THE GLOBAL LEGAL POST

SWITZERLAND

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This chapter forms part of:

INTERNATIONAL FRAUD & ASSET TRACING
Law Over Borders Comparative Guide 2026

www.globallegalpost.com/lawoverborders

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1. LEGAL FRAMEWORK AND CAUSES OF ACTION

1.1 What are the principal civil causes of action available in cases of fraud?

The main civil remedy available for fraud claims is the liability in torts provided for by Article 41 of the Swiss Code of Obligations (SCO). Tort liability is given when the claimant proves that the defendant committed an unlawful act. In addition to deceit (Article 28, SCO) and infringement of absolute rights such as property, tort liability will be given in cases of criminal offences when the goal of these offences is to protect assets or interests that were harmed.

Liability in torts may also concur with liability for breach of contract (Article 97, SCO) or unjust enrichment (Article 62, SCO), in particular where they are combined with motives of impossibility (Article 20, SCO), unfair advantage (Article 21, SCO), misrepresentation (Article 23, SCO), or duress (Article 29, SCO).

It is specified here that the specific provisions of insolvency and criminal law will be discussed separately, in Sections 8 and 9 below.

1.2 Are there specific statutory regimes addressing fraud, dishonesty or financial crime?

There are no specific statutory regimes addressing these issues, subject to legal provisions of criminal law (see Section 9, below).

2. JURISDICTION AND APPLICABLE LAW

2.1 When will the local courts accept jurisdiction over international fraud claims?

Switzerland is a Contracting State to the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Clug), which is similar to the Brussel Regulations that apply in the EU. Provisions on direct jurisdiction apply to defendants domiciled in Switzerland on the one hand, and EU Member States and European Free Trade Association ("EFTA", namely Iceland, Lichtenstein, Norway and Switzerland) countries on the other hand, subject to legal provisions on exclusive jurisdictions as provided for at Articles 22 and 23 of the Clug.

Article 2, section 1 of the Clug provides for a general forum in courts of the domicile of the defendant.

Article 5, sections 3 and 4 provide for alternative forums for torts claims. A person domiciled in a state bound by this Convention may, in another state bound by this Convention, be sued:

- in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
- as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings (see Section 9, below, for details on civil action in criminal proceedings).

Subject to the provisions on exclusive or compulsory jurisdiction, parties may also agree, in writing, a prorogation of the Lugano Convention, if one or more party is domiciled in a state bound by the Convention (Article 23 section 1, Clug). With respect to defendants who are not domiciled in the EU or an EFTA country, the Swiss Private International Law Act (SPILA) applies.

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Similarly to the provisions of Clug, Article 2 of the SPILA provides for a general forum in Swiss courts of the domicile of the defendant.

Article 129 paragraph 1 of the SPILA specifies that the Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant have jurisdiction to hear actions in tort. Moreover, the Swiss courts at the place where the act or the result occurred and, for actions pertaining to the operation of an establishment in Switzerland, the courts at the place of the establishment have jurisdiction.

Article 4 of the SPILA provides that where it does not provide for any other forum in Switzerland, the legal action to validate an attachment may be brought at the Swiss forum of the attachment. It must be outlined that a Swiss judgment obtained at the place of the attachment will not be enforceable in the EU and EFTA countries against a defendant domiciled in these jurisdictions, for lack of indirect competence of Swiss courts (Article 35 section 1, Clug), as Article 3 section 2 of the Clug and its Annex I designate the place of attachment as an exorbitant forum.

Article 5 paragraph 1 of the SPILA provides that in matters involving an economic interest, the parties may agree on the court that will have to decide any existing or future dispute arising from a specific legal relationship. The agreement may be done in writing, or by any other means allowing it to be evidenced by text. Unless otherwise agreed, the choice of forum is exclusive. Article 6 of the SPILA specifies that the court before which the defendant proceeds on the merits without reservation has jurisdiction (implied consent).

Switzerland being a civil law jurisdiction, the *forum non conveniens* exception does not apply.

2.2 What connecting factors are relevant?

The relevant factors are:

- the domicile of the defendant;
- the place of the wrongdoing;
- for defendants non domiciled in the EU or an EFTA country, the place of the result of the wrongdoing in Switzerland; and
- for defendants non domiciled in the EU or an EFTA country, the place of the Swiss establishment.

2.3 How do courts approach conflicts of law in fraud and asset tracing cases?

There are no specific legal provisions in fraud and asset tracing cases; general provisions on conflict of laws apply.

Switzerland being a civil law country, rules on conflicts of laws are provided for by statute, which is the first source of law; case law is only a source of inspiration (Article 1 paragraphs 1 and 3 of the Swiss Civil Code (SCC)). Conflicts of laws are governed by SPILA, being specified that the Lugano Convention does not contain provisions on governing law.

