctions. A Swiss company that loses access to its banks and its revenues because of foreign sanctions may be over-indebted within days. Its board must then notify the court unless a restructuring is possible, since Swiss company law obliges it to do so in the case of over-indebtedness.¹ The Swiss composition proceedings allow the company to obtain a moratorium, during which it is protected from enforcement by its creditors while it seeks an agreement with them.

The administrator appointed by the court must deal with the sanctions in the proceedings. Payments to or from sanctioned persons require authorisation from the State Secretariat for Economic Affairs. Frozen assets can be used to pay creditors only with such authorisation. Foreign sanctions, particularly those of the United States, may make banks and service providers unwilling to cooperate, even when Swiss law does not prohibit the transaction. Since the proceedings can take years for these reasons, the adviser must plan for close coordination with the State Secretariat, the court and the foreign authorities.

1 Notes

1. Art. 725b para. 3 and 4 OR (SR 220), version in force since 1 January 2023, [swissrights.ch](https://www.swissrights.ch): if the two interim accounts show over-indebtedness, the board of directors notifies the court, unless creditors subordinate their claims or there is a reasonable prospect of remedying the over-indebtedness within a reasonable period, at most 90 days after the audited interim accounts. ↩

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