

Statute of limitation will apply to claims confirmed in loss certificates older than 20 years

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Loss certificate Debt Enforcement and Bankruptcy Act Consequences

A creditor of a debt in Switzerland can file a debt collection request against the debtor to enforce its claim. The debt collection proceedings will eventually lead to the seizure of the debtor's assets. If the enforcement proceedings are unsuccessful and the debtor's assets are insufficient to cover the creditor's claim, the debt collection authorities will issue a loss certificate confirming the part of the claim which was not covered by the proceeds.

Loss certificate

A loss certificate is considered a debt acknowledgement by the debtor, meaning that the creditor is entitled to initiate summary proceedings against the debtor to facilitate the enforcement of the claim if the debtor becomes wealthier following the first unsuccessful enforcement proceedings.

Until December 31 1996 the Debt Enforcement and Bankruptcy Act stated that claims which were confirmed by a loss certificate were not time barred. This resulted in a considerable advantage to the creditor, as the creditor could keep observing the debtor and enforce its claim at any time.

Debt Enforcement and Bankruptcy Act

The Debt Enforcement and Bankruptcy Act was revised on January 1 1997 and the privilege of creditors possessing a loss certificate was restricted. Claims confirmed by a loss certificate now have a 20-year statute of limitation period.

The intertemporal rules of the act provide that the claims confirmed in loss certificates issued before January 1 1997 will be time barred 20 years after the revision. This means that the statute of limitation of all claims confirmed in an old loss certificate will enter into force on January 1 2017.

Consequences

In practical terms, a debtor that is facing new enforcement proceedings will have a defence against a creditor in possession of a loss certificate older than 20 years, as the debtor will be entitled to assert that the claim is time barred.

Consequently, creditors that still intend to enforce their claims confirmed in an old loss certificate have to proceed to a step which prevents the claim from being time barred before December 31 2016.

According to Article 135 of the Code of Obligations, the statute of limitation period is interrupted if the debtor acknowledges the claim (particularly if it makes an interest payment or partial payments) or if the creditor files a debt collection request. Pursuant to Article 137(1), the statute of limitation period starts anew as of the date of the interruption. According to Article 137(2), the limitation period will be 10 years if the statute of limitation period is interrupted by a signed debt

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acknowledgement coming from the debtor.

Creditors will find it easier to file a debt collection request (which is a mere formality). This simple step will interrupt the statute of limitation period and will extend it for another 20 years.

Alternatively, creditors can contact the debtors and ask them to either pay or acknowledge the claim once again. In the event that the debtor acknowledges the claim or even makes a partial payment, this will interrupt the statute of limitation period and extend it. However, creditors should be aware of a controversy in the Swiss doctrine as to whether a debt acknowledgement signed by the debtor extends the statute of limitation period for 10 years (literal interpretation of Article 137(2)) or for 20 years (contextual and purpose-orientated interpretation of Article 137(2)).

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