Article 132 of the SPILA provides that the parties may, at any time after the damaging event, agree to apply the law of the forum. In absence of choice of law, Article 133 paragraph 1 of the SPILA provides that if the tortfeasor and the injured party have their habitual residence in the same state, claims in tort are governed by the law of that state. Article 133 paragraph 2 of the SPILA specifies that if the

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tortfeasor and the injured party do not have their habitual residence in the same state, these claims are governed by the law of the state in which the tort was committed. However, if the result occurred in another state, the law of that state applies if the tortfeasor should have foreseen that the result would occur there. Notwithstanding the preceding paragraphs, if a tort violates a legal relationship existing between the tortfeasor and the injured party, claims based on that tort are governed by the law applicable to such legal relationship (Article 133 paragraph 3, SPILA).

Reference to a foreign law in SPILA includes all the provisions which under that law are applicable to the case. The application of a foreign law is not precluded by the mere fact that a provision is considered to have public law character (Article 13, SPILA). If the applicable law refers back to Swiss law or to another foreign law, such *renvoi* shall be taken into account only if SPILA so provides (Article 14 paragraph 1, SPILA).

Subject to choice of law, and as an exception, the law referred to by SPILA is not applicable if, considering all the circumstances, it is apparent that the case has only a very loose connection with that law and that the case has a much closer connection with another law (Article 15, SPILA).

Pursuant to Article 16 of the SPILA, the content of the foreign law shall be established by the authorities on their own motion (*ex officio* application of foreign law). For this purpose, the cooperation of the parties may be requested. In matters involving an economic interest, the task of establishing foreign law may be assigned to the parties. Swiss law applies if the content of the foreign law cannot be established.

Article 17 of the SPILA reserves material public policy: the application of provisions of foreign law is excluded if such application leads to a result that is incompatible with Swiss public policy.

3. ASSET TRACING PRINCIPLES

3.1 What assets can be traced?

Tracing is not available in civil proceedings. It is available over the assets of the debtor in insolvency proceedings, including potential claims against third parties (see Section 8, below), as well as over the assets of perpetrators of the fraud and third parties in criminal proceedings (in particular through the prosecution of money laundering or in presence of a criminal organisation: see Question 9.4, below).

3.2 Is tracing possible through mixed funds?

Tracing is not available in civil proceedings. See Question 3.1, above.

3.3 Are proprietary claims recognised in fraud cases?

The legal remedies mentioned at Question 1.1 do not enable persons harmed by fraud to bring property claims over the misappropriated assets. Constructive trusts do not exist under Swiss law. Claw-back actions are available in insolvency proceedings (see Question 8.3, below).

In fraud-related cases, criminal redress will be more efficient in this regard (see Section 9, below). The forfeiture of assets that have been acquired through the commission of an offence or that are intended to be used in the commission of

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an offence or as payment therefore shall be ordered, unless the assets are passed on to the person harmed for the purpose of restoring the prior lawful position (Article 70 paragraph 1, SPC). Restitution in favour of the person directly harmed takes precedence over forfeiture in favour of the state. If illicit and licit assets held in a bank account were mingled, restitution is still possible if a connection can be established between the offence and the bank account concerned. If the paper trail is interrupted due to mingling, the assets must be forfeited and a replacement claim ordered, which will eventually be allocated to the plaintiffs up to the amount of their damage.

3.4 How do courts deal with tracing into substituted assets?

Tracing is not available in civil proceedings. Allocation to the plaintiff of substitutes assets (compensation claim) may be available in criminal proceedings (see Question 9.4, below).

4. INTERIM AND PROTECTIVE REMEDIES

4.1 What interim remedies are available to preserve assets?

Without judgment on the merits, where the debtor is domiciled in Switzerland, and subject to cases where there exist foreign interim orders enforceable in Switzerland (see below), domestic debt collection proceedings may be initiated through a request for issuance of an order to pay to the debt collection office of the place of domicile of the debtor. However, these proceedings do not have a freezing effect before completion of domestic proceedings of validation of the claim.

When the defendant is not domiciled in Switzerland, pre-trial attachment orders may be obtained if, in particular, the claim has sufficient ties with Switzerland. The mere presence of assets in Switzerland is not sufficient to meet the requirement of "sufficient ties". This requirement may be met if the claimant shows likelihood of the commission of money laundering in Switzerland as this entails liability in torts, or where, added to other connecting factors, Swiss law is the governing law of the claim.

Post-trial attachments may be ordered on Swiss-identified assets, irrespective of the domicile of the defendant.

