INSOL EUROPE

ACADEMIC FORUM
INSOL Europe

When West Meets East: Bridging Europe's Insolvency Regimes

Papers from the INSOL Europe Academic Forum Conference, Vienna, 8-9 October 2025

When West Meets East:
Bridging Europe's Insolvency Regimes

Papers from the INSOL Europe Academic Forum Conference, Vienna, 8-9 October 2025

DR EUGENIO VACCARI
Associate Professor of Law
Royal Holloway, University London
Egham, United Kingdom

DR EMILIE GHIO
Lecturer in Corporate and Insolvency Law
University of Edinburgh
Edinburgh, United Kingdom

Editors

Published by INSOL Europe
PO Box 7149, Clifton
Nottingham NG11 6WD UK

https://www.insol-europe.org/
ISBN: 978-1-7393683-4-0

Contents

Notes on Contributors

Avolio, **Carla** is a Junior Assistant Professor (fixed-term) of Business Law at the Department of Legal Studies, Alma Mater Studiorum – University of Bologna, where she teaches Business Law and Insolvency and Restructuring Law. She holds PhD in Legal Studies from the University of Bologna. She is author of a monograph and several articles, and regularly participates in academic conferences and seminars. She is member of the Editorial Board of Italian Journal of Insolvency and Company Law and of the Interdepartmental Research Center on Business Crisis, Over-Indebtedness, and Insolvency.

Cepec, Jaka holds a PhD in Law (Law & Economics of Insolvency) from the Faculty of Law, University of Ljubljana. He is Professor of Law at the School of Economics and Business, University of Ljubljana. His research focuses on insolvency law, empirical legal research, and Law & Economics. In 2018, he was awarded a Fulbright Scholarship for postdoctoral research at Washington and Lee University, Virginia, USA. His publications are available on Google Scholar.

Gotvan, Lana K. is a teaching assistant and researcher at the Faculty of Law, University of Ljubljana, where she works in the Department of Legal and Economic Sciences. Her research interests are behavioural law and economics, negotiation theory, and insolvency law. She completed her bachelor's and master's degrees at the Faculty of Law, University of Ljubljana and completed the Magister Juris at the University of Oxford. She is currently pursuing a PhD at the School of Economics and Business, University of Ljubljana.

V. Jayshree is Assistant Professor of Law at Rashtriya Raksha University, Gandhinagar, Gujarat, an Institution of National Importance under the Ministry of Home Affairs, Government of India. She is presently pursuing her Ph.D. in Cross-Border Insolvency at Gujarat National Law University, Gandhinagar. She holds an M.Phil. in Corporate Laws, an LL.M. in Corporate Laws from Hidayatullah National Law University, Raipur, Chhattisgarh (India) and a B.B.A. LL.B. (Hons.) with specialization in Corporate Laws from MATS University, Raipur, Chhattisgarh (India). Her research primarily focuses on cross-border insolvency law. Her recent publications and opinion pieces, include "The Future of Cross-Border Insolvency Reform in India" in Indian Law Review (2026), "India, Cross-Border Insolvency, and Legal Reform" in The Hindu (News Paper, India) (4 January 2025), and "Public Policy Exception and Cross-Border Insolvency" in NLUJ Law Review (Vol. X, Issue II, Summer 2024) (UGC Care List, India). She is committed to contributing to scholarly and policy discourse on international insolvency law.

Joubin-Bret, Anna is the Secretary of the United Nations Commission on International Trade Law (UNCITRAL) and the Director of the International Trade Law Division in the Office of Legal Affairs of the United Nations, which functions as the substantive secretariat for UNCITRAL. She is the ninth Secretary of the Commission since it was established by the General Assembly in 1966. Prior to her appointment on 24 November 2017, Ms. Joubin-Bret practiced law in Paris, specializing in International Investment Law and Investment Dispute Resolution. She focused on serving as counsel, arbitrator, mediator and conciliator in international investment disputes. She served as arbitrator in several ICSID, UNCITRAL and ICC disputes. Prior to 2011 and for 15 years, Ms. Joubin-Bret was the Senior Legal Adviser for the United Nations Conference on Trade and Development (UNCTAD). She edited and authored seminal research and publications on international investment law, notably the Sequels to UNCTAD IIA Series and co-edited with Jean Kalicki a book on Reform of Investor-State Dispute Settlement in 2015. Ms. Joubin-Bret holds a post-graduate degree (DEA) in Private International Law from the University of Paris I, Panthéon-Sorbonne, a Masters Degree in International Economic Law from University Paris I and in Political Science from Institut d'Etudes Politiques. She was Legal Counsel in the legal department of the Schneider Group, General Counsel of the KIS Group and DirectorExport of Pomagalski S.A. She was appointed judge at the Commercial Court in Grenoble (France) and was elected Regional Counsellor of the Rhône-Alpes Region in 1998.

Lamanna, Luca is a legal academic and doctoral researcher at Sapienza University of Rome, where he is completing a PhD in AI, Business and Insolvency Law. He currently collaborates with the Chair of Comparative Corporate Governance at the European University of Rome. He has conducted extensive international research at the Max Planck Institute in Hamburg, Université Paris 1 Panthéon-Sorbonne and Universidad Autónoma de Madrid. His professional background includes experience in banking and financial regulation at a leading law firm and R&D legal research focused on AI compliance. Luca has published scientific articles in renowned journals, such as the International Company and Commercial Law Review, and has contributed to numerous international conferences hosted by institutions like UNIDROIT and the European University Institute. He serves as Adjunct Secretary for the Conference of European Restructuring and Insolvency Law (CERIL) and is a member of the Italian Society of Law and Economics. His research interests focus on corporate governance, insolvency law, and the impact of emerging technologies on legal frameworks.

Mak, Charles Ho Wang is a Lecturer in Law at the University of Bristol. He holds fellowships and academic affiliations at the Stanford-Vienna Transatlantic Technology Law Forum at Stanford Law School, the Asian Institute of International Financial Law at the University of Hong Kong, the Centre for Chinese and Comparative Law at the City University of Hong Kong, and the Sovereign Debt Forum. His research focuses on insolvency law, sovereign debt restructuring, trust law, financial regulation, technology law, and dispute resolution. He has published widely in reputable journals. His numerous awards include the III Prize in International Insolvency Studies 2024, the Scottish Universities Law Institute Early Career Fellowship, the Emerging Scholar Award, the YANIL Research Prize (First Prize), and the Association of Law Teachers Stan Marsh Prize. In 2024, he was inducted into the International Insolvency Institute's NextGen Leadership Program (Class XIII) in Singapore.

Mottironi, Antonia is the founding partner of Ardenter Law in Geneva. She advises on global strategies for resolving complex disputes, particularly involving fraud, cross-border insolvency and anti-corruption. She represents creditors, foreign insolvency office holders and victims of economic crime before Swiss authorities, focusing on civil and criminal litigation, business crime, judicial assistance and the enforcement of foreign arbitral awards and judgments. She has extensive experience in international asset recovery. She has developed strong expertise in cross-border insolvency cases involving failed foreign banks and fraud schemes. Mottironi serves on the board of the Swiss Association for Debt Collection and Bankruptcy Law, is Switzerland's country coordinator at Insol Europe, Chair of Nominations for IWIRC Europe, and a member of IWIRC International committees. She frequently publishes and speaks on asset recovery and cross-border insolvency.

Parry, Rebecca is a Co-Director of the Centre for Law, Emerging Technologies and Business, Nottingham Trent University, who has written widely on aspects of domestic and international insolvency laws. She has a particular recent interest in the intersection between technology and law and vulnerabilities arising from the provision of public services by private companies. She is a member of the Standing Task Force on Insolvency Law in Emerging Markets and Developing Economies established by the Insolvency Law Academy (ILA). She chairs the ILA's Global Roundtable on Personal Insolvency.

Rodriguez, Rodrigo is tenured Professor of Civil Procedure and Insolvency Law at the University of Lucerne (Switzerland) and titulary Professor at the University of Bern. He is also the Head of the Swiss Federal Supervisory authority on debt enforcement and insolvency at the Federal Office of Justice in Bern. Prof. Rodrigo Rodriguez has extensively published in German, English, Spanish and French in the fields of international civil procedure as well as Swiss and international insolvency law. He has participated in the reform of Swiss Restructuring Law and of the Swiss PIL provisions on recognition of foreign insolvency proceedings. He represents Switzerland at UNCITRAL's Working Group V and at the Council of Europe's Judicial Cooperation Committee. He is the former Chair of Insol Europe's Academic Forum and member of the International Insolvency Institute and the American Chamber of Bankruptcy.

Sahin, Hakan is a Senior Lecturer (Teaching &Research) in Law at Nottingham Law School, NTU, specialising in International Investment Law. He is a research active academic who designs, leads and teaches modules at undergraduate and postgraduate levels, including International Trade Law, International Commercial Transactions, International Dispute Resolution, International Energy Investment Law, and Regulation of Cryptoassets and Blockchain. He holds an LLM and PhD from Anglia Ruskin University and previously served as an Assistant Professor at Maltepe University in Istanbul, Türkiye. Before joining NTU, he worked as an Assistant Professor in Private International Law at Maltepe University in Istanbul, Türkiye.

