

Faculty:

Asset-Recovery Issues and Strategies: Western Europe

Wayne P. Weitz, Moderator

GlassRatner Advisory & Capital Group, LLC | New York, NY

Wayne P. Weitz, CTP is a senior managing director with GlassRatner Advisory & Capital Group, LLC in New York and has more than 30 years of experience in turnaround management, financial and operational restructuring, bankruptcy, mergers and acquisitions, and complex bondholder litigation. His practice includes debtor and borrower advisory services, secured and unsecured creditor advisory services, offshore and cross-border insolvency, valuation, litigation support, and statutory and ad hoc committees. Mr. Weitz returned to GlassRatner after spending several years with other restructuring advisory and distressed investment banking firms. He originally joined the firm in 2008 and was one of the senior professionals who opened the firm's initial New York office in 2009. During his turnaround and restructuring career, Mr. Weitz has focused on advising troubled companies and stakeholders in and out of bankruptcy in domestic and cross-border situations. Prior to becoming a restructuring professional, he held positions in the corporate sector, where his responsibilities included capital allocation, strategic planning, international acquisitions, valuation of potential acquisitions, and investments and deal execution. He began his career as an investment banker and has completed nearly 100 acquisitions, dispositions and capital formation transactions. Mr. Weitz is co-chair of ABI's Complex Financial Restructuring Program and is a former co-chair of ABI's Financial Advisors and Investment Banking Committee. He is a board member of the New York chapter of the Turnaround Management Association, where he also serves as Membership Committee co-chair. Mr. Weitz received his B.A. in economics and politics from Brandeis University and his M.B.A. in finance and accounting from the University of Chicago Booth School of Business. He has also earned his Intermediate Sommelier Certification from the National Wine School.

Yves Klein

Monfrini Bitton Klein | Switzerland, Geneva

Yves Klein is a partner with Monfrini Bitton Klein in Geneva, Switzerland, where he represents liquidators of insolvent foreign banks, publicly traded companies or offshore companies, notably in the context of Ponzi schemes. He has obtained recognition of numerous foreign judgments and arbitral awards for amounts in excess of US\$100 million and has successfully recovered the assets of the defendants concealed in Switzerland or abroad. Upon joining the firm in 1999, Mr. Klein focused his practice on transnational civil and criminal asset-recovery proceedings on behalf of victims of economic crime. He notably represented, alone or with his partners, more than 10 foreign States and recovered in excess of US\$2 billion of corruption proceeds. After acquiring professional experience with international organizations and a law firm in Washington, DC (1994-95), Mr. Klein practiced international business law and litigation with a Geneva law firm (1995-1998). He was admitted to the Geneva bar in 1995 and has a professional and cultural understanding of Latin America, particularly Brazil; he speaks Portuguese and Spanish fluently. Mr. Klein received his law degree from the University of Geneva in 1989 and his diploma of higher studies in international law from the Graduate Institute of International Studies of Geneva in 1993.

Boris Klinger

Ernst & Young LLP | Germany, Frankfurt

Boris Klinger is a director in EY's Forensics practice in Frankfurt, Germany, where he leads business intelligence initiatives and compliance-related investigations. With more than a decade of experience in investigative research, compliance due diligence and fraud investigation, he advises leading organizations on managing risk, maintaining integrity and ensuring regulatory compliance. Mr. Klinger's consulting expertise covers business intelligence services, compliance background checks, anti-money laundering (AML) and complex fraud inquiries. He has managed numerous large-scale projects, including business partner intelligence research and third-party due diligence for multinational clients. He has led compliance assessments for M&A targets and business partners across Europe, the CIS and Africa, and has supported financial institutions with Know Your

Customer (KYC) programs focused on shareholding structures and ownership transparency. In addition, Mr. Klinger designed and executed executive integrity assessments for management and board-level candidates and has overseen annual supplier risk categorization for a DAX 30 company since 2010. His work spans such sectors as automotive, defense, financial services, telecommunications and consumer products. Before joining EY, Mr. Klinger was an assistant to the CEO of an international automotive spare parts wholesale company operating across Western Europe. He holds an LL.M. and is fluent in English and German.