Civil attachment orders are *in rem* orders and only affect the assets held at the moment when the order is notified. The court will not order the disclosure of assets and banking secrecy will apply until the end of the *inter partes* proceedings. Private searches cannot be ordered. The amount of the banking assets actually attached will be disclosed to the claimant only if the *inter partes* attachment proceedings are successful.

Interim reliefs obtained abroad may be enforced in Switzerland, provided that the defendant received proper notice of the proceedings and was heard or had the effective possibility to be heard (*inter partes* proceedings). One should note, however, that documents and information obtained abroad via gag and/or without notice disclosure orders, such as Norwich Pharmacal Orders (NPO) or discovery pursuant to section 1782 of Title 28 of the United States Code, are admitted as evidence in Swiss proceedings.

In all cases of civil attachments, the claimant must show likelihood of the presence of assets in Switzerland and will not receive support of the civil courts in this respect.

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Security for damages caused by unjustified attachment may be ordered *ex officio* or upon request of the respondent.

5. DISCLOSURE AND INFORMATION GATHERING

5.1 What disclosure tools are available to identify assets and wrongdoers?

Outside of insolvency and criminal proceedings, there are no disclosure tools available to identify assets, even in case of fraud or dishonesty.

5.2 Is pre-action disclosure available?

No, outside of criminal and insolvency proceedings, pre-action disclosure is not available in civil proceedings, subject to the narrow scopes of reedition of accounts of Article 400 of the SCO and anticipated taking of evidence provided for at Article 158 of the Swiss Code of Civil Procedure (SCCP).

Article 400 of the SCO is limited to the performance of a contract of mandate, excluding disclosure in support of a claim in torts and information on third parties to the agreement.

Article 158 of the SCCP provides for the possibility of taking evidence located in Switzerland at any time if the applicant can demonstrate a likelihood that the evidence is at risk or that it has a legitimate interest in obtaining the requested evidence. In fact, this pre-trial disclosure tool will usually be limited to what a claimant may be entitled to obtain through an order of production of evidence in the trial.

In the trial, request of production of evidence aims at proving facts that have already been alleged with sufficient precision, and not to enable a party to discover facts on which to base its allegations (ATF 141 III 281; TF 5A_552/2014). The party requesting the production of documents must specify the documents sought with sufficient precision. The court and the opposing party must be able to identify the documents in question unequivocally (TF 5A_256/2016; TF 4A_294/2020).

6. CROSS-BORDER COOPERATION AND JUDICIAL ASSISTANCE

6.1 Can local courts assist foreign proceedings involving fraud and asset recovery?

Yes, local courts assist foreign proceedings whether pursuant to international conventions (see Question 6.3, below), through Articles 31 of the Clug/10 SPILA, or through diplomatic channels. There are no specific rules for fraud and asset recovery cases, however.

6.2 How effective is cooperation with foreign courts and regulators?

Cooperation in civil matters is good. Courts are efficient and experienced in handling these requests. However, they act as authorities of execution only and have no latitude in correcting any mistake that may be contained in the request of the requesting foreign court.

The Swiss federal administration publishes an online guide of mutual assistance by country, which is a helpful tool for parties and authorities, although it has no legal value (*www.rhf.admin.ch/rhf/fr/home/rechtshilfefuehrer.html*).

More specifically, Swiss courts also tend to lift banking secrecy in favour of foreign civil trials even where only private parties are at stake. Parties to the dispute have

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no standing in the Swiss execution of letters rogatory as they are neither the keeper of the secret nor, *per se*, the beneficiary of the secret. The client of the bank (which is usually the account holder but might be the beneficiary owner) 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 their client. This contractual secrecy does not give any direct right to the client against third parties, including courts and authorities. Banking secrecy does not grant any privileged right to refuse to collaborate before courts and authorities. In this regard, the Swiss Federal Court took the opportunity to recall, in a decision of December 2015 (4A_340/2015), that banking secrecy is only an exception to the duty to collaborate of third parties holding information. The only room that remains to Swiss banks to resist a request of collection of banking information is to argue, on a case-to-case basis, that the interest in keeping the secret outweighs the interest in finding the truth in the main trial abroad. Legally speaking, banking secrecy has been relegated to the qualification of "other legally protected secrets", far behind professional secrecy of lawyers, doctors or priests. This is to say, the chances of success of opposing banking secrecy to the collection of banking information in support of a trial abroad are shrinking.

Cooperation between regulators is of administrative nature, at a state-to-state level. In civil proceedings of asset recovery, this channel is not directly relevant for private claimants. However, in financial supervision and proceedings of enforcement, the Swiss Financial Market Supervisory Authority FINMA explicitly states that it answers requests for assistance from foreign supervisory authorities.

