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General information

Availability of financial information

Financial information on domestic companies may be obtained from the Trade Registry where records on payment failures are kept for five years; however the availability of financial information in Switzerland remains very limited and hardly available. Considering the exclusion of stock exchange listed corporations, companies are not obliged to file any financial statements, regardless of their size or legal form. Due to this very restrictive information policy, the opinion and insurance cover of Euler Hermes is very helpful for companies trading in Switzerland, with our specialist teams able to obtain proprietary financial information from Swiss buyers and financial statements under confidentiality agreements, this information then impacts the buyer's grade reflecting its financial health and how it conducts business. Grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions

Main corporate structures

Liability for business debts is determined by legal structures, which are described as follows:

- Sole Proprietorship is available for small businesses managed by an individual and for which no commercial structure is necessary. In this case, the owner is held liable for all business debts. Two or more individuals may also decide to share ownership and responsibilities through Partnerships, in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships alternatively offer limited liability to the partners.
- Private Limited Liability Companies (Société à Responsabilité Limitée, SARL / Gesellschaft mit beschränkter Haftung, GmbH) require minimal capital funds (CHF 20,000) while the shareholders' liability is limited to their contribution. As a result, these entities present the highest risk of default. Joint Stock Companies (Société anonyme, SA / Aktiengesellschaft, AG) are sometimes used by small enterprises but rather tend to be used for medium and large structures willing to divide their capital (at least CHF 100,000) into tradable shares. In these entities, the shareholders' liability is limited to the value of their shares.
- Foreign companies may alternatively settle in Switzerland through Branch Offices, which provide no liability limitations to the foreign parent company. Joint Ventures may take the form of any legal structure listed above, but incorporation is not necessary, so a contract drafted for this purpose would suffice.

Regulatory environment

Switzerland is a federal state composed of twenty-six cantons, where the rules are codified and the case law only has a limited law-creating role. Cantons retain all powers and competencies not delegated to the Confederation by the Swiss Federal Constitution, and are responsible



Days Sales Outstanding (DSO): The payment behavior of Swiss companies is very good. Most payments tend to be made in advance or within 30 days.



or law enforcement (besides healthcare, welfare, public education and power of taxation).

Although the courts have been bound by a unique Civil Procedures Code since January 2011, the cantons' civil or administrative courts may deal with claims in the first and second instance. Only four cantons (Aargau, Bern, St. Gallen, Zürich) would provide specialized commercial courts. All four Commercial Courts usually deal with international commercial disputes depending on the place of jurisdiction. At the federal level, the Federal Administrative Court and the Supreme Court of Switzerland (in Lausanne) would have final jurisdiction to reconsider decisions rendered at the cantonal level.

Getting Paid

Days Sales Outstanding (DSO)

The payment behavior of Swiss companies is very good. Most payments tend to be made in advance or within 30 days, while delays of up to 10 days may appear occasionally. For listed companies, the DSO is slightly higher at 49 days.

Late payment interest

Articles 73 and 104 of the Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) provide that interest amounting to at least 5% of the debt is due from the due date of the invoice or the date of the payment request (Mahnung/Mise en demeure).

Debt collection costs

According to Art. 27 III SchKG, costs for third party collection cannot be charged to the debtor. Collection occurs through the intermediary of the Municipal Debt Collection Office (Betreibungsamt/Office des Poursuites), which then imposes fees (calculated on the basis of the open amount of the case, its complexity, the process duration, etc.) on the debtor prior to redistributing the amount to the creditor.

Ownership protection

Although uncommon, use of Retention of Title (RoT) agreements, aiming at preserving ownership over goods until the related invoice is paid in full, is admissible in Switzerland provided that the provisions have been specifically signed by both parties and registered with the debt enforcement official registry (Betreibungsbeamter) of the buyer's place of registration (or domicile) in Switzerland.