David Standish

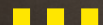
Interpath Advisory | United Kingdom, London

David Standish is a managing director at Interpath Advisory in London and co-leads its Contentious Insolvency team. He has more than 30 years of experience working on some of the largest and most high-profile and complex bankruptcies, liquidations, courts-appointed receiverships and deceased estates. Mr. Standish is recognized as the leading practitioner in Court Appointed Receivership and has pioneered the use of this process in numerous international and offshore situations. He regularly instructs lawyers in jurisdictions around the world and lectures extensively on various aspects of contentious insolvency and asset recovery. Mr. Standish is currently leading a Proceeds of Crime Receivership for the Serious Fraud Office in the U.K. in the largest U.K. confiscation order. In addition, he continues to lead the largest-ever court-appointed receivership case in the U.K. (the JSC BTA Bank vs. Ablyazov case) with alleged pre-judgment liabilities of around \$7bn and assets (including significant financial services assets) spread internationally. Mr. Standish works with lawyers in such jurisdictions as the U.S., Thailand, Russia, UAE, Cyprus, Latvia, Ukraine, BVI, St. Vincent & the Grenadines, Barbados, The Marshall Islands, Seychelles, Belize, Cayman, Germany, Switzerland, Luxemburg, Turkey, Jersey and Guernse. He also is an honorary professor at Durham Law School.

Asset Tracing

EY Forensics Germany

Boris Klinger



The better the question. The better the answer. The better the world works.



Shape the future
with confidence



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“Asset tracing is the process by which investigators ‘follow the money.’

Investigators trace assets by conducting financial investigations, during which they determine a subject’s assets, examine the revenue generated by criminal activity, and follow its trail.”

Columbia University
Law School

Common Limitations to Asset Tracing

Although the exact regulations vary by jurisdiction, asset tracing generally faces two main types of limitations:

Data Privacy



Lack of Transparent Ownership



Overview of Limitations for Asset Tracing in Germany

Data Privacy



- ▶ **Banking secrecy, tax secrecy**
In Germany both limitations are strict.
- ▶ **GDPR Article 6: Legal Basis Required**
Access to personal data is only permitted with a clear legal basis or explicit consent.
- ▶ **Purpose Limitation & Storage Restrictions**
Data can only be used for its defined purpose and must be deleted when no longer needed.
- ▶ **Documentation & Transparency Obligations**
Obligation to keep records of what data is collected, why, and how it's processed (Art. 30 GDPR). Furthermore, individuals have the right to know their data is being processed (Art. 12-14 GDPR).
- ▶ **e-Privacy: Consent for Tracking Technologies**
Tools like cookies or tracking pixels require prior consent—significantly limiting OSINT capabilities (e.g., AdINT).
- ▶ **Grey Areas & Authority Requests**
Profiling or data access without a clear legal basis creates compliance risks and potential fines (e.g., profiling).

Lack of Transparent Ownership



While company ownership data is accessible throughout Europe, there are varying restrictions when it comes to ownership of:

- ▶ **Real Estate**
Some jurisdictions offer transparent data on real estate ownership while others restrict those to various extents (e.g., Germany - Switzerland - Austria). Legitimate interest is often the basis to get information, however in the most cases you can only check already known addresses.
- ▶ **Luxurious Goods: A Blind Spot**
Cars, yachts, private jets, and art collections lack centralized public registries. Further ownership is often hidden behind shell companies or trusts.
- ▶ **Cross-Border Complexity**
Different jurisdictions apply different disclosure rules, making tracing assets across borders time-consuming and legally challenging.

An Alternative Approach for Asset Tracing

Experience and creativity in using publicly available sources can be helpful in indirectly identifying assets



Asset Tracing in Germany

While some German sources are publicly available, other sources relevant for asset tracing have restrictive availability. That is, one has to prove legitimate interest to access these sources. A legitimate interest could be debts a person has to another party.