Supper, Mag. Laszlo is a lawyer specialising in civil and insolvency law. He currently serves as a lecturer and researcher at the University of Applied Sciences Wiener Neustadt, where he teaches in various areas of law and contributes to research projects. Previously he worked at several renowned law firms with a focus on civil and commercial law. Supper completed his diploma studies in law at the University of Graz (Karl-Franzens-Universität Graz), which included a semester abroad in the United Kingdom. At present, Supper is pursuing a postgraduate LL.M. programme and is a doctoral candidate at the Institute of Civil Procedure Law at his alma mater. His doctoral research focuses on the reciprocal effects between Austrian insolvency proceedings and arbitration proceedings.

Ware, Stephen is the Frank Edwards Tyler Distinguished Professor of Law at the University of Kansas, where he teaches Alternative Dispute Resolution, Bankruptcy, Contracts, and Commercial Law. He is the only full-time law professor in the United States who regularly teaches and writes on both arbitration law and bankruptcy or insolvency law. Professor Ware is the author of five books, over 50 articles in scholarly journals, and many other publications. His writings have been cited by the U.S. Supreme Court and in at least 36 other cases. Ware has testified before both houses of the U.S. Congress, state legislatures, and as an expert witness in court. He is a frequent speaker at academic and professional conferences throughout the U.S. and beyond. He has appeared on numerous television and radio stations and been quoted in The Financial Times, Wall Street Journal, New York Times, and many other outlets. He has served on the editorial board of the Journal of Legal Education and as an arbitrator for the American Arbitration Association. After graduating from the University of Chicago Law School, Ware clerked for the United States Court of Appeals and practiced law with the New York firm of Davis Polk & Wardwell.

Editorial Preface

The theme of the twenty-first INSOL Europe Academic Forum, held on 8-9 October 2025 was "When West Meets East: Bridging Europe's Insolvency Regimes". The conference was preceded by the sixth Workshop of the Younger Academics Network of Insolvency Law (YANIL), hosted at the University of Vienna. This event was made possible thanks to the support of the Foundation Bob Wessels Insolvency Law Collection (BWILC). This volume comprises selected papers presented at the INSOL Europe Academic Forum and at the YANIL workshop. The chapters herein detail the key discussions of the event and offer further insight into the evolving regulatory debate on insolvency law in the European Union.

The book opens with a chapter by **Anna Joubin-Bret** (Director, International Trade Law Division, Office of Legal Affairs of the United Nations and Secretary of UNCITRAL), who delivered the keynote speech at the event. In her chapter, the author examines the growing impact of digitalisation on insolvency law, both at the domestic and cross-border level. Focusing on the transformation of business models, the emergence of novel categories of assets and actors, and the increasing dematerialisation of transactions, the chapter explores how insolvency frameworks are being challenged by developments associated with the digital economy. Drawing on recent experience with insolvencies involving crypto-assets and digital platforms, the contribution assesses the suitability of existing UNCITRAL texts to address these challenges and argues that, through principled interpretation and targeted legal development, UNCITRAL is well-placed to provide coherent and adaptable solutions to the evolving needs of insolvency law in a digitalised global economy.

The remainder of the book is divided into four parts.

Part I focuses on the **systemic and cross-border architecture of insolvency law**, examining the regulatory foundations and coordination mechanisms that underpin cross-border insolvency practice.

The first contribution in this part is a chapter by **V. Jayshree** (Rashtriya Raksha University), which examines the fragmented landscape of cross-border insolvency regulation in Asia and critically assesses the limits of relying exclusively on the UNCITRAL Model Law to achieve effective modified universalism in the region. Building on a comparative analysis with the European Union's Insolvency Regulation, the chapter explores the feasibility of a regional approach to cross-border insolvency in Asia, provisionally termed an *Asian Insolvency Regulation*. By analysing both the legal and institutional challenges involved, the contribution highlights how Europe's experience may function not merely as a precedent, but as a practical blueprint for regional coordination and legal reform.

The second chapter, co-authored by **Prof. Rodrigo Rodriguez** (University of Lucerne) and **Antonia Mottironi** (Ardenter Law), explores the decisive role of legal characterisation in the recognition of foreign insolvency proceedings, using Switzerland as a case study. Focusing on the qualification of foreign proceedings as "insolvency proceedings" for recognition purposes, the authors show how small design features – such as the degree of court involvement, collective effects, or enforcement stays – can have profound implications for jurisdiction, asset recovery, and even criminal liability. The chapter uses a series of common law proceedings as

case studies to demonstrate how the Swiss recognition framework operates as a laboratory for testing the coherence of emerging hybrid and preventive procedures.

This part concludes with a chapter authored by **Dr Charles Mak** (University of Bristol), which examines the potential role of blockchain technology and smart contracts in cross-border insolvency proceedings. The chapter analyses how distributed ledger technologies may enhance transparency, coordination and creditor confidence through improved record-keeping, asset tracing, and procedural automation. At the same time, it critically assesses the legal, technical and institutional limits of such tools, emphasising the need to preserve judicial oversight and avoid translating flexible legal standards into rigid code. The contribution argues that digital technologies may support more effective cross-border insolvency processes only if they are carefully integrated within existing legal frameworks and accompanied by appropriate safeguards.

Part II focuses on the **linkage between insolvency and arbitration**, addressing the structural tension between insolvency law's preference for centralised adjudication and arbitration law's commitment to party autonomy and decentralised dispute resolution.

The first contribution in this part is a chapter written by **Prof. Stephen Ware** (University of Kansas), which provides a comparative and normative analysis of the arbitrability of disputes involving insolvent debtors. The chapter examines how different legal systems delineate the boundary between core, non-arbitrable insolvency matters and disputes that merely involve a company subject to insolvency proceedings. Particular attention is devoted to the verification of creditors' claims and to actions brought by the debtor or the insolvency administrator against non-creditors. While acknowledging insolvency law's rationale for centralising disputes before a single insolvency court, the chapter argues against categorical exclusions of arbitration. Instead, it advances a balanced approach under which arbitration agreements and awards should be enforced where arbitration is compatible with the collective objectives of insolvency proceedings and does not undermine their efficiency or coherence.

The second chapter is authored by **Mag. László Supper** (University of Applied Sciences Wiener Neustadt) and **Prof. Alexander Klauser** (Knoetzl), and offers a detailed doctrinal analysis of the interaction between insolvency proceedings and arbitration under Austrian law. Focusing on the situation in which an insolvency creditor's claim is contested, the chapter examines whether pending arbitration proceedings may serve as claim-verification proceedings for the purposes of insolvency law. The authors distinguish between contestation by the insolvency administrator (or debtor in self-administration) and contestation by other creditors, and analyse the procedural consequences of the opening of insolvency proceedings for arbitration, including stays of proceedings and the adjustment of claims for performance into declaratory relief. The chapter concludes by assessing the effects of arbitral awards on insolvency proceedings, thereby providing a practice-oriented perspective on the theoretical issues explored in the preceding contribution.

Part III focuses on **governance failures, directors' duties and behavioural insights**, addressing the persistent gap between the formal design of insolvency law and the way in which key actors behave in practice.

The first contribution in this part is a chapter written by **Prof. Jaka Cepec** and **Lana K. Gotvan** (University of Ljubljana), which examines the so-called "initiation problem", namely the systematic failure of debtors to commence insolvency proceedings in a timely manner.

Drawing on insights from rational choice theory and behavioural economics, the authors analyse the incentives traditionally used by insolvency law to promote early filing and present empirical evidence – particularly from the Slovenian experience – demonstrating their limited effectiveness. The chapter argues that misaligned incentives are compounded by cognitive biases such as overconfidence, loss aversion and the sunk-cost fallacy, and contends that effective regulatory design must incorporate behavioural insights alongside conventional legal "carrots and sticks".

The second chapter is authored by **Luca Lamanna** (Sapienza University of Rome) and develops this behavioural perspective further by critically examining the assumptions underlying the European duty of prevention. Challenging the premise that debtors equipped with early warning tools will act rationally, the chapter introduces the concept of "decisional latency" to describe the systematic delay in acknowledging and responding to financial distress. On this basis, the contribution explores the potential role of algorithmically assisted governance, including artificial intelligence, as a debiasing infrastructure capable of objectifying crisis signals and enhancing the practical effectiveness of preventive insolvency policies, while remaining attentive to the limits of automation and the need for human oversight.

Part IV, the fourth and final part of the volume, addresses **insolvency, public interests and redistribution beyond creditors**, bringing to the fore broader societal, environmental and public-law dimensions of insolvency proceedings.

The first chapter in this part is authored by **Carla Avolio** (Alma Mater Studiorum – University of Bologna) and explores the role of environmental sustainability within insolvency law. Focusing primarily on Italian and EU legislation, the chapter examines whether and to what extent sustainability objectives may bind insolvent undertakings and how they interact with the traditional objective of maximising creditor recovery. Particular attention is paid to the temporal dimension of insolvency decision-making and to the relevance of environmental considerations in the context of pre-pack proceedings, as well as to the legal remedies available to creditors seeking to challenge sustainability-driven decisions by insolvency practitioners.

The second chapter is authored by **Prof. Rebecca Parry** and **Dr Hakan Sahin** (Nottingham Trent University) and analyses the use of nationalisation as a response to the financial distress of public service providers in a globalised investment environment. Using the case of Thames Water as a focal point, the chapter examines the legal and economic constraints imposed by international investment agreements and the duty to compensate foreign investors in cases of expropriation. The authors highlight how these constraints complicate state intervention and may significantly limit the feasibility of nationalisation as an alternative to insolvency, thereby exposing the tension between public interest objectives, market mechanisms and investor protection.

Taken together, the contributions in this volume illustrate both the increasing complexity of contemporary insolvency law and its evolving role as a framework for mediating between private ordering, public interests and global economic integration.