In the event that a RoT agreement was validly established abroad but the goods were moved to Switzerland, the title holder is given three months to take steps so as to render the title valid and permanently effective in Switzerland. RoT rights may be enforced by a segregation request to the competent administration of the bankruptcy or a possible segregation action in case of refusal of the request.

Payments

The most common payment methods are as follows:

Direct bank transfers are among the most popular payment means for international transactions as they are fast, secured and supported by an increasingly developed banking network internationally and domestically. Export transactions are usually guaranteed through an Export Credit Insurance policy, which helps minimize the risk of sudden or unexpected customer insolvency.

Euler Hermes' worldwide network of risk offices monitors the financial well-being of customers and grants them a specific credit limit up to which clients may trade and claim should something go wrong. Alternatively, Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) are often used in relation to export shipment transactions as they constitute reliable



Late payment interest:

Interest amounting to at least 5% of the debt is due from the date of the payment request (Mahnung/Mise en demeure).



guarantees which can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment.

Bank guarantees are fairly available. Checks and bills of exchange are not commonly used since the risk of a payment default is considered too high. Payment in advance is also very common.



Collecting overdues

Amicable action

Negotiating

Although domestic courts are efficient and reliable, amicable settlement opportunities should always be considered as a serious alternative to formal legal proceedings.

Before starting legal proceedings against a debtor, assessing their assets is important as it allows verification as to whether the company is still active and whether recovery chances are at best. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt.

In addition, conciliation or mediation proceedings before a Justice of the Peace prior to commencing formal legal action are mandatory unless i) the dispute falls within the jurisdiction of the Commercial Court of Zurich, ii) the parties have agreed to ignore this opportunity when the claim is above CHF 100,000, iii) the proceedings concern certain actions filed under the Federal Debt Enforcement and Bankruptcy Act, or iv) the proceedings concern the enforcement of a judgment rendered by a competent court as provided under the Lugano Convention of 1988. If the parties cannot agree on a settlement, the conciliation authority will issue a writ (Klagebewiligung) permitting the claimant to bring the dispute before the competent District Court within three months (failure to submit a statement of claim to the competent court within three months does not preclude a case but the claimant would have to resubmit the claim for conciliation).

Legal action

Ordinary proceedings

If the amicable phase fails or if the debtor questions the claim, the option of starting legal proceedings remains.

Swiss law provides two types of proceedings for the enforcement of money claims, respectively referred to as special execution proceedings (Spezialexécution, i.e. the seizure of assets) and general execution proceedings (Generalexécution, i.e. bankruptcy). Both types of enforcement proceedings may be initiated by a creditor (or a private individual/company claiming to be a creditor) by filing an enforcement request with the competent debt enforcement authority (Office des Poursuites/Betreibungsamt) and asking for issuance of a payment summons to the debtor. Without assessing the substance of the alleged claim, the authority summons the debtor to pay within 20 days or to bring a defense within ten days. In the absence of any reaction, the creditor may request a default judgment ordering attachment on the debtor's assets.

When a claim is certain and undisputed, or when the creditor has already obtained an enforceable judgment against the debtor, the dispute may be solved through summary proceedings in which documentary evidence prevails over hearings (which are nonexistent) and in which the debtor's right to oppose the claim is waived. When the claim is disputed by the debtor, the court may decide to either set the objection aside and authorize continuation of the enforcement proceedings (under Article 88 SchKG) with the competent debt enforcement authority, or to have the dispute solved through full court proceedings within one year of service of the payment summons. It should be noted that, since 2011, the Swiss

Procedural Code has introduced a significant pre-trial discovery method into proceedings which allows the parties to request evidence from the other party prior to commencing litigation. The courts would typically award remedies in the form of compensatory damages, specific performance, seize and sell orders, declaratory judgments, etc. Punitive damages are not available, however. In practice, using a lawyer is highly recommended at all stages because debts are frequently questioned without any justification being required. Having said this, any action against a debtor will be kept on public records for five years, which may constitute a source of pressure while collecting debt.