6.3 Are there treaties or international conventions commonly relied upon?

Switzerland is a party to:

- the Hague Convention of 1 March 1954 on Civil Procedure;
- the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;
- the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters;
- the Hague Convention of 25 October 1980 on Facilitating International Access to Justice; and
- the European Agreement of 27 January 1977 on the Transmission of Applications for Legal Aid.

7. ENFORCEMENT OF FOREIGN JUDGMENTS AND ORDERS

7.1 Can foreign judgments in fraud cases be recognised and enforced?

Yes, foreign fraud-related judgments are enforceable in Switzerland. There are no specific provisions on the enforcement of foreign judgments in relation to fraud claims in Switzerland.

Civil foreign judgments on fraud cases are considered as civil judgments pursuant to Article 32 of the Clug (for EU/EFTA judgments) and Articles 25ff. of the SPILA (see in particular: Judgment of the European Court of justice of 21 April 1993, *Volker Sonntag v. Hans Waidmann, Elisabeth Waidmann and Stefan Waidmann – Germany*, Case C-172/91).

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7.2 What is the process for enforcing foreign freezing or confiscation orders?

"Confiscation" orders qualify as criminal decisions and cannot be enforced through civil proceedings. Enforcement of confiscation orders must be requested through proceedings of mutual assistance in criminal matters, from state to state. US federal civil forfeiture orders are not enforceable through Swiss civil enforcement as they qualify as criminal confiscation orders.

Swiss law makes a distinction between the enforcement of money and non-money judgments. Money judgments are enforced pursuant to the SDCBA. Non-money judgments are enforced through the SCCP.

Interlocutory injunctions ordering *in rem* conservatory measures are enforceable pursuant to the provisions of the Debt Collection and Bankruptcy Federal Act (SDCBA), with assistance from cantonal debt collection offices. Interlocutory injunctions ordering *ad personam* conservatory measures, like common law world freezing orders, are enforceable pursuant to the provisions of SCCP, with assistance of civil courts.

Enforcement of conservatory measures *in rem* is initiated by a request for order to pay or a request of attachment of Swiss assets. It is eventually decided in the context of the subsequent debt collection proceedings where the judge decides to set aside the objection to the order to pay under Article 80 of the SDCBA. For Clug judgments, debt collection proceedings commence concurrently with the request for a declaration of enforceability before the court. The decision on the declaration of enforceability is binding throughout Switzerland. For other foreign judgments, there is no declaration of enforcement, and a decision on enforcement rendered in one particular debt collection proceeding is not binding on another debt collection proceeding. A review of the merits of foreign judgments is expressly excluded by Article 27 of the SPILA and Article 36 of the Clug.

Under Clug, judgment given in a state that is a party to the Convention must be recognised in the other states without any special procedure being required (Article 33, Clug). The judgment must be declared enforceable immediately and *ex parte* on completion of the formalities provided for at Article 55 of the Clug without any review.

The decision on the application for a declaration of enforceability can be appealed by either party on the grounds in Articles 34 and 35 of the Clug.

8. INSOLVENCY AND FRAUD

8.1 How does insolvency law interact with fraud and asset recovery claims?

Besides the legal provisions of SDCBA on clawback actions (see Question 8.3, below), the interplay between insolvency and fraud results from various combinations of criminal and civil provisions, including procedural rules on legal standing of the debtor and/or the insolvency office holder, whether in civil or criminal courts (see Question 8.2, below).

In cross-border cases, Articles 260 SDCBA and 174a of the SPILA enable the foreign office holders to be granted with legal standing to bring civil claims (whether in civil or criminal proceedings), respectively through assignment of the rights of the Swiss bankruptcy estate and direct recognition of the powers

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of the foreign insolvency office holder. The criminal standing belongs to the insolvent entity only, through its representatives.

The foreign insolvency decree does not need to be recognised before the debtor files a criminal complaint in Switzerland, as long as it acts on Swiss territory through its duly authorised bodies pursuant to the company laws of its place of incorporation. This entails that conservatory measures, such as freezing or disclosure orders, may be obtained within criminal proceedings prior to the recognition of the foreign insolvency decree. In other words, criminal proceedings may be used as interim relief.

Within the insolvency proceedings, Article 222 of the SDCBA grants to the administration of the bankruptcy estate the power to obtain broad disclosure over the assets of the debtor and against third parties against which the debtor may have a claim.