Dr Emilie Ghio
Lecturer in Corporate and Insolvency Law
Edinburgh Law School
The University of Edinburgh
United Kingdom
emilie.ghio@ed.ac.uk

Dr Eugenio Vaccari
Associate Professor of Law
Royal Holloway Law School
Royal Holloway, University of London
United Kingdom
eugenio.vaccari@royalholloway.ac.uk

A Note on the Academic Forum

The INSOL Europe Academic Forum, founded in 2004, is a constituent body of INSOL Europe, the largest European association of academics, practitioners, and experts in insolvency. This event is regularly attended by those engaged in the research and study of insolvency, from recognised and established scholars to new entrants to the insolvency world.

The Academic Forum's primary mission is to provide a platform for INSOL Europe's members interested in insolvency law and research and to encourage and assist the development of research initiatives in the area of insolvency.

The Academic Forum meets annually, in conjunction with INSOL Europe's main conference. It also organises half-yearly conferences on themes of interest to the practice and academic communities. Previous meetings have taken place in Prague (2004); Amsterdam (2005); Monaco (2007); Leiden and Barcelona (2008); Brighton and Stockholm (2009); Leiden and Vienna (2010); Milan, Venice, and Jersey (2011); Nottingham and Brussels (2012); Trier and Paris (2013); Leiden and Istanbul (2013); Trier, Nottingham, and Berlin (2015); Berlin and Lisbon (2016); Trier and Warsaw (2017); Athens (2018); Copenhagen (2019); Dublin and Dubrovnik (2022); Amsterdam (2023); and Sorrento (2024). During the COVID-19 pandemic, INSOL Europe shifted its activities online. For example, in 2021, the Academic Forum was held online. Several other smaller events, including university seminars and colloquia, have also been co-hosted by the Academic Forum, in partnership with other institutions across Europe.

The generous support of Edwin Coe LLP (2007-2014; 2018-present) and Shakespeare Martineau (2015-2017) has enabled the Academic Forum to award travel grants to early-career scholars and to organise an annual keynote lecture by a leading international scholar. Past lecturers have included Prof. Jay Westbrook (University of Texas, US), the late Prof. Gabriel Moss QC (3/4 South Square, Gray's Inn, UK), the Hon. Mr Justice Ian Kawaley (Supreme Court of Bermuda), Prof. Karsten Schmidt (President of the Bucerius Law School, Germany), the late Prof. Ian Fletcher (University College London, UK), Prof. Rosalind Mason (Queensland University of Technology, Australia), Prof. Axel Flessner (Humboldt University Berlin, Germany), HH Judge Ignacio Sancho (Spanish Supreme Court), Frank Verstijlen (Groningen, the Netherlands), Prof. Ignacio Tirado (Secretary General of UNIDROIT/University of Madrid, Spain), Prof. Irene Lynch Fannon (Head of Knowledge Management at Matheson, Ireland), Prof. Emeritus Bob Wessels (Leiden University, the Netherlands), and Prof. Stefania Bariatti (UNIDROIT/University of Milan).

These lectures, as well as many of the presentations at the Academic Forum conferences, have been collated and published in conference proceedings booklets. These publications constitute comprehensive conference reports and contain accounts of recent research in the field of insolvency and restructuring which academics, practitioners, judges and policymakers may find useful. The technical publication series was inaugurated in 2009 with papers presented at the Leiden and Barcelona events in 2008. Since the COVID-19 pandemic, the INSOL Europe Council has opted for publishing these proceedings in a digital format only.

The Academic Forum's next meeting is scheduled to take place on 14-15 October 2026 in Vilamoura (Portugal). It will be preceded by the seventh YANIL workshop on 13 October and

followed by the INSOL Europe Conference (15-18 October). Details of these conferences and events are available on the INSOL Europe website. You may also find further information about the work of the Academic Forum on its Facebook, LinkedIn, and Twitter pages.

We look forward to seeing you in Vilamoura in October 2026!

Dr Emilie Ghio
Lecturer in Corporate and Insolvency Law
Edinburgh Law School
The University of Edinburgh
United Kingdom
emilie.ghio@ed.ac.uk

Dr Eugenio Vaccari
Associate Professor of Law
Royal Holloway Law School
Royal Holloway, University of London
United Kingdom
eugenio.vaccari@royalholloway.ac.uk

The Importance of Being an Insolvency Proceeding: A Swiss Perspective of Recognition

Antonia Mottironi[*] *and Rodrigo Rodriguez*[**]

Abstract: This article examines when and how foreign proceedings qualify as "insolvency proceedings" for the purposes of recognition in Switzerland, and why that qualification is outcome determinative for cross border practice. Switzerland's position outside the EU insolvency framework, combined with its blocking statute creates a distinctive recognition landscape in which characterisation is closely tied to questions of sovereignty and criminal risk. The article first sets out the supranational and Swiss legal frameworks governing recognition of insolvency decrees and insolvency related judgments, highlighting the fault lines between insolvency, civil and commercial matters, and "death zone" proceedings that fall through the cracks. It then analyses, from a Swiss perspective, the treatment of English schemes of arrangement, restructuring plans, creditors' voluntary liquidations, insolvency related misconduct claims and receiverships, using them as case studies to illustrate the functional criteria Swiss courts apply. The authors show how small differences in design – such as court involvement, collective effects, stays on enforcement or cram down features – may shift a proceeding from one category to another, with profound implications for indirect jurisdiction, access to Swiss asset recovery tools and the exposure of foreign office holders under the Swiss Criminal Code. The Swiss experience thus offers a concrete laboratory for testing the coherence of emerging "hybrid" and preventive procedures and underscores, for judges and practitioners alike, the practical importance of being – and being recognised as – an insolvency proceeding.

Keywords: blocking statute; Brussels I (recast) Regulation, CVA; GateGroup; insolvency proceedings; EU Insolvency Regulation; recognition; receivership; Restructuring plan; Switzerland; Scheme of arrangement, Swissport.

1 Introduction: the challenges and importance of qualification

The general subject of this article is how decisions and proceedings regarding insolvency may be characterised in a continental European system like Switzerland – and the consequences that such characterisation entails.

This article takes as its starting point a simple question: when, in the eyes of Swiss law, is a foreign process truly an "insolvency proceeding"? The answer is anything but trivial. In Switzerland, the qualification of a foreign proceeding as "insolvency" rather than "civil and commercial" determines not only which recognition regime will apply, but also whether foreign office holders risk criminal exposure if they act without prior recognition.

Under the "Swiss blocking Statute" (Article 271 of the Swiss Criminal Code), foreign insolvency office holders qualify as foreign public officials under Swiss criminal provisions protecting the sovereignty of the country against unauthorised acts of foreign officials on its territory.[1] In other words, recognition

[*] Antonia Mottironi is Swiss-qualified lawyer admitted to the Geneva and Swiss Bars. She regularly publishes in the fields of debt collection, business crime and recognition and enforcement. She is founding partner of Ardenter Law in Geneva (Switzerland).

[**] Rodrigo Rodriguez is Professor for Civil Procedure and Insolvency Law at the University of Lucerne (Switzerland) and Head of the Federal Supervisory Authority on Insolvency at the Swiss Federal Office of Justice. Both authors thank Carina Betschart, MLaw, for her valued assistance.

[1] "1. Any person who carries out activities on behalf of a foreign state on Swiss territory without lawful authority, where such activities are the responsibility of a public authority or public official, any person who carries out such

whether as insolvency decree is not merely a gateway to procedural opportunities; it is also a condition for lawfully exercising powers: foreign office holders appointed by foreign courts or authorities must be authorised by Swiss courts or authorities to act on Swiss territory, directly or through an ancillary Swiss liquidator. This must be achieved by recognition proceedings.

Apart from its strict blocking statute, the famous Swiss banking secrecy[2] makes it challenging (but by no means impossible) to obtain information and to secure assets prior to the recognition of the foreign insolvency decree. Despite its economic integration, Switzerland is not a member of the European Union and is therefore not directly bound by the EU instruments in the field of insolvency.

Switzerland is also a civil law jurisdiction, in which pre-trial disclosure orders are generally not available in civil courts.[3] For these reasons, and outside of fraud-related insolvency cases with a sufficient Swiss criminal nexus, taking actions in this country is often considered at a later stage, for instance when a Swiss element is identified during foreign proceedings. This may come as a surprise since Switzerland still manages more than 25% of the world's foreign assets,[4] has thousands of service providers such as trustees and wealth managers and is the world's number one commodity trading and trade finance hub,[5] and intends to become the new crypto-valley.[6] This is to say, the jurisdiction remains a major asset recovery hub in contentious insolvency cases, in particular in global trade, banking and fraud cases.

In some situations, being recognised as insolvency proceedings can give the party granted recognition key procedural advantages compared to remaining a civil, or "private", claimant: the capacity to file civil claims, including by joining criminal proceedings; the lift of the banking secrecy on the assets of the debtor; the possibility to obtain information from the debtor through a secondary proceeding and other disclosure orders against third parties holding information on the debtor or against which the debtor may have a claim, even at their own prejudice;[7] and the recognition of judgments related to the main insolvency proceeding. In some cases, however, being considered a civil proceeding may enhance the chances of recognition as opposed to insolvency proceedings, for instance when several groups of creditors have opposite interests and an interest in creating *lis pendens* first (*forum running* before institution of collective measures).