Other sources like the central testament register is not available in the context of Asset Tracing.

We therefore argue for an approach which combines official sources with other publicly available sources and further OSINT methods.

Germany	
Publicly available	Restrictive availability
<ul style="list-style-type: none">▶ Company register Limitations regarding non-stock listed entities (privately held AGs)▶ Company databases Several open-source and private company databases, national and international▶ Insolvency register Information on private insolvencies▶ Credit agencies Such as Creditreform, or ICP Credit▶ Company Ultimate Beneficiary Owner Register (Transparency register)▶ Ownership of patents and trademarks	<p>Upon proof of legitimate interest, the following sources are available:</p> <ul style="list-style-type: none">▶ Cadaster Information on real estate (address necessary)▶ Probate records In combination with name and address of a deceased relative, it is possible to apply for access to probate records▶ Banking details Not available*▶ Tax statements Not available*▶ Car register available based on proven interest
Beyond checkboxes	
<p>Although testaments are not publicly accessible, using alternative sources (e.g., Social Media, art collections) and OSINT techniques (such as Google Dorking) can help build a profile of an individual and estimate their wealth.</p>	

*available for liquidator

Asset Tracing in Austria and Switzerland

Austria	
Publicly available	Restrictive availability
<ul style="list-style-type: none"> ▶ Company register Limitations regarding non-stock listed entities (privately held AGs) ▶ Company databases Several open-source and private company databases, national and international ▶ Insolvency register Information on private insolvencies ▶ Cadaster Information on real estate (address necessary) 	<p>Upon proof of legitimate interest, the following sources are available:</p> <ul style="list-style-type: none"> ▶ Probate records In combination with name and address of a deceased relative, it is possible to apply for access to probate records ▶ Banking details Not available
Beyond checkboxes	
<p>Among Germany, Austria, and Switzerland, Austria has the most transparent public sources in regard to Asset Tracing. The inclusion of further sources, such as Social Media, and OSINT methods can help answering the question about a person's wealth.</p>	

