

Bankruptcy

General

Following the entry into force of the new Banking Act provisions concerning bank insolvencies on July 1, 2004, the competence of the Swiss Federal Banking Commission (SFBC) was widened to include bankruptcy procedures affecting institutions under its supervision. The competence of the SFBC has also been extended to institutions in the process of being supervised or carrying on financial activities without the required authorizations.

Effects of the opening of the bankruptcy procedure

Interest due by a bankrupt institution stop running at the opening of the bankruptcy procedure. The interest on debts secured by pledged collaterals continue to run until the realization of the assets provided that the proceeds from the pledged collaterals is superior to the sum of the debt and the interest due at the time of the opening of the bankruptcy procedure (art. 209 LP). With the opening of the bankruptcy procedure all debts of the bankrupt institution become payable, except those secured by pledged real estate collaterals of the bankrupt institution (art. 208 LP).

Announcement of the debts and other liens

The debts recorded in the books of the institution are presumed to have been announced and it is therefore not necessary to announce them once more (art. 36(1) LB). The other creditors as well as all persons with claims on the assets in possession of the bankrupt institution are invited to register – with the supporting evidence - their claims with the liquidator of the bankruptcy.

In announcing their claims, creditors with debts secured by pledged real estate must indicate separately the capital, the interest, the costs - and in case the capital is payable or was claimed for reimbursement; for what amount and at what date. Beneficiaries of easements created under the old cantonal law without registration in the public registry or not yet registered in the real estate registry are invited to inform the liquidator of their rights by producing the supporting evidence within the set time limit. Should the bankrupt institution co-own or own a determinate part of a real estate property, the invitation to inform the liquidator applies to the easements on the real estate property itself. Such easements when not brought to the attention of the liquidator are not opposable to bona fide buyers unless the civil code provides for the enforceability of the rights even when not registered.

Announcement and gathering of the assets of the bankruptcy

The debtors of the bankrupt institution (which are also bound by professional secrecy, such as lawyers, banks, etc.) as well as those who are in possession of assets of the bankrupt institution must give notice to the liquidator within the time limit set for the announcement of debts. The debts and duties which are subject to netting must also be announced.

Persons in possession of assets of the bankrupt institution, whether as secured creditors or otherwise, must make such assets available to the liquidator within the set time limit. Failure to do so will result in them being stripped of their priority rights in case of unjustified omission, with the exceptions of shares and other financial instruments traded on representative markets - in relation to which there exists a agreement for market realization (art 27(3) LB) – as well as deposits excluded from the bankruptcy estate pursuant to art. 37d LB. The latter shall nonetheless be announced to the liquidator within the time limit set for the announcement of debts. Secured creditors as well as third parties in possession of titles secured by mortgages on real estate property belonging to the bankrupt institution must also hand over their titles to the liquidator within the time limit set for the announcement of debts.

Violations of the above-mentioned obligations will result in fines pursuant to art. 50 LB and 324(2)(3) CP.

Election of Domicile

Notice to interested parties located abroad will be serviced at the domicile or legal seat of the liquidator until they have elected a domicile in Switzerland.