---

activities for a foreign party or organisation, any person who facilitates such activities, shall be liable to a custodial sentence not exceeding three years or to a monetary penalty, or in serious cases to a custodial sentence of not less than one year."

2 Swiss banking secrecy is provided for in Article 47 of the Federal Banking Act. It is conceived as a criminal offence that punishes the breach of secrecy by the bank towards its client. The client of the bank is the beneficiary of the secret, which can be opposed to the bank as their counterparty. In turn, the bank cannot reveal to third parties the existence of the contractual relationship with its client. Banking secrecy cannot be opposed in criminal and insolvency proceedings. In civil proceedings (including execution of letters rogatory), banking secrecy qualifies as "other legally protected secrets", far behind the professional secrecy of lawyers, priests or doctors. The Swiss Federal Court recalled that banking secrecy is only an exception to the duty of third parties holding information to collaborate (see Swiss Federal Court,4A_340/2015).

3 The Swiss Civil Procedure Code of 2011 has provided for a narrow possibility of pre-trial securing of evidence under its new Article 158 – however, its conditions and the possibilities it offers are still much narrower that under, for instance, US procedural law.

4 'Banking Barometer 2024' (Swiss Banking Association), available at: https://www.swissbanking.ch/en.

5 Swiss Commodity Trading Association (SUISSENÉGOCE), see the 2025 and 2026 Report, available at: https://suissenegoce.ch/app/uploads/2025/11/2025_SN_ANNUAL-REPORT.pdf.

6 'Crypto Valley Grows 132% Since 2020: Now Hosts 1,749 Companies' (Switzerland Global Enterprise, 22 May 2025), available at: https://www.s-ge.com/en/article/news/crypto-valley-growth ("Zug dominates capital-market structuring and technical operations, hosting 47% of Financial Services and 43% of Infrastructure firms. Emerging regional specializations suggest that founders are selecting locations for their sectoral expertise and deep local networks. Such as: Ticino claims 10% of Consulting incorporations. Basel-Stadt and Basel-Landschaft have over 25% of their entities focused on coding. Geneva leads in Security, Audit & Compliance, with 40% of its firms in this domain. Lucerne stands out in DeFi, hosting over 10% of the sector's firms")

7 See Swiss Federal Court, 5A_126/2020.

Hence, recognition cannot be seen only as a procedural opportunity (or necessity), but must also be considered as a requirement to avoid foreign insolvency office holders being prosecuted for breach of the Swiss blocking statute.

The qualification of foreign proceedings as "insolvency" proceedings is therefore paramount for any foreign office holder contemplating actions on Swiss territory, from both procedural and criminal perspectives.

In light of this background, the aim of this Article is twofold. First, it maps the supranational and Swiss legal frameworks that govern the recognition of foreign insolvency decrees and insolvency-related decisions, with particular attention to the fault-lines between "insolvency", "civil and commercial" and less neatly classifiable proceedings. Second, the authors test this framework through a series of concrete examples that are central to contemporary practice: common-law schemes of arrangement and restructuring plans, creditors' voluntary liquidations, insolvency-related judgments and receiverships. Each of these mechanisms exposes different tensions between functional insolvency effects, formal classification in the lex fori, and the criteria applied by Swiss courts for recognition.

Geographically and economically integrated in Europe without being in the EU, Switzerland made the choice to adopt its own domestic UNCITRAL-compatible law on cross -border insolvency; the country is therefore at the crossroads of several legal systems, which makes its legislation and case law of particular relevance in international restructuring and insolvency cases. Understanding how and when a foreign proceeding will be seen as an "insolvency proceeding" in Switzerland can improve the design of restructuring strategies, inform forum choices, and reduce the risk of unintended gaps – the "death zones" in which no recognition regime clearly applies. It offers a case study for anyone interested in the future of cross-border insolvency cooperation, the interaction between public and private enforcement, and the design of hybrid or preventive procedures at the intersection of insolvency and company law.

2 The legal framework(s)

2.1 The supranational framework

This section sets out the supernational legal framework concerning recognition and enforcement of insolvency decrees and insolvency-related decisions. Under international instruments – just as much as under the national legal recognition regimes -, characterisation of a decision is crucial for its recognition. Depending on where the decision was issued, one characterisation will lead to recognition and the other to refusal.

The following matrix establishes four different categories of decisions. The first is the commercial decision, as generally defined in the recast Brussels I (recast) Regulation and/or the Lugano Convention[8] and in the provisions of Titles 1–10 of the Swiss Private International Law Act ("SPILA").[9] The last one on the opposite side of the matrix is the insolvency decree, as defined in the EuInsReg and Title 11 of the SPILA or in the UNCITRAL Model Law on Cross-border Insolvency. In between, the category of "insolvency-related judgments" is introduced. This category refers to decisions covered by Article 32 paragraph 2 of the EuInsReg, Article 174*c* of the SPILA and the specific UNCITRAL Model Law dedicated to those decisions. A "non-category" has been added under the mysterious "death zone"

[8] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351/1. Its scope is mirrored in the Lugano Convention (Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters OJ L 339/3) which is applicable between Switzerland and the EU countries (plus Iceland, Norway and Denmark).

[9] See its (unofficial) English translation, available at: https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/en

column. This column refers to proceedings that cannot be clearly assigned to any of the other categories and for which, as a consequence, none of the recognition regimes can be made applicable.[10]

For every category, the table cites some example(s) of proceedings that – in the authors' view – would likely fall under the respective category. The next line cites the legal regime or specific source applicable to the cross-border recognition of the respective category. The last line specifies the jurisdictional criteria that those regimes provide for the respective proceedings to be recognised (i.e. where the proceeding must have been opened to stand a chance to be recognised or "indirect jurisdiction").

The recognition game – Faites vos jeux!

	Commercial decision	**"death zone"**	**"insolvenc-related judgment"**	**"insolvency decree"**
Examples	Scheme of arrangement [?][11]	Receivership [?]	Wrongful trading	Restructuring Plan [?] CVL
Legal source	Brussels/Lugano Hague 05/19[12]		EuInsReg 32 II/ 174*c* SPILA (UN)MLIJ	EuInsReg 166 + 175 SPILA (UN)MLCBI
Proper "indirect jurisdiction"	Chosen forum or commercial fora		CH[13]: Any place - but not a reg. seat in CH, plus a recognisable related proceeding EU: Any place within EU	COMI CH: or registered seat

2.2 To be an insolvency proceeding in the EU

The EU has an extensive set of rules regarding cross-border insolvencies. Thankfully, Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (the "recast EuInsReg") has elaborated extensively on a definition. According to that definition, the Regulation shall apply to:

> public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:
> (a) a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;
> (b) the assets and affairs of a debtor are subject to control or supervision by a court; or
> (c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to

[10] Why are they in the 'death zone'? They are not considered insolvency proceedings (for instance, because they lack 'collectiveness') and are not regarded as "private law" or "commercial" decisions, even though they include powers of enforcement. These powers are – outside the specific context of insolvency proceedings – considered to be strictly territorial. Such decisions will therefore not be able to be recognized abroad; their effect may, however, be achieved through a new Swiss enforcement decision. However, many common-law enforcement tools are simply not available under Swiss law.

[11] The question mark reflects the legal uncertainty still surrounding characterisations.

[12] Referring to the Brussels I (recast) Regulation and the parallel instrument, the Lugano Convention (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) as well as to the Hague Conventions of 2005 (on Choice of Court agreements) and 2019 (on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters).

[13] "CH" refers to the Switzerland ("Confoederatio Helvetica").

protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).

The Regulation further specifies that "where the […] may be commenced in situations where there is only a likelihood of insolvency, their purpose shall be to avoid the debtor's insolvency or the cessation of the debtor's business activities". It further states that the proceedings covered by the definition shall be listed in an Annex. Accordingly, Annex A has an extensive list of proceedings of the different Member States. While doctrine is split on the question of whether this list is an exhaustive one or whether the Regulation would also cover proceedings that fall under the definition but have, for whatever reason, not been included in it, Recital 9 (of the recast) explicitly states that the list in Annex A is "exhaustive" and that "national insolvency procedures not listed in Annex A should not be covered by this Regulation".[14]

Interestingly, a second EU instrument, the EU Preventive Restructuring Directive ("PRD")[15] seems to have an even wider – and separate – definition of the proceedings covered by it. Eager to include also so-called "hybrid" proceedings, it has opted for a separate definition from that of the EuInsReg[16] – which adds to the complexity of defining what is an insolvency proceeding in the EU. However, the Restructuring Directive is a mere harmonisation instrument with no provisions on cross-border recognition.

The Insolvency Regulation provides (in its scope) for mutual recognition of its proceedings. As a consequence, only proceedings subject to the EuInsReg will take advantage of the automatic EU-wide recognition under that Regulation.

Where an EU decision is of a civil and commercial nature, the EU Regulation on the Recognition and Enforcement of Decisions in Commercial Matters (Recast Brussels I)[17] comes into play. By virtue of Article 1(b) of that Regulation, "bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings" are excluded from its scope. This exclusion is widely understood as giving priority to the EuInsReg for those decisions, the two Regulations thereby "dovetailing" to cover all possible decisions.[18]

Given that the EuInsReg and the recast Brussels I Regulation provide for a completely different set of conditions – in terms of indirect competence – for recognition, characterisation of a foreign decision (for the purposes of the scope of one or the other regulation) is of paramount importance in respect of its cross-border effects.

2.3 The Swiss framework

2.3.1 The Swiss Blocking Statute and the qualification of foreign insolvency office holders as foreign officials and its consequences

[14] This view, is, however, not unanimously shared in doctrine.