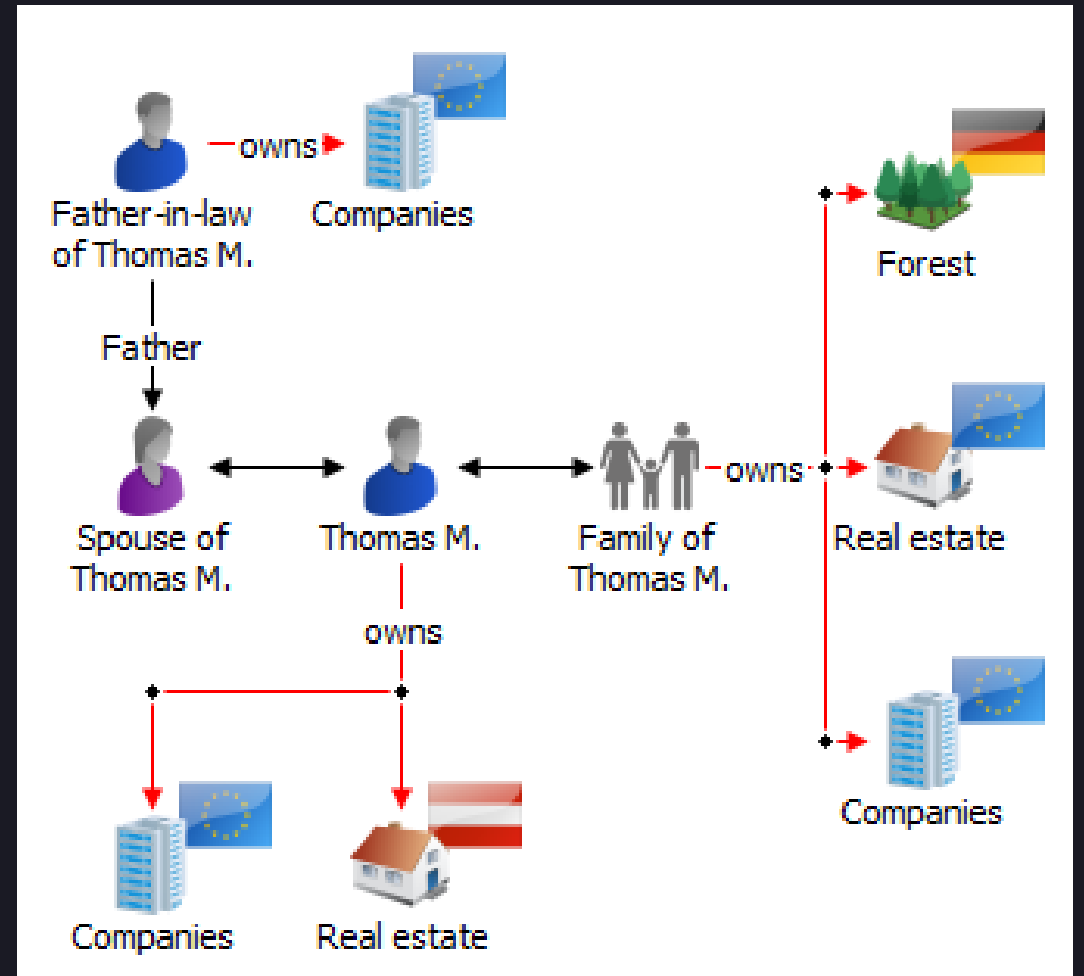
Switzerland	
Publicly available	Restrictive availability
<ul style="list-style-type: none"> ▶ Company register Limitations regarding non-stock listed entities (privately held AGs) ▶ Company databases Several open-source and private company databases, national and international ▶ Social Media Private and professional networks ▶ Cadaster Information on real estate (address necessary) 	<p>Upon proof of legitimate interest, the following sources are available:</p> <ul style="list-style-type: none"> ▶ Cadaster Historical information ▶ Probate records In combination with name and address of a deceased relative, it is possible to apply for access to probate records ▶ Banking details Not available
Beyond checkboxes	
<p>Switzerland has limited transparency, but with the right approach to the sources and by leveraging sources beyond official ones, it is possible to give a clearer insight into the wealth a person possesses in Switzerland.</p>	

Example of Cross-Border Asset Tracing

During a cross-border Asset Tracing case, we identified German and Scandinavian companies linked to an individual. Furthermore, by researching addresses, we were able to identify real estate holdings in Austria.

Upon researching family members of the individual, we established a wealthy background. The family owns real estate across Europe and is involved in several businesses.

Lastly, the spouse of the individual was identified to be the daughter of a well-known European billionaire.



Contact Details

We support our clients with compliance & forensic services:

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- Third party audits and forensic investigation
- Pre-employment checks

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TO WAIVE BUT NOT FALTER:



WHEN SHOULD FOREIGN BANKRUPTCY LIQUIDATORS APPLY FOR A WAIVER OF THE SWISS ANCILLARY BANKRUPTCY?



MBK.LAW
SWISS LITIGATORS

Authored by: Yves Klein (Partner), Evin Durmaz (Senior Associate) & Elisa Branca (Associate) - Monfrini Bitton Klein

Foreign bankruptcy liquidators often face significant hurdles when attempting to recover assets or enforce claims in Switzerland. These challenges largely stem from Article 271 of the Swiss Criminal Code (SCC), which acts as a blocking statute, prohibiting foreign officeholders from taking direct legal or administrative actions in Switzerland or litigants to obtain evidence in support of foreign proceedings. This provision is designed to protect Swiss sovereignty, ensuring that foreign actions do not infringe on the jurisdiction of Swiss authorities. However, Swiss lawmakers have developed mechanisms to balance this principle with the practical needs of cross-border insolvency cases, particularly through the recognition of foreign bankruptcies. In particular, since 2019, the sometimes-cumbersome Swiss ancillary bankruptcy can be waived, when this is compatible with the interests of Swiss creditors.