Derivative action is also available under Articles 754 and 757 of the SCO. The members of the board of directors and all persons engaged in the business management or liquidation of the company are liable both to the company and to the individual shareholders and creditors for any losses or damage arising from any intentional or negligent breach of their duties. In the event of the bankruptcy of the damaged company, its creditors are entitled to request that the company be compensated for the losses suffered. However, in the first instance the insolvency administrators may assert the claims of the shareholders and the company's creditors. Where the insolvency administrators waive their right to assert such claims, any shareholder or creditor shall be entitled to bring them. The proceeds shall first be used to satisfy the claims of the litigant creditors in accordance with the provisions of the SDCBA. Any surplus shall be divided among the litigant shareholders in proportion to their equity participation in the company; the remainder shall be added to the insolvent's estate. The assignment of claims held by the company in accordance with Article 260 of the SDCBA is reserved.

The Swiss Penal Code also provides for specific criminal offences in the bankruptcy (Articles 163 to 171, SPC). They qualify as felonies, which means that the proceeds deriving from these offences can be traced through prosecution of money laundering (Article 305 *bis,* SPC). However, in practice, the threshold for the opening of criminal proceedings for criminal mismanagement in the context of insolvency is high and many criminal complaints are terminated, without any investigation, by the issuance of non-prosecution orders.

8.2 Can insolvency office holders bring fraud or recovery actions?

Swiss insolvency office holders may bring fraud and recovery actions. Foreign insolvency office holders cannot bring fraud or recovery actions prior to the recognition of their authority by a Swiss court or authority, whether through a waiver of the Swiss ancillary bankruptcy (Article 174a, SPILA) or assignment of the rights of the estate (Article 260, SDCBA).

Foreign insolvency office holders acting on Swiss territory without prior recognition infringe the Swiss Blocking Statute. Embedded in Article 271, paragraph 1 of the SCP, the Swiss Blocking Statute provides that a person shall be

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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, if they:

- carry out activities on behalf of a foreign state on Swiss territory;
- without lawful authority; and
- such activities are normally the responsibility of a public authority or public official.

Foreign insolvency office holders qualify as persons who carry out activities on behalf of a foreign state, as they are appointed by a foreign court in order to conduct a non-voluntary liquidation process pursuant to insolvency laws. Thus, they have to be vested with lawful authority by seeking the recognition of the foreign insolvency decree before the Swiss civil courts, pursuant to Articles 174ff. of the SPILA.

8.3 Can assets dissipated through fraud be clawed back in insolvency?

Yes. The insolvency office holder and the creditors may open claw-back actions pursuant to Articles 286 to 288 of the SDCBA, in particular in cases of gifts and disposal of assets made without consideration or where the acts were performed with the intention, recognisable by the other party, of prejudicing its creditors or favouring certain creditors to the detriment of others (deceit pursuant to Article 288, SDCBA).

However, in complex asset tracing and recovery, bringing civil action in criminal proceedings is usually preferred (see Section 9, below), as asset tracing in insolvency proceedings is limited to the assets of the debtor, excluding tracing of dissipated assets through third parties.

9. CRIMINAL PROCEEDINGS AND CIVIL RECOVERY

9.1 Can criminal proceedings and civil recovery run in parallel?

Yes. Switzerland is a civil law jurisdiction. Due to the lack of a discovery process under the SCCP, civil proceedings in fraud-related matters are in most cases preceded or supported by criminal proceedings so as to obtain evidence and secure assets in support of civil claims. Rather than impeding the civil action, the instigation of criminal proceedings supplements it, and criminal proceedings do not suspend the civil action. In principle, there is no secret in the investigations in criminal proceedings, with, however, important exceptions where the plaintiff is a state or state-owned company. The plaintiffs to criminal proceedings have the right to consult the file and to levy copy, with the right to use such in other proceedings of any kind (including arbitration), both in Switzerland and abroad.

Civil claims deriving from fraud can be brought in the criminal proceedings instead of that in parallel civil proceedings (Article 122ff., SCPP). The civil action in criminal proceedings creates *lis pendens* and interrupts the statute of limitation (Article 135 paragraph 2, SCO).

9.2 Are there civil confiscation or non-conviction-based forfeiture regimes?

"Civil" confiscation is of criminal nature in Switzerland. Non-conviction-based forfeiture regime is provided for by Articles 376ff. of the SCPP.

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Pursuant to Article 70 paragraph 1 and 2 of the SPC, the court shall order the forfeiture of assets that have been acquired through the commission of an offence or that are intended to be used in the commission of an offence or as payment therefor, unless the assets are passed on to the person harmed for the purpose of restoring the prior lawful position. Forfeiture is not permitted if a third party has acquired the assets in ignorance of the grounds for forfeiture, provided they have paid a consideration of equal value therefor or forfeiture would cause them to endure disproportionate hardship.