[15] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 [2019] OJ L 172/18. See also Fn 8.

[16] Its Article 1 defines its scope as follows: "This Directive lays down rules on: (a) preventive restructuring frameworks available for debtors in financial difficulties when there is a likelihood of insolvency, with a view to preventing the insolvency and ensuring the viability of the debtor; (b) procedures leading to a discharge of debt incurred by insolvent entrepreneurs; and (c) measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt."

[17] See Fn 8.

[18] See *F-Tex SIA v Lietuvos-Anglijos UAB* "Jadecloud-Vilma" (Case C-213/10) [2013] Bus LR 232 [21], [29] and [48]; *Nickel & Goeldner Spedition GmbH v "Kintra" UAB* (Case C-157/13) [2015] QB 96 [22].

Embedded in Article 271(1) of the Swiss Criminal Code, the Swiss Blocking Statute provides that any person: who carries out activities on behalf of a foreign State on Swiss territory; without lawful authority; and where such activities are the responsibility of a public authority or public official, shall be liable to a custodial sentence not exceeding three years or to a monetary penalty, or, in serious cases, to a custodial sentence of not less than one year.

Foreign insolvency office holders qualify as persons who carry out activities on behalf of a foreign State as they are appointed by a court in order to conduct a non-voluntary liquidation process. They thus have to be vested with lawful authority by seeking recognition of the foreign insolvency decree before Swiss courts. In this context, the qualification of the foreign decision as being whether it is an insolvency decree or not is paramount. The omission to seek recognition due to the wrong belief that a foreign decision is civil or commercial may entail criminal liability of the foreign insolvency office holder for breach of Swiss sovereignty and national interests, if this "civil or commercial" foreign decision appears to qualify as an insolvency measure under Swiss law – this is, for instance a difficulty encountered in practice with Creditors' Voluntary Liquidations (see below). Conversely, where the foreign main proceedings quality, pursuant to foreign law, as an insolvency type decision, it may not qualify as such under Swiss law – another typical example is the US receivership (see below). Upstream reflection on the qualification of the foreign decision may therefore determine the decision's fate in terms of recognition, as criteria for the proper originating jurisdiction vary considerably.

Once recognised as insolvency proceedings, the foreign insolvency office holder can benefit from two advantages given in domestic bankruptcy proceedings: banking secrecy cannot be opposed anymore over the assets of the debtor; and disclosure orders, both on assets and information of the debtor, can be ordered by the local bankruptcy offices.[19] This includes any information that may enable the insolvency office holder to identify claims and assess their amounts, even to the prejudice of third parties holding assets or information.[20]

The qualification of foreign proceedings as "insolvency" proceedings is therefore paramount, also (and especially) in the Swiss context.

2.3.2 To be an insolvency proceeding in Switzerland

Switzerland not being an EU member, the EuInsReg does not apply. Insolvency decrees are also excluded from the material scope of the Lugano Convention (see Article1(2)(b), mirroring the same provision of the recast Brussels Regulation). The recognition of insolvency decrees issued outside of Switzerland is therefore governed by the SPILA. Since 2019, cross-border insolvency provisions in this Act apply, which are deemed (while the issue remains debated) generally in line with the UNCITRAL Model Law on Cross-Border Insolvency.[21] In particular, the requirement of reciprocity has been abolished.

Article 166(1) SPILA provides that a "foreign bankruptcy decree" shall be recognised in Switzerland on application of the bankruptcy administrator, the debtor or a creditor if: the decision is enforceable in the state where it was issued; there is no ground to deny recognition (mainly contrariety to Swiss public order and violation of fundamental procedural rights); and the decision was issued in the debtor's state of domicile, or in the state of the centre of the debtor's main interests ("COMI"), provided the debtor was not domiciled in Switzerland when the foreign proceedings were opened.

[19] The involvement of the local bankruptcy office can be avoided for simplicity and cost reduction (see Article 174a SPILA), but then also its powers to recover information will not be made available.

[20] See Swiss Federal Court, 5A_126/2020.

[21] R. Rodriguez, 'Is Swiss international insolvency law finally embracing the Model Law?' in A. Lienhard et al. (eds.), *Mélanges en l'honneur de Jean-Luc Vallens* (Joly éditions, 2017). See generally on the reform, R. Rodriguez and M. Jakob, 'Switzerland's new (or updated…) international insolvency law' (Eurofenix, Winter 2018/2019) 26, available at: https://www.insol-europe.org/download/documents/1384

Swiss law refers to "bankruptcy" decrees rather than to "insolvency" decrees, yet case law specifies that, within the context of recognition, Swiss courts must interpret the notion of "bankruptcy decrees" in a broad manner and pursuant to the *lex fori*.[22] In a leading case on the scope of Article 166 SPILA, the Swiss Federal Court set the standard that

> a foreign insolvency decree has to deploy a set of minimal insolvency-typical effects[23] to be subject to the provisions of Arts. 166 et seq. SPILA [i.e. to be qualified as an insolvency decree, including composition agreements by reference of art. 175 SPILA] […]. One of such insolvency-typical effects [actually the only example given in the decision] is the limitation of the debtor's powers to dispose of his assets.[24]

Further typical factors and effects are (considering the mandatory consequences of the opening of such proceedings under Swiss law): seizure of the debtor's assets "for the benefit of the community of creditors" and prohibition of individual enforcement (Articles 197 and 206 of the Swiss Debt Collection and Bankruptcy Act ["SDCBA"]), limitations on the powers to represent the debtor (art. 204 SDCBA), appointment of an insolvency administration (Articles 235 et seq. SDCBA); in liquidation: sale of the debtor's assets (Article 252 et seq. SDCBA); in restructuring: appointment of an administrator or supervisor (Article 295 or 298 SDCBA), acceptance and confirmation proceedings (Article 304 et seq. SDCBA), and generally binding character of the agreement (Article 310 SDCBA).

More specifically, the Swiss Federal Court defines a bankruptcy decree within the meaning of Article 166 SPILA as "a general and collective enforcement procedure which aims at an equal satisfaction - at least within the same rank of creditors [...] following the taking into judicial custody and the realisation of the debtor's assets and which takes place under the supervision of a court or other authority."[25] It also specifies that the debtor's insolvency must be the cause of the bankruptcy.[26] Case law has also given additional refinement to the definition of a bankruptcy decree:

> The notion of a foreign bankruptcy is determined, under Swiss law, by the functions of the bankruptcy administration. It refers to the authority which administers the bankrupt's estate, realises it and distributes it in accordance with the procedural forms laid down by the law of the State in which the bankruptcy was opened. This notion covers those institutions or persons which, under the foreign law governing the main bankruptcy proceedings, are competent to initiate, conduct and implement those proceedings.[27]

In practice, the distinction between decisions falling within the scope of the SPILA or not is not as easy as it may appear at first glance. The large diversity of proceedings that a court may encounter in recognition proceedings, as well as the recent development toward "hybrid" or "soft touch" proceedings that reduce or even eliminate key aspects of the definitions described above, creates serious characterisation challenges for courts, scholars and practitioners.

3 To be or not to be an insolvency proceeding – some examples

3.1 Schemes and Restructuring plans

[22] B. Dutoit and A. Bonomi, *Droit international privé suisse: Commentaire de la loi fédérale du 18 décembre 1987* (Helbing Lichtenhahn Verlag 2022).

[23] "das ausländische Konkursdekret minimale konkurstypische Wirkungen entfaltet und insofern Gegenstand einer Anerkennung gemäss Artikel 166 Abs. 1 IPRG (oder als sinngemäss zu behandelndes Nachlass- oder ähnliches Verfahren gemäss Art. 175 IPRG) bilden könnte".

[24] Swiss Federal Court, 2C_303/2010 ("Bashkirian"), para. 2.3.1.

[25] A. Braconi, "Commentary on Art. 166" in A. Bucher and F. Guillaume (eds.), *Loi sur le droit international privé – Convention de Lugano* (Helbing Lichtenhahn. 2024), N 2.

[26] Swiss Federal Court, 5A_952/2013, para. 4.3.

[27] Swiss Federal Court, BGE 137 III 631 (2011), para. 2.3.1.

3.1.1 The importance of being an insolvency proceeding

A major obstacle for cross-border recognition of common-law restructurings, which generally often cover also foreign-based group members, is the criterion of (indirect) jurisdiction. The grounds for the assertion of (direct) jurisdiction by, for instance, a UK court (COMI, but also an establishment or even a "sufficient connection") are not the same – especially in the continent and under the EIR, the Brussels Regulation or the Lugano Convention – as those accepted for the purposes of recognition. This is especially the case where the EuInsReg is not applicable and different sources apply for the purposes of asserting jurisdiction and for recognition abroad.