Necessary documents

All necessary documents providing relevant claim information, such as: the contract and their general terms and conditions, orders and order confirmations, invoices, delivery notes, foreign judgments, extracts of each involved party from the chamber of commerce, relevant correspondence (such as letter of complaint and the respective replies), and eventual promissory notes.

Time limitations

Standard statutory periods of limitation are determined in accordance with the Swiss Code of Obligations (CO). Commercial claims must normally be brought within ten years, but more constraining limitations apply: a five year period of limitation applies to claims relating to rent, interest on capital and other periodic services; to claims relating to the supply of foodstuffs, catering and innkeepers' debts; to claims relating to handcrafts, retail of goods, provision of medical services, professional work by lawyers, legal agents, procurators and notaries as well as claims relating to employees' working conditions. Unjust enrichment disputes must be brought within one year.

The period of limitation is interrupted by debt enforcement or legal action within a current period of limitation, but the matter is considered as a substantive legal requirement and failure to abide by the rules would bar access to court.

Provisional measures

Interim measures may help preserve the creditor's interests pending a final court decision. Upon request, the courts would typically order provisional measures aiming at preserving evidence, the status quo and avoiding irreparable damage (injunctions, orders to remedy an unlawful situation, orders to a Register Authority or to a third party, performance in kind, payment of a sum of money). The courts would however require credible evidence that a right to which the creditor is entitled has been (or will soon be) violated, that such violation threatens to cause irreparable harm to the applicant.

In cases of special urgency, and in particular where there is a risk that the enforcement of the measure will be unsatisfied, the court may order interim measures immediately without hearing the opposing party (ex parte). The court must nonetheless summon the parties to a hearing so as to allow the debtor to present a defense.

The court would however ex officio order the creditor to provide security on costs in order to protect the debtor from abuse.



Lodging an appeal

A decision made in first instance may be brought before the Courts of Appeal (at the cantonal level) within 30 days of notification provided that the dispute is in excess of CHF 10,000. At this stage, the review would focus on factual and legal issues alike. The decision rendered in second instance may be brought to the Federal Supreme Court provided that the claim is in excess of CHF 30,000 although only legal issues (improper interpretation of the law, failure to abide by procedural rules, etc.) would be reconsidered.

How long could legal action take?

In Switzerland, debt collection proceedings should not last longer than two years (excluding insolvency proceedings). Domestic courts would not need more time to deal with claims involving foreign parties, however delays may occur when the documents must be translated, or if foreign witnesses must be heard.

How much could this cost?

As a general rule, the successful party may obtain reimbursement of all court and legal fees from the defeated party. Court costs may vary from one canton to another and depend on the amount of the claim in dispute. Attorney fees would be paid for on an hour basis.

Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Use of Alternative Dispute Resolution methods (arbitration, mediation, conciliation, ombudsmen) is not necessary as domestic courts normally provide timely decisions, but it is nonetheless very common in Switzerland, particularly when disputes have an international dimension. Domestic courts have consistently reinforced the parties' agreement to rely on ADR methods.

Foreign forums

Using foreign tribunals is not necessary in Switzerland, but the country is nonetheless a signatory to the Hague Convention of 15 June 1955 on the law applicable to the international sale of goods, which stipulates that contracts shall be governed by the law chosen by the parties, the general spirit of the agreement and the circumstances of the case. Domestic courts would however typically retain exclusive jurisdiction over specific areas of law and over issues possibly impacting public policy. It is also essential that the agreement be characterized by an international connection (for example, one party has elected domicile in another country, or the place of execution is located abroad), and that a jurisdiction clause is specifically drafted for this purpose.