Separate forfeiture proceedings are conducted if a decision must be made on the forfeiture of property or assets outside of criminal proceedings. Property or assets that will probably be forfeited in separate proceedings shall be seized. If the requirements for forfeiture are fulfilled, the public prosecutor shall order their forfeiture in a forfeiture order; it shall give the person concerned the opportunity to respond. If the requirements are not fulfilled, it shall order the abandonment of the proceedings and return the property or assets to the entitled person.

In addition, Switzerland has enacted a specific statutory regime for assets held by foreign politically exposed persons. The Federal Act on the Freezing and the Restitution of Illicit Assets Held by Foreign Politically Exposed Persons (FIAA) allows the freezing, confiscation and restitution of assets where the state of origin is unable to conduct effective criminal proceedings, notably in cases of state failure or systemic collapse of the justice system. Under this regime, the Federal Council may order the freezing of assets, and confiscation and restitution may follow under defined statutory conditions even where effective criminal prosecution in the requesting state is not possible.

Where international cooperation is involved, the Federal Act on International Mutual Assistance in Criminal Matters (IMAC) provides the procedural framework. Swiss authorities may act on the basis of foreign mutual legal assistance requests, including requests relating to seizure and forfeiture. Evidence transmitted by foreign authorities may be used to support confiscation proceedings in Switzerland, subject to an independent assessment by Swiss authorities of the applicable legal requirements.

In summary, Switzerland permits non-conviction-based forfeiture but implements it as a criminal law confiscation mechanism, including independent proceedings without a conviction. Switzerland's regime is more restrictive than broad civil asset forfeiture systems elsewhere. For example, "extended" confiscation is not generally available across the board and is described as limited under Swiss law, with broader confiscation mainly associated with terrorist or criminal organisations or with specific statutory settings. In practice, the evidentiary requirement remains important, especially for tracing the proceeds of crime and showing the necessary paper trail, which most recent case law confirms (Federal Court decisions 7B_109/2023 and 7B_110/2023).

9.3 Can victims participate in, or benefit from, criminal confiscation?

Private parties cannot directly initiate forfeiture proceedings in Switzerland. They may, however, file criminal complaints, submit information or evidence to the competent authorities, or participate as injured parties, which may prompt

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the opening of proceedings that can ultimately lead to confiscation. Article 70 of the SPC provides for the confiscation of assets that constitute the proceeds of a criminal offence or that were intended to induce or reward an offence, unless restitution to the injured party takes precedence. Article 72 of the SPC allows for the confiscation of assets that are subject to the power of disposal of a criminal organisation. In addition, Swiss law expressly provides for stand-alone confiscation proceedings: Articles 376 *et seq*. of the SPC regulate an independent procedure that allows confiscation even where no criminal judgment can be rendered against a person. Under this framework, confiscation may be ordered without a conviction in situations where the accused person has died, is absconding or cannot be extradited, benefits from immunity, or where prosecution is otherwise procedurally impossible. In such proceedings, the competent criminal authority must establish that the assets are of criminal origin or have a sufficient criminal nexus, but a final conviction of a specific individual is not required.

9.4 How are recovered assets distributed to victims?

In case of allocation of confiscated assets to the plaintiffs in the criminal proceedings (Articles 70 and 73 paragraph 1 lit. b, SPC), which excludes the case of "restitution", the distribution is made *pro rata* of the (admitted) amount of their civil claims.

Replacement claims pronounced in criminal proceedings (i.e. where there is no clear paper trail) do not establish any preferential right.

10. LIMITATION PERIODS AND DEFENCES

10.1 What limitation periods apply to fraud claims?

The main cause of action in cases of fraud is the liability for damages in torts. The right to claim damages or satisfaction prescribes three years from the date on which the person suffering damage became aware of the loss, damage or injury and of the identity of the person liable for it but in any event 10 years after the date on which the harmful conduct took place or ceased (Article 60 paragraph 1, SCO).

If the person liable has committed a criminal offence through their harmful conduct, then the right to damages or satisfaction prescribes at the earliest when the right to prosecute the offence becomes time-barred. If the right to prosecute is no longer liable to become time-barred because a first-instance criminal judgment has been issued, the right to claim damages or satisfaction prescribes at the earliest three years after notice of the criminal judgment is given (Article 60 paragraph 2, SCO).

In cases of fraud, the offences carry custodial sentences of three years and more, excluding sentences of life. Therefore, the right to prosecute is subject to a time limit of: 15 years if the offence carries a custodial sentence of more than three years; and 10 years if the offence carries a custodial sentence of three years (Article 97 paragraph 1, SPC). If a judgment is issued by a court of first instance before expiry of the limitation period, the time limit no longer applies (Article 97 paragraph 3, SPC).