The characterisation[28] of both the English Scheme of Arrangement and the Restructuring Plan under Swiss law essentially has to determine whether the foreign court order sanctioning the Scheme or Plan would fall into the scope of the provisions on "civil and commercial matters" or instead qualify as an "insolvency, composition or a similar proceeding" (Article 1(2)(b) of the Lugano Convention and, similarly, Article 166 and Article 175 SPILA). In the first case, either the Lugano Convention or Article 26 and Article 149 SPILA will apply to it (depending on the time the proceedings were initiated and the interpretation of the intertemporal provisions). In the second alternative, Articles 166–175 SPILA (on recognition of insolvency proceedings) will apply.[29]

It is worth noting that, while the qualification of the proceedings by the originating court can be an important element, it is formally not binding upon the recognising court.[30]

The accepted criteria for "proper" assertion of jurisdiction, leading to recognition in the home jurisdiction in Europe, depend largely on the characterisation of the restructuring tool to be recognised: where the restructuring tool in question is to be considered a *commercial matter* (in the sense of the recast Brussels Regulation), the accepted grounds for jurisdiction will generally be:

- The choice of forum in the relevant agreements (if leading to the forum where the restructuring took place), or absent an exclusive choice of forum clause
- The place of performance or the defendant's – or a closely related defendant's – domicile (Article 7 et seq. of the recast Brussels Regulation).[31]

Where the restructuring tool in question is to be considered an *insolvency decree* (or similar restructuring tool under insolvency law), the accepted ground for jurisdiction is generally the debtor's Centre of Main Interests (COMI), sometimes (under Swiss law, for instance) its registered seat.

In the UK, case law has so far differentiated between the Schemes of Arrangement, these having been considered, under the *Swissport* decision,[32] to be subject to the provisions of the Brussels I Regulation for the purposes of jurisdiction (see hereinafter), and *Restructuring Plans* (see below).

3.1.2 Swissport and the consequence for Schemes

---

[28] In Swiss and German private international law, the legal doctrine of "characterisation" ("Qualifikation") refers to the process of classifying a legal concept from a foreign legal system under the categories of the applicable (national) private international law in order to determine which set of rules applies and, consequently, to resolve questions of jurisdiction, applicable law, and recognition and enforcement in respect of that foreign concept.

[29] R. Rodriguez, 'Recognition of Schemes and Restructuring Plans in Switzerland and under the Lugano Convention' (2023) *European Insolvency and Restructuring Journal*, available at: https://eirjournal.com/article/view/15837/17291

[30] As last evidenced in the 'Sabena' decisions of the Swiss Federal Court, where that court refused the Belgian court's qualification of the claim under the Lugano Convention, leading to the refusal of the recognition of the Belgian decisions: see Swiss Federal Court, BGE 133 III 386 (2001); Swiss Federal Court, BGE 135 III 127 (2008); Swiss Federal Court, BGE 140 III 320 (2014); Swiss Federal Court, BGE 141 III 382 (2015).

[31] Other legal systems outside the Lugano/Brussels scope may provide for additional jurisdictional fora.

[32] *Re Swissport Fuelling Ltd* [2020] EWHC 1499 (Ch).

For the purposes of this paper, the English Scheme of Arrangement is assumed (in a simplified way) to follow the following definition:[33] A compromise or arrangement between a company and its members or creditors (or any class of them) under Part 26 (sections 895 to 901) of the Companies Act 2006. A scheme of arrangement can be used to effect a solvent reorganisation of a company or group structure, as well as to effect insolvent restructurings, such as by a debt for equity swap or by a wide variety of other debt-reduction strategies. A scheme requires approval by at least 75% in value of each class of the members or creditors who vote on the scheme, being also at least a majority in number of each class. If the scheme includes a reduction in the company's share capital, a separate special resolution of the company's members (requiring a 75% majority of those voting) is also necessary. A UK court's permission is needed to convene the meetings of members and creditors to vote on the scheme. The court will, at this point, review whether any division of the members and creditors into classes for voting purposes is appropriate. If the relevant members and creditors approve the scheme, the court will decide at a further hearing whether to sanction the scheme and will look at whether the approved scheme is fair. If the court sanctions the scheme, the scheme is binding on all affected members, creditors and the company.[34]

The English court will accept jurisdiction to sanction a Scheme of Arrangement in respect of a foreign-incorporated company if it is satisfied that there is a "sufficient connection" with England. Factors which have frequently led the court to determine that a company has a 'sufficient connection' include:

> (i) it has substantial assets in England;
> (ii) its COMI is in England; or
> (iii) the liabilities subject to the scheme are governed by English law (whether or not coupled with an English jurisdiction clause).[35]

While the Scheme shares with the definition of insolvency proceedings cited above a series of elements (the purpose of restructuring of debts, court supervision, overvoting of dissenting creditors), it also fails to fulfil a series of key elements, such as encompassing all of the debtor's creditors;[36] providing for an automatic stay of individual enforcement against the debtor; and being provided for in a law relating to insolvency as well as requiring the financial distress of the debtor.

In *Swissport*, the UK Court decided that an English Scheme of Arrangement was, in terms of jurisdiction, subject to the provisions of the (then applicable) Brussels/Lugano Regulation. This implied a characterisation closer to a "commercial matter" (to which the said instruments apply) than to a "bankruptcy, […] compositions and analogous proceedings" (which are excluded from those instruments).

The consequence of this approach is that:

---

[33] 'Scheme of arrangement' (Practical Law, Glossary), available at: https://uk.practicallaw.thomsonreuters.com/0-107-7201?contextData=(sc.Default)&transitionType=Default&firstPage=true. For a more detailed definition and further references, see E. Vaccari and E. Ghio, *English Corporate Insolvency Law: A Primer* (Edward Elgar Publishing, 2022), pp. 185–190.

[34] E. Moustaira, 'English schemes of arrangement – [how] will they be recognized by the EU Member States?' (2021*) Lex & Forum* 195, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4158782. On the Schemes of Arrangement, se 'Scheme of arrangement' (Practical Law, Glossary), available at: https://uk.practicallaw.thomsonreuters.com/0-107-7201?contextData=(sc.Default)&transitionType=Default&firstPage=true. For a more detailed definition and further references, see E. Vaccari and E. Ghio, *English Corporate Insolvency Law: A Primer* (Edward Elgar Publishing, 2022), pp. 185–190.

[35] J. Payne, *Schemes of Arrangement: Theory, Structure and Operation* (Cambridge University Press, 2021) *passim*; J. Watson, 'Forging the connection: Foreign companies & English schemes of arrangement' (2015) *Eurofenix* 23; E. Vaccari and E. Ghio, *English Corporate Insolvency Law: A Primer* (Edward Elgar Publishing, 2022), pp. 185–1887.

[36] Which it could in theory, but this is very rarely the case in practice.

1) jurisdiction for a Scheme can be based on choices of court or, in their absence, on the grounds of the Brussels/Lugano instruments (defendant's domicile, place of performance, related party domicile etc.), and
2) the scheme is subject to automatic recognition in all EU and Lugano countries. Automatic (Brussels) and semi-automatic (Lugano) recognition implies that there is no review of the grounds of jurisdiction by the recognising court.

3.1.3 Restructuring Plans under GateGroup

A UK Restructuring Plan is an arrangement which may be proposed under Part 26A of the Companies Act in relation to a company which "has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern".[37] Part 26A was introduced into the Companies Act 2006 by the Corporate Insolvency and Governance Act of 2020, i.e. clearly by a law "relating to insolvency".[38]

In addition to this specific scope, the following particularity differentiates it from the pre-existing Scheme of Arrangement. A Scheme of Arrangement requires approval of more than 50% in number constituting at least 75% in value of each relevant class of creditors or members, present and voting either in person or by proxy in favour of the Scheme for it to proceed to sanction by the Court. The Restructuring Plan, in turn, allows the court discretion to sanction it where a number representing 75% in value of the creditors or members of at least one class are present and voting either in person or by proxy in favour of the Plan. This applies even where there is a dissenting class (or classes) (which therefore binds that dissenting class (or classes) to the Plan [i.e. a "cram down"]), provided that:

> (i) no members of the dissenting class are any worse off under the "relevant alternative" to the Plan, and
> (ii) at least one of the classes that has voted in favour of the Plan would receive a payment, or have a genuine economic interest in the company if the relevant alternative were implemented.[39]

The Restructuring Plan differs from the Scheme in a few – yet essential – elements. Its purpose is "rescue, adjustment of debt, reorganisation" and it is only applicable where "the company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern". The possibility of a "cross-class cram down" in the new Restructuring Plan adds a heavily non-consensual element that is characteristic of insolvency proceedings.[40]

Consequently, in *GateGroup* [41] the UK Court characterised a Restructuring Plan under Part 26A of the Companies Law as an insolvency proceeding – for the purposes of asserting jurisdiction and for

---

[37] Section 901A(2), Companies Act 2006.

[38] UK Parliament, House of Commons Library, 'Corporate Insolvency and Governance Act 2020' (Research Briefing, 6 April 2022), available at: https://commonslibrary.parliament.uk/research-briefings/cbp-8971/#:~:text=The%20Corporate%20Insolvency%20and%20Governance%20Act%202020%20(CIGA%202020)%20received,assist%20businesses%20during%20the%20pandemic (("the Part 26A restructuring plan was introduced as part of the 'permanent [set of] insolvency measures in the Act (previously announced by the Government, and in development before Covid-19)', intended to 'mark a major change in UK insolvency law towards a business rescue culture more in line with U.S. insolvency (chapter 11)'").

[39] The relevant alternative will be whatever the court considers most likely to occur if the Plan is not sanctioned by the court (for example, this might be an administration or liquidation or, potentially, an alternative plan), see E. Vaccari and E. Ghio, *English Corporate Insolvency Law: A Primer* (Edward Elgar Publishing, 2022), pp. 191–93. Recent decisions of the English Court of Appeal (in re: *Adler*, *Thames Water* and *Petrofac*) have supplemented the purely statutory test with an overall fairness test.

[40] PRD, Article 11.