1. The Recognition of Foreign Bankruptcies and Mini-Bankruptcy Proceedings

Swiss law mandates that foreign bankruptcy decisions be formally recognized by local courts.

In principle, this recognition initiates a “mini-bankruptcy” or “ancillary bankruptcy” proceeding, which functions as a sort of mutual assistance mechanism.

Mini-bankruptcy proceedings involve the collection and liquidation of Swiss-based assets under the supervision of the local bankruptcy office. Bankruptcy offices are bestowed with coercive authority and can request document production from third parties (including from Swiss banks for example) based in Switzerland.

The proceeds are then used to satisfy privileged Swiss creditors. Any surplus can then be remitted to the foreign bankruptcy estate following the recognition of the foreign schedule of claims.

Once the Swiss privileged claims have

been settled and once the foreign schedule of claims has been recognized by the local court, the bankruptcy office may apply with the local court to close the ancillary bankruptcy proceedings. This closure does not prevent the continuation of actions which right to conduct litigation has been assigned to the foreign liquidators.

While this system has provided a structured approach to cross-border insolvency, it has often been criticized for being cumbersome and unnecessary in cases where Swiss assets are minimal or where no local creditors exist who need to be protected.



2. The 2019 PILA Amendment and Waiver of Mini-Bankruptcy

Recognizing these inefficiencies, a key amendment to the Swiss Private

International Law Act (PILA) was introduced in 2019. The new Article 174a PILA allows for the waiver of the mini-bankruptcy under specific conditions:

- the foreign bankruptcy decision must be recognized by Swiss courts ;
- the foreign bankruptcy liquidators should file the waiver application ;
- there should be no privileged Swiss creditors ; and
- the non-privileged creditors must be able to file their claims in the foreign bankruptcy proceedings.



This provision streamlines the process for foreign liquidators.

The introduction of Article 174a PILA reflects Switzerland's commitment to adapting its legal framework to modern insolvency challenges. It aligns with international trends toward greater cooperation and efficiency in cross-border cases, making Switzerland an attractive jurisdiction for resolving complex insolvencies.

3. Practical Application and Swiss Courts' Approach

The implementation of this PILA amendment has led to significant case law, shaping how foreign liquidators can operate in Switzerland.

Swiss courts have demonstrated a pragmatic approach, prioritizing efficiency and international cooperation in cross-border insolvency matters.



In Geneva, in particular, two key decisions illustrate this trend and established that:

- **No Temporal Limitation on Waiver Requests:** the Geneva Court of Appeal clarified that there is no strict temporal limitation on when a waiver of the mini-bankruptcy

can be requested. This flexibility allows foreign liquidators to adapt their strategies as the insolvency process unfolds, even if delays occur (Decision of the Geneva Court of Appeal ACJC/1691/2023 dated 14 December 2023). This ruling notably confirms and validates the practice of lower courts that a waiver of the ancillary bankruptcy may be granted merely after a call for Swiss privileged creditors has been published without result, namely without formally opening the ancillary bankruptcy.

- **Possible Waiver Even After Mini-Bankruptcy Closure:** the Geneva Court of Appeal has also held, in a groundbreaking interpretation, that a waiver can be granted even after a mini-bankruptcy proceeding has been closed in Switzerland. This ensures that foreign liquidators are not unduly restricted by procedural technicalities and can still act effectively in recovering assets, even after the Swiss proceedings are closed (Decision of the Geneva Court of Appeal ACJC/1545/2024 dated 2 December 2024).



4. Strategic Implications for Foreign Liquidators

These developments have opened the door for innovative recovery strategies.

For example, foreign bankruptcy liquidators can, first, leverage the local bankruptcy office coercive powers to obtain documents or evidence from third parties during a mini-bankruptcy proceeding. Once the necessary information and evidence is gathered, the liquidators can request a waiver, enabling them to act directly in Switzerland based on the evidence obtained.

This two-step approach combines the advantages of the coercive powers of the bankruptcy office with the streamlined execution enabled by the PILA amendment.