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The criminal statute of limitation starts:
- the day on which the offender committed the offence;
- the day on which the final act was carried out if the offence consists of a series of acts carried out at different times; or
- the day on which the criminal conduct ceases if the criminal conduct continues over a period of time (Article 98, SPC).

It should be noted that this extended civil statute of limitation does not permit the application of foreign criminal law, and it is not necessary for criminal proceedings to have been actually instituted.

10.2 Does fraud suspend or extend limitation periods?

No, fraud itself does not suspend or extend limitation periods. Certain acts of the claimant can interrupt statute of limitation pursuant to Article 135, SCO (i.e. a new period of limitation starts):
- if the debtor acknowledges the claim and in particular if he makes interest payments or part payments, gives an item in pledge or provides surety; or
- by debt enforcement proceedings, an application for conciliation, submission of a statement of claim or defence to a court or arbitral tribunal (including in criminal proceedings, see Question 9.1, above), or a petition for bankruptcy.

Statute of limitation may also be suspended by certain circumstances (i.e. the limitation period ceases to run). We will mention, for instance, the suspension period for as long as the claim cannot be brought before a court for objective reasons provided for at Article 134 paragraph 1 No. 6 of the SCO, which is of particular interest in cases of criminal mismanagement by top management or cases of captured states.

10.3 What common defences are raised in fraud and tracing cases?

The most common defences observed in fraud cases are:
- ownership and conditions for the piercing of the corporate veil;
- prohibition of fishing expedition when seeking disclosure;
- banking secrecy;
- protection of sensitive data under the Swiss Federal Act on Data Protection;
- Swiss Blocking Statute where the plaintiff is a state or for the remittance of Swiss information abroad;
- lack of proper service of interim orders of final judgments (in particular in case of default judgments)
- jurisdiction; and
- governing law and content of foreign law.

11. REMEDIES AND RECOVERY TOOLS

11.1 What remedies are available upon a successful claim?

See Question 1.1, above.

11.2 Can constructive trusts or equitable liens be imposed?

No, constructive trusts and equitable liens do not exist under Swiss law.

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11.3 How are recovered assets realised and distributed?

In civil proceedings of seizure through debt collection proceedings initiated by an order to pay (see Questions 4.1 and 7.2, above), each individual creditor participates in "series". Pursuant to Article 110 of the SDCBA, creditors who submit a request for continuation of the debt collection proceedings within 30 days of the execution of the seizure shall participate in the seizure proceedings. The seizure proceedings shall be extended in each case to the extent necessary to cover all the claims of the creditor group.

Creditors who only submit the request for continuation after the 30-day period has expired shall in the same way form additional groups with separate seizure proceedings.

Assets that have already been seized may be distrained again, but only to the extent that their proceeds are not to be paid to the creditors for whom the previous seizure proceedings were carried out.

If the creditor obtained an attachment prior to the institution of the debt collection proceedings, and if following issuance of the attachment order, the attached assets are seized by another creditor before the attachment creditor may file their own application for seizure, the latter shall automatically participate provisionally in the seizure proceedings. The creditors may deduct the costs of the attachment from the proceeds of the attached assets.

The civil attachment, as well as replacement claims pronounced in criminal proceedings (see Question 9.4, above) do not establish any preferential right.

In case of allocation of confiscated assets to the plaintiffs in the criminal proceedings (Articles 70 and 73 paragraph 1 lit. b, SPC), the distribution is made *pro rata* of the (admitted) amount of their civil claims.

11.4 Are interest and costs recoverable?

Interest is recoverable, whether at the Swiss legal rate of 5% or any other legal (depending on the governing law of the claim) or agreed rate. Costs are recoverable, usually based on tariffs calculated based on the disputed value. Higher costs may be obtained by demonstrating the actual activity of the legal counsels, which must remain reasonable and justified by the complexity of the proceedings.

12. PRACTICAL AND STRATEGIC CONSIDERATIONS

12.1 How claimant friendly is the jurisdiction for fraud and asset recovery?

Switzerland being a civil law jurisdiction, the legal system tends to ensure protection of the rights of the defence first. In addition, absence of disclosure orders in civil proceedings or class actions, banking secrecy and a culture of privacy make litigation for plaintiffs difficult.

The broad admission of litigation funding by the Swiss Supreme Court may tend to improve the position of plaintiffs in the future.

12.2 How quickly can urgent relief be obtained?

Urgent relief, whether in civil or criminal proceedings, is usually granted within 24 hours.

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12.3 What are the typical costs and funding options (including litigation funding)?
Costs may vary depending on the complexity of the case, the disputed value and the legal strategies of the parties. Costs in criminal proceedings are far lower than in civil proceedings, but legal fees may be high as accused and seized third parties often defend strongly against prosecution.