[41] Gategroup Guarantee Ltd [2021] EWHC 304 (Ch); see Niederer Kraft Frey, 'Gategroup Restructuring Plan Approved by English Court' (29 March 2021), available at: https://www.nkf.ch/news/deals-cases/gategroup-

addressing its chances to be recognised in the relevant jurisdictions. With COMI as the main criterion for asserting jurisdiction (and having it recognised under the EIR and national laws), both the use of a UK-based newco and COMI-shifts were used. Subsequent implementation in the relevant jurisdiction was not challenged – this qualification is thus not court-tested.[42]

3.1.4 Consequences of Swissport and GateGroup for Schemes and Restructuring Plans

According to these findings and the cited jurisprudence, a *Restructuring Plan* is likely to be considered (by a Swiss court, or, in this view, by most continental European courts) a "composition or similar proceeding", falling under the exclusion of art. 1 para 2 (b) of the Lugano/Brussels instruments - and consequently, under Articles 166 to 175 of the SPILA. It is thus also not a commercial matter falling under the substantive scope of the Lugano Convention or Articles 25–26 and 149 of the SPILA. The consequential applicability of national law provisions on the recognition of insolvency proceedings (Articles 166 et seq. SPILA) would lead to a Part 26A Restructuring Plan being recognised and enforced in Switzerland (upon application to the Swiss court) under the conditions of Articles 166 para 1(c) SPILA, namely that the Plan company (provided it is the material debtor) had its registered seat or its COMI in the UK.

In turn, a *Scheme of Arrangement* is more likely to be characterised as a "commercial matter". In Switzerland, recognition proceedings would then be subject to the conditions in Articles 25–27 and 149 of the SPILA (the UK no longer being bound by the Lugano Convention). These provisions would namely require that parties bound by the Scheme have validly submitted to the jurisdiction of the UK courts.

The following overview shows the jurisdictional sources of law applicable in respect of the different instruments (in view of their qualification) and the consequences for the relevant jurisdictional attachment criterion:

	Scheme of arrangement	**Restructuring Plan**
Characterisation	Civil & commercial	Insolvency
Legal source		
	SPILA (civil & commercial obligations, art. 149)	(New) SPILA on insolvency (art. 166 et seq.)
	Hague Conventions (2005 and 2019)[43]	(UN)MLCBI
Jurisdictional criterion		
	Choice of forum[44]	Registered seat or COMI

restructuring-plan-approved-by-english-court/; for criticism see R. Mokal, 'What is an Insolvency Proceeding? Gategroup Lands in a Gated Community' (5 June 2022), available at: https://ssrn.com/abstract=4128352.

[42] In a recent – and much discussed – decision of a German court (LG Frankfurt am Main, Vorbehaltsurteil vom 22.08.2025 – 2-12 O 239/24 in re *Aggregate*), the court refused recognition of an English restructuring plan in Germany in summary proceedings as it did neither consider (even) a restructuring plan to be an insolvency proceeding – and refused recognition also on the basis of general recognition rules, doubting the applicable reciprocity requirement was fulfilled. Due to the particularities of the summary proceeding, the decision does not establish a legal precedent, though it illustrates well the uncertainties that UK restructurings face in Europe post-Brexit; for criticism see R Bork, 'Recognition of an English Restructuring Plan in Germany', European Insolvency and Restructuring Journal – EIRJ: 2026-2, available at: https://eirjournal.com/article/view/25454/27646.

[43] The UK being outside the territorial scope of the Lugano Convention, the question of the applicability of the both the Hague Convention of 2005 (on court agreements) and of 2019 (on jurisdiction) arises. For the Conventions and their status, see https://www.hcch.net/

[44] If such a choice is made in accordance with the applicable private international law rules of the recognising State or the applicable treaty (e.g. Convention of 30 June 2005 on Choice of Court Agreements), or, subsidiarily, on any ground of jurisdiction applicable to commercial matters (such as the place of performance or a sufficient connection to a co-defendant's domicile).

As a result, UK law provides for two restructuring tools that are similar, but different in aspects that are key to their characterisation for the purposes of recognition. This opens the possibility for counsel to choose the restructuring tool also, or even mainly, on the basis of the chances of recognition abroad. Where the parties subject to a (potential) Scheme would validly submit (or have submitted) to the jurisdiction of UK courts, a Scheme stands a good chance of recognition. However, where this condition is not met (for instance, one or several of the relevant instruments to be modified by a Scheme or Plan contain an exclusive choice of forum in favour of courts other than UK courts), a Restructuring Plan may be the better option, provided that the Plan company (it being the material debtor) has its COMI in the UK (or can validly shift it there).

The UK is not the only jurisdiction where Schemes are available: Ireland, an EU jurisdiction, also knows similar tools to the (UK) Scheme (namely the Irish Scheme, which case law has already characterised as a commercial decision) and to the Restructuring Plan. Unlike those in the UK, their recognition under the applicable EU instrument will be automatic.[45]

Although the characterisation for purposes of recognition is, in principle, based on the same factors as the criteria for the applicability of the blocking statute of Article 271 of the Swiss Criminal Code.

3.2 Creditor's Voluntary Liquidation

3.2.1 The issue at stake: a creditors' decision or a judicial composition?

A creditor's voluntary liquidation ("CVLs") is an insolvency process in which the shareholders of an insolvent (or about to be) company pass a resolution to wind it up, and an independent liquidator is appointed to realise the company's assets and distribute the proceeds to creditors in the statutory order of priority. It is "voluntary" because it is initiated by the company, but "creditors" because the process is conducted primarily for the benefit and protection of the creditors rather than shareholders.[46] Among several legal purposes, CVLs are used to avoid compulsory liquidation that may be initiated by one creditor separately, through a Court order.

Swiss law provides for judicial composition proceedings at Articles 293 et seq. of the Swiss Debt Enforcement and Bankruptcy Act ("SDEBA").[47] Composition proceedings are defined as an agreement between the debtor and their creditors, adopted by a qualified majority vote within composition proceedings. Through this arrangement, the debtor obtains discharge from their debts either by transferring all or part of their assets to their creditors, or by transferring these assets to a third-party purchaser in return for payment to the creditors.[48] This procedure, governed by Articles 317 et seq. of the SDEBA, constitutes a restructuring mechanism designed to avoid bankruptcy and to settle claims arising prior to the grant of the composition moratorium.[49] Once approved by the competent authority, the composition agreement is binding *erga omnes* on all creditors whose claims predate the publication of the stay, whether they have acceded to the agreement, participated in the proceedings or even lodged their claims late.[50]

---

[45] Barclays Bank (Ireland) [2024] IEHC 738; N. Lillington et al., 'Comparative Analysis of International Restructuring Frameworks: Automatic Stay and Substantive Consolidation in Ireland, the Cayman Islands, Brazil and the USA' (2025) 3 *Norton Journal of Bankruptcy Law and Practice* 303; 'Pioneering Pathways for Restructuring US Governed Debt in Ireland' (Global Insolvency Review, 24 September 2024), available at: https://global-restructuringreview.com/article/pioneering-pathways-restructuring-us-law-governed-debt-in-Ireland

[46] 'Creditor's Voluntary Winding Up' (Chambers and Partners, 24 January 2025), available at: https://chambers.com/articles/creditor-s-voluntary-winding-up; 'Creditors' Voluntary Liquidation: What You Need to Know' (Grant Thornton, 30 January 2025), available at: https://www.grantthornton.ie/insights/factsheets/creditors-voluntary-liquidation-what-you-need-to-know/

[47] A full English translation of this Act is available at: https://www.fedlex.admin.ch/eli/cc/11/529_488_529/en

[48] S. Marchand and O. Hari, *Précis de droit des poursuites* (Schulthess, 2022), p. 365.

[49] Federal Supreme Court (Switzerland), B.34/04, recital 2.

[50] Ibid.

Composition may also be agreed outside of court. Extrajudicial composition is an amiable settlement of debts consisting of a combination of private law contracts entered into between the debtor and their creditors. Unlike a judicial composition, which is subject to court approval, this form of debt restructuring is not subject to any judicial ratification or formal approval. It is based exclusively on the will of the parties and seeks mutual concessions of the creditors, thereby avoiding a full examination of the facts before a court.[51]

3.2.2 Consequences in practice

Article 175 SPILA provides that a composition or a similar procedure approved by a foreign authority shall be recognised in Switzerland. Articles 166–170 and 174*a*–174*c* apply by analogy. Therefore, only judicial composition, i.e. decided or ratified by a court, can be recognised in Switzerland.

In practice, a way to ease the process of recognition in Switzerland is to seek, at the place of the CVL, a Court order appointing the liquidator and specifying that the CVL was decided based on insolvency laws.[52] The CVL must be found similar to an insolvency decree or a Swiss judicial composition. Without recognition, the liquidator may face criminal prosecution for breach of the Swiss Blocking Statute, should they be considered as "appointed by a court" by the mere fact that their authority derives from insolvency laws vesting them with powers to compel all creditors.

An alternative option to CVLs, in a cross-border strategical point of view (and if possible in the relevant jurisdiction), is to consider the appointment of an "administrator" by a Court, in lieu of a voluntary liquidation decided by the creditors.

It is also worth mentioning that Annex A of the EUInsReg mentions, for Ireland, "Creditors' voluntary winding-up (with confirmation of a court)" as insolvency proceedings. It also mentioned the United Kingdom's "Creditors' voluntary winding-up (with confirmation by the court)".