Enforcing foreign awards

As previously mentioned, using foreign forums in order to obtain enforceable decisions against local debtors is rather unusual. Nonetheless, foreign decisions issued against foreign debtors may be enforced in Switzerland under certain conditions. As a general rule, most countries permit enforcement of foreign awards provided that an exequatur procedure has been conducted to recognize the foreign decision as a domestic one, and this principle applies in Switzerland. Two situations must however be considered. On one hand, domestic courts would rapidly enforce decisions falling under the scope of an application of bilateral reciprocal recognition and enforcement treaties and decisions issued in EU countries as well as in Norway, Denmark and Iceland under the Lugano Convention (which extended the Brussels I regulations to third state parties). On the other hand, foreign judgments issued in other countries would have to go through exequatur proceedings (as provided under the Swiss Private International Law Act) so that the courts would, among other points, verify whether the issuing tribunal had jurisdiction to decide on the claim, whether the decision is final in the issuing country (i.e. whether all appeal venues have been exhausted) and whether the parties both benefited from a due process of law. The courts would also ensure that the foreign decision does not contradict Swiss public policy. Switzerland is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958; therefore domestic courts also ought to enforce decisions rendered through international arbitration proceedings.



Litigation @ Euler Hermes

Should legal action be necessary, Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

Handling insolvent debtors

Swiss bankruptcy legislation is based on the Federal Law of 1889 on the pursuit of debts and bankruptcies (as amended in 1994). Each canton, however, has its own Debt Collection Office in charge of collecting complaints, improving communication between the several parties at play, processing seizures or writing asset inventories. The debt collection process is initiated when the debtor or creditor(s) file a request with the local office.

Insolvency proceedings

Out-of-Court proceedings

Out-of-court debt restructuring is common and advisable as it provides a confidential and informal venue for discussing financial issues prior to commencing insolvency proceedings.

Restructuring the debt

Even though most insolvency procedures lead to liquidation, recent insolvency proceedings aim at supporting business continuation through a debt restructuring agreement between debtors and creditors. The process is similar to the Chapter 11 proceedings under U.S. law, and allows a debtor to stay in business provided that its remaining assets cover all privileged claims and debts. The company is furthermore left under the supervision of a court-appointed administrator and a moratorium (Nachlassstundung) is put in place to preserve it from parallel enforcement claims whilst a plan is negotiated. The plan must be approved by a majority of creditors in order to be valid.

As opposed to bankruptcy proceedings, debt restructuring proceedings allow for a more flexible realization of the debtor's assets and are therefore often likely to yield higher proceeds to be proportionally distributed to the creditors.

Winding up proceedings

Despite efforts to increase debt restructuring negotiations, Swiss law focuses less on the continuation of the debtor's business activities than on the protection of the rights of the creditors, so that the default insolvency procedure in practice essentially aims at seizing the debtor's assets.

In this case, business operations come to an immediate standstill while the debtor loses authority to dispose of its assets. Once the court declares the debtor bankrupt, the creditors are given one month to file their claims with the liquidator, which then establishes the list of liabilities and sells the assets prior to distributing the proceeds to the creditors.

Priority Rules

Complex priority rules normally apply while distributing the proceeds to the creditors. Secured debts receive priority over preferential debts (such as employees' wages, pension and social security claims) and unsecured claims, which are considered last in



the chain, if any of the estate remains. The priority granted to tax claims was abolished in January 2014.

Cancellation of suspect transactions (clawback)

Liquidators increasingly request the courts to cancel certain transactions concluded prior to the insolvency proceedings. In particular, any measure taken by the debtor deemed fraudulent or detrimental to the creditors would typically be void. A suspect period of up to five years may apply.

How long could insolvency proceedings take?

Insolvency proceedings should not last longer than two years, but this timeframe may be extended with the most complex cases.

Necessary documents

All documents providing relevant information such as: contract and their general terms and conditions, orders and order confirmations, invoices, delivery notes, foreign judgments, extracts of each involved party from the chamber of commerce, relevant correspondence (such as a letter of complaint and the respective replies), and eventual promissory notes.

Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

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