Another possibility is to file simultaneously the recognition of the foreign bankruptcy decision and the request for waiver of the mini-bankruptcy, when it is suspected that no Swiss privileged creditors exist and the coercive powers of the local bankruptcy office will not be necessary. This will allow to avoid the opening of any mini-bankruptcy in Switzerland and provide the foreign liquidators the ability to act directly in Switzerland. Such strategy significantly reduces costs and time.



This is particularly advantageous in cases where the potential Swiss assets or claims are already known to the foreign liquidators.

5. Conclusion

The 2019 PILA amendment and the evolving case law surrounding it represent a significant shift in Swiss cross-border insolvency practice. By allowing foreign bankruptcy liquidators to bypass the mini-bankruptcy process in appropriate cases, Switzerland has enhanced its reputation as a jurisdiction that values practicality and international cooperation. For foreign practitioners, understanding the nuances of these provisions and the strategic opportunities they present is essential when dealing with Swiss assets.

As more cases test the boundaries of these provisions, further clarity and opportunities will likely emerge, reinforcing Switzerland's pivotal role in international insolvency law.



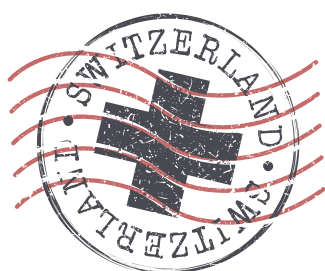


DO YOU KNOW ABOUT THE SWISS WORLDWIDE FREEZING ORDER?

Authored by: Natalia Hidalgo (Senior Associate), Yves Klein (Partner) and Edouard Kaiflin (Senior Associate)
– Monfrini Bitton Klein

The worldwide freezing order (also known as Mareva injunction) available in common law jurisdictions has been described as one of the nuclear weapons of the law. The conjunction of an injunction that may be obtained ex parte and that restrains a defendant from disposing of its assets up to a certain value and its ancillary disclosure obligation requiring the defendant to provide an affidavit setting out the value and location of its assets is indeed an extremely powerful asset recovery tool that many practitioners in civil law jurisdictions envy.

Few persons know, however, that an equivalent of the worldwide freezing order is available to litigants against Swiss defendants when they are insolvent or try to conceal their assets.



In Switzerland, enforcement of monetary claims is mainly regulated by the Swiss Federal Act on Debt Enforcement and Bankruptcy ("DEBA").

DEBA provides for three types of bankruptcy procedures: ordinary bankruptcy (Article 159-176), bankruptcy for bill of exchange (Article 177-189), and bankruptcy without prior debt enforcement procedure (Article 190-194).

In the context of ordinary bankruptcy proceedings, a creditor must have completed the full debt enforcement procedure before being able to request from the court the bankruptcy of its debtor, which may take years if the claim needs to be recognized in a judgment. The bankruptcy for bill of exchange provides for a more expedited procedure but may take several months before interim measures are available.

Unlike the first two types of bankruptcies, bankruptcy without prior debt enforcement of Articles 190 and 191 DEBA, can, under certain conditions, be requested directly from the court.

The possibility for the creditor to request the bankruptcy without prior debt enforcement procedure exists only if creditors' interests are threatened within the meaning of Article 190 DEBA, namely:

- If the debtor has no known residence, if it has absconded in order to evade the fulfilment of its obligations, if it has committed or attempted to commit acts to defraud creditors or has concealed its assets during debt collection proceedings.
- If the debtor has generally stopped payments to its creditors. This condition is fulfilled if the debtor does not pay uncontested and due debts, if there are payment orders from various creditors to which the debtor consistently declares its opposition, or even if the debtor fails to meet minor debts. It is not required, however, for the debtor to stop all payments but it is, for example, sufficient if the refusal to pay concerns a substantial part of its business activities. Even a single unpaid debt could be sufficient to prove that the creditor's interests are threatened if the amount is significant and the refusal to pay lasts. This is notably the case when the debtor refuses to satisfy its primary creditor.

The procedure of bankruptcy without prior debt enforcement procedure is conducted through summary proceedings and the debtor has a right to be heard.