

Bankruptcy proceedings

General remarks

Since the entry into force of the new bank insolvency provisions of the Banking Act (BA; SR 952.0) on 1 July 2004, the Swiss Financial Market Supervisory Authority (FINMA, previously: Swiss Federal Banking Commission) is responsible for initiating bankruptcy proceedings against institutions subject to its supervision. Its competence also applies in respect of companies whose compliance requirement is still being ascertained or that engage in an activity subject to authorisation without being in possession of the requisite licence.

Impact of the initiation of bankruptcy proceedings

Upon the initiation of bankruptcy proceedings against an insolvent institution, the interest payable by the institution ceases to accrue. For secured claims, interest continues to accrue until realisation of the security is completed, provided that the proceeds from realisation exceed the amount of the claim and the interest accruing until bankruptcy proceedings are initiated (Art. 209 of the Debt Enforcement and Bankruptcy Act (DEBA)). Where the claim for the amounts due are not covered by real estate securities, the initiation of bankruptcy proceedings causes all existing debts of the insolvent institution to fall due (Art. 208 DEBA).

Registration of claims

Creditor/customer claims recorded in the insolvent institution's account books are considered to be registered and no new registration of claims is required (Art. 36 para.1 BA). The other creditors and all persons having claims to the assets in the insolvent institution's possession are called upon to register their claims with the bankruptcy liquidator and to furnish supporting evidence by the registration date specified.

When registering their claims, creditors with debts secured by a mortgage or other security interests in real estate must indicate separately the principal, the interest, and the expenses, as well as indicating whether the claim for payment of the principal is due or a redemption notice has been effected, and for which amount and for which date, as applicable. The owners of easements created under previous cantonal law that were not entered in the public land register and that have not yet been entered in the land register are called upon to notify the bankruptcy liquidator by the registration date specified and submit any supporting evidence. Where the insolvent institution is a co-owner or condominium (private apartment) owner of a property (private apartment), this notice to effect notification to the bankruptcy

liquidator also applies to easements on the property itself. Where the bankruptcy liquidator is not notified of such easements, they can no longer be asserted against any good faith purchasers of such encumbered properties unless the Swiss Civil Code provides for the enforceability of such rights in rem even when they have not been entered in the public land register.

Reporting of credit balances and surrendering of assets

All debtors of the insolvent institution (including those bound by professional secrecy such as solicitors, banks, etc.) and those who are in possession of assets of the insolvent institution must make notification to the bankruptcy liquidator by the notification date specified. Notification is to also be made of claims for which settlements can be made.

Persons in possession of assets of the insolvent institution, whether in the capacity of secured creditors or otherwise, must make such assets available to the bankruptcy liquidator by the same date. Failure to do so will result in them being stripped of their priority rights in cases where such omission is unjustified, with the exception of shares and other financial instruments traded on a representative market for which an agreement pertaining to private sale exists (Art. 27 para. 3 BA) as well as assets in custodial accounts excluded from the bankruptcy estate under Art. 37d BA. Notification of the latter must nonetheless be made to the bankruptcy liquidator by the date specified. Secured creditors and third parties in possession of titles secured by mortgages on real estate property belonging to the insolvent institution that have been repledged must also surrender their titles and mortgage bonds to the bankruptcy liquidator by the date specified.

Any violations of the above-mentioned obligations will result in imposed fines as prescribed in Art. 48 of the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA) and Art. 324 item 2 and 3 of the Swiss Penal Code.