Litigation funding is allowed. Third parties funding agreements are covered by attorney–client privilege and do not have to be disclosed to courts and authorities. Legal counsels must remain independent from the funder and are prohibited to work on a full-contingency fees agreement.

12.4 Are there any local procedural pitfalls practitioners should be aware of?
The main pitfalls for practitioners are the Swiss Blocking Statute, banking secrecy and the non-availability of pre-trial disclosure.

Issues regarding banking secrecy and absence of pre-trail disclosure were addressed above.

Embedded in Article 271 paragraph 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.

Parties in foreign proceedings and foreign insolvency office holders must act cautiously when contemplating taking steps in Switzerland, as they may be deemed as vested with public authority of a foreign state. For instance, the examination of witnesses on Swiss territory without letters rogatory breaches the Swiss Blocking Statute.

13. RECENT DEVELOPMENTS AND TRENDS

13.1 Have there been any significant recent cases or legislative reforms?
On 26 September 2025, the Swiss Parliament passed the Federal Act on the Transparency of Legal Entities and the Identification of Beneficial Owners (LETA) and a revised Anti-Money Laundering Act; both are expected to take effect in the second half of 2026. LETA creates a central, non-public federal Transparency Register for beneficial owners, replacing the older, company-level UBO identification framework once it enters into force. It applies to Swiss legal entities and certain foreign entities with a Swiss nexus, and the stated policy goal is to improve transparency of ownership and control structures and align Switzerland with the Financial Action Task Force (FATF) and EU standards.

13.2 Are courts expanding or restricting asset tracing or recovery tools?
Courts and practice materials show a pragmatic widening in a few areas: third-party document production, precautionary taking of evidence before proceedings, access to records in criminal proceedings, and strong use of attachments against bank accounts and other located assets. Swiss practice also treats cryptocurrencies and other digital assets as recoverable assets in principle, which broadens the

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asset classes that can be traced and preserved. In insolvency, access to files and business records is also relatively broad, which helps tracing in bankruptcy and avoidance work.

For asset recovery, the judicial trend is best described as selective expansion within a restrictive model: more willingness to assist with targeted tracing, evidence preservation, and enforcement, but no move toward open-ended investigation tools. For a practitioner, the strongest route is still to combine attachments, document requests, insolvency access, and, where possible, criminal or regulatory channels rather than relying only on civil remedy.

13.3 Are there emerging trends in international fraud litigation in this jurisdiction?

On 20 March 2025, a landmark step in international anti-corruption enforcement was taken when the United Kingdom's Serious Fraud Office (SFO), France's Parquet National Financier, and Switzerland's Office of the Attorney General signed a founding statement establishing the International Anti-Corruption Prosecutorial Taskforce. This new alliance aims to intensify and streamline the fight against cross-border bribery and corruption, reflecting a growing recognition of the global nature of financial crime and the need for coordinated responses.

The announcement of the taskforce comes at a time of uncertainty in global anti-corruption enforcement. In February 2025, US President Donald Trump issued an executive order pausing enforcement of the Foreign Corrupt Practices Act, historically a cornerstone of international anti-bribery efforts. While the SFO has stated that the creation of the taskforce is not a direct response to the US pause, the move is widely seen as a signal that European authorities are prepared to fill any enforcement gaps and take a more prominent role in leading multijurisdictional cases.

AUTHOR BIOGRAPHY



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Antonia Mottironi is the founding partner of Ardentĕr Law and is admitted to the Geneva and Swiss Bars. She advises on the implementation of global strategies aiming at the resolution of complex disputes, in particular in fraud and cross-border insolvency. She represents creditors, foreign insolvency office holders and persons affected by economic crime. She focuses on civil and criminal litigation, especially in the area of business crime, international judicial assistance and enforcement of foreign arbitral awards and judgments. In recent years, she has handled a great number of international asset recovery cases. She has also assisted clients in preparing and co-ordinating multijurisdictional disputes, in particular with common law jurisdictions. She has in-depth experience in cross-border insolvency cases involving foreign bankrupt banks and fraud schemes.

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FIRM PROFILE

Ardentĕr Law
Ardentĕr Law is a Geneva-based Swiss law firm, specialising in guiding clients through the implementation of global strategies for the effective resolution of complex disputes. Established in October 2021 by Antonia Mottironi, a Swiss qualified lawyer. The firm's practice areas are concentrated in asset tracing and recovery, business crime, litigation management and international disputes. Ardentĕr's strength lies in its international network of lawyers and experts, coupled with a strong understanding of international organisations and NGOs. Operating from Geneva, Ardentĕr represents clients' interests before Swiss courts and authorities, assisting creditors, foreign insolvency office holders and individuals impacted by economic and international crimes.

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