Although the EUInsReg does not apply in Switzerland, it can be a guide or source of inspiration for a Swiss court to qualify a CVL.[53] The requirement of a Court order within the EU countries is also similar to the Swiss requirement of Article 175 SPILA: the CVL must be "approved by a foreign authority". Outside the scope of the Lugano Convention, Brexit does not affect the recognition in Switzerland of CVLs issued in the United Kingdom.

3.3 Insolvency-related decisions (misconduct in the onset of insolvency)

3.3.1 Possible characterisations

As mentioned above, Swiss courts do not recognise foreign insolvency decrees issued at the place of COMI if the debtor is a Swiss company. This applies also to insolvency-related decisions, if and when the decision is related to an insolvency proceeding concerning a debtor with a registered a seat in Switzerland.

The EUInsReg and, since 2019, also the SPILA have specific provisions for recognition of insolvency-related judgments: however, Swiss law excludes that such a decision is rendered outside the defendant's Swiss domicile (Article 166(1)(c) SPILA). This means that any decision against a Swiss-registered company (even if rendered at that company's COMI abroad) will not be recognised in Switzerland.

[51] S. Marchand and O. Hari, *Précis de droit des poursuites* (Schulthess, 2022).
[52] Assuming that the foreign law of the place of liquidation allows this.
[53] G. Kaufmann-Kohler and A. Rigozzi, *Arbitrage international: Droit et pratique à la lumière de la LDIP* (Weblaw-Schulthess, 2010), para. 10, ad art 166 SPILA; S. Marchand and O. Hari, *Précis de droit des poursuites* (Schulthess, 2022), p. 178.

Unlike under the EuInsReg, directors of a Swiss-registered company can only be sued in Switzerland and they must not fear enforcement in Switzerland of a judgment rendered abroad.

A difficulty in the characterisation of insolvency-related judgments that often arises is whether such a claim is not rather a company-law related responsibility claim: this would lead to a decision issued at the company's forum to be recognisable (but not if qualified as insolvency-related), either under the recast Brussels I Regulation or under a specific provision of the SPILA (Article 165, instead of Article 174*c*). Often, the line between a director's liability claim (under company law rules) and an insolvency-related claim (on misconduct or wrongful trading in the onset of insolvency) will not be easy to draw.

3.3.2 Consequences for claims for misconduct of directors:

In cases of mismanagement or other kinds of misconduct by directors of foreign companies, foreign insolvency decrees issued against companies incorporated pursuant to the laws of Switzerland cannot be recognised in Switzerland, even if they may, as such qualify as insolvency proceedings. This is, in part (and apart from sovereignty reasons), explained by the fact that Switzerland does not have a similar jurisdictional test as *forum conveniens* or most appropriate jurisdiction, and, rather and similarly to other civil law jurisdictions, applies strict jurisdiction rules. [Although Swiss law provides for recognition of insolvency-related judgments, this recognition is subject to the recognition of the main proceeding (to which the decision is related).

Those insolvency decrees may, however, qualify as foreign interim relief for the only purpose of protecting the assets of the debtor in this foreign jurisdiction. Then the foreign insolvency office holder appointed by the Court of COMI may apply for recognition under the general provisions of Articles 25 et seq. SPILA (exequatur) and request in rem attachments (whether based on the Debt Collection and Bankruptcy Act interim relief, Articles 100–101 SDEBA and/or ad personam measures provided for in art. 10 SPILA).

3.4 Receiverships (collective and universal proceedings?)

Receiverships[54] do not exist under Swiss law and recognition of receivers is a common pitfall in practice: they usually do not pass the test of qualification as an "insolvency measure", whether by lack of universality, of collectivity or because receivers are not vested with the power to liquidate and distribute the assets of the debtor.

A most recent definition of "receiver" given by Swiss courts can be found in a landmark decision of 26 March 2026:

> "A receiver is a person appointed and instructed by the court to administer, secure and, where appropriate, apply certain items or assets, or all the assets of a specific person, for the purpose determined by the court. Receivers are ordered in particular as a supplementary measure to worldwide freezing orders. WEIBEL explains, with regard to English law, that "[t]he receiver's duty in the context of a freezing order is, briefly, to take care of certain or all of the defendant's assets before and pending trial and thus to prevent dealings with them""[55].

A decision of the Swiss Federal Court of 20 February 2024 denied recognition of New York court orders appointing a U.S. Rule 66 receiver for two judgment creditors. Consequently, receivers could not access Swiss assets.[56] The Federal Court decision found that the receivership orders did not qualify as a "civil matter" under Articles 25 et seq. SPILA: their purpose was debt collection, a public law enforcement activity, not adjudication of a civil claim.

---

[54] The term "receiver" used in this section excludes the 'official receivers' provided by UK Insolvency Act 1986.

[55] Federal Supreme Court (Switzerland), 4A_264/2025, recital. 7.1 and references (English translation by the authors from the German original).

[56] Federal Supreme Court (Switzerland), 5A_999/2022.

However, the orders also did not qualify as an "insolvency measures" under Articles 166 et seq. SPILA, as they served only two creditors and lacked the collective treatment of all creditors required for Swiss bankruptcy recognition.

Consequently, the receiver's powers could not be recognised in Switzerland and could not be exercised on Swiss territory – without breaching the Swiss Blocking Statute.

In a prior decision, rendered in a banking bankruptcy, recognition was also denied to the US receiver appointed at the place of the COMI (vs. joint liquidators appointed in a Caribbean offshore jurisdiction).[57] Apart from non-recognition, at the time, of insolvency measures issued at the place of the COMI, FINMA[58], which is the competent authority for banking insolvencies in Switzerland (and recognition of foreign bank insolvencies), found that receivership did not qualify as an "insolvency measure" because it was limited to the preservation of assets – not directed at liquidation and distribution among all creditors. In this specific case, while the US receiver was not recognised, FINMA recognised instead the foreign bankruptcy order issued by the court of the place of incorporation of the bankrupt entity, and then ordered the opening of a Swiss ancillary bankruptcy.[59]

However, the latest judgment rendered by the Federal Court on 26 March 2026 and quoted above, which confirms non-recognition of receivers pursuant to the US Rule 66 Receivership, recognised the authority of the director of a BVI company, who had been appointed by a receiver appointed by the BVI Hight of Justice[60]. The Swiss Federal Court confirmed the legal standing of the director in Swiss proceedings of remittance of accounts against a Swiss bank, as it had been validly appointed pursuant to the rules of the BVI. More importantly, the Swiss Federal Court made a distinction between receiverships, which main function is to operate as an "interim relief", and receiverships aiming at debt collection (such as US Rule 66 Receeiver). It found that the BVI Receivership order qualified as a measure of relief, which is enforceable in Switzerland pursuant to the general rules on recognition of Art. 25ff. SPILA. It found that:

> "In the common law jurisdiction, a receivership order is a flexible instrument that can be used in a wide variety of situations. The question of whether a court-appointed receiver will be recognised cannot therefore be answered in a uniform manner, but depends in each individual case on the specific nature of the receivership order. The receivership order is frequently used as a form of interim relief. This may be to protect secured creditors from the disposal or removal of assets subject to security interests, or to secure claims that have merely been asserted or have already been established by a court order. In the present case, too, the receivership order issued under BVI law is to be classified, from a Swiss perspective, as a measure of interim relief. F. and G. were appointed as receivers to ensure, during the pending action for payment brought by C. Ltd. against D. and the respondent ("pending resolution of the claim herein") to identify, secure and (if necessary) recover their assets. Nothing about the classification as a precautionary measure is altered by the fact that, under BVI law, the Receivership Order does not automatically lapse upon a judgment in the main action, but must be terminated by a further judgment of a court in the BVI, as the respondent argues […].
>
> Furthermore, it is clear that the receivership order is not a foreign bankruptcy order that could be the subject of recognition under Art. 166 et seq. […], particularly as, according to the

[57] Swiss Financial Market Supervisory Authority (FINMA), Decision of 8 June 2010.
[58] Available at: http://www.finma.ch/
[59] The foreign joint-liquidators could not be authorised to exercise their power in Switzerland as at the time, Swiss law did not authorise direct remittance of Swiss assets to foreign liquidators. Anyway, the existence of secured creditors in Switzerland would have prevented such recognition.
[60] Federal Supreme Court (Switzerland), 4A_264/2025.

findings of the lower court, it is not aimed at a general compulsory liquidation of the respondent in favour of all creditors and does not produce effects typical of bankruptcy proceedings"[61].

These cases illustrate structural frictions between common law and Swiss civil-law approaches to enforcement and insolvency, which can complicate cross-border asset recovery involving Swiss assets if not properly addressed. Even so, tailored use of Swiss recognition rules can still offer effective recovery paths, provided creditors, shareholders, liquidators and receivers obtain upstream jurisdiction-specific advice and adjust their strategy accordingly.

4 Conclusion

What you think you brought from your home jurisdiction into the Swiss recognition court is not necessarily what that court is going to consider it to be. This can come as a surprise or be part of a comprehensive cross-border restructuring planning or liquidation process.

Taking the probable characterisation in the receiving court into consideration may assist restructuring and insolvency advisors and practitioners in ensuring early cross-border recognition – provided the proceedings are initiated at the proper fora according to their characterisation. The right combination of forum and proceeding – or the wrong one – will decide on the cross-border recognition fate of the restructuring, not only in respect of Switzerland. Additionally, in the particular case of Switzerland, taking the appropriate steps in accordance with the probable characterization of your role, may also keep criminal charges at bay.

[61] Federal Supreme Court (Switzerland), 4A_264/2025, r. 7.3 and 10.2.