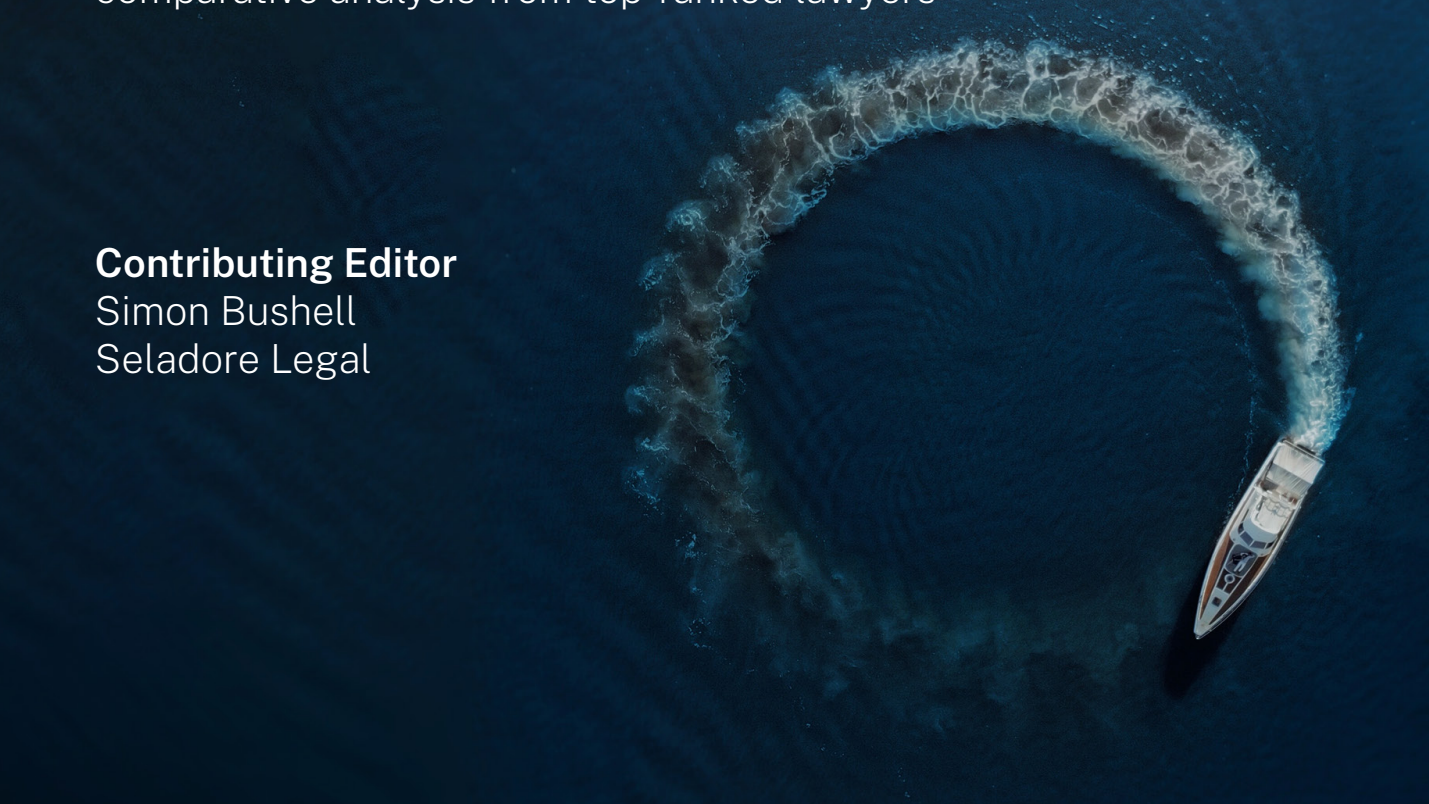
Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

International Fraud & Asset Tracing 2024

Definitive global law guides offering comparative analysis from top-ranked lawyers



Contributing Editor
Simon Bushell
Seladore Legal

Chambers

Global Practice Guides

International Fraud & Asset Tracing

Contributing Editor

Simon Bushell

Seladore Legal

2024

Chambers Global Practice Guides

For more than 20 years, Chambers Global Guides have ranked lawyers and law firms across the world. Chambers now offer clients a new series of Global Practice Guides, which contain practical guidance on doing legal business in key jurisdictions. We use our knowledge of the world's best lawyers to select leading law firms in each jurisdiction to write the 'Law & Practice' sections. In addition, the 'Trends & Developments' sections analyse trends and developments in local legal markets.

GPG Director Katie Burrington
Content Management Director Claire Oxborrow
Content Manager Jonathan Mendelowitz
Senior Content Reviewer Sally McGonigal, Ethne Withers
Content Reviewers Vivienne Button, Lawrence Garrett, Sean Marshall, Marianne Page, Heather Palomino, Deborah Sinclair, Stephen Dinkeldein and Adrian Ciechacki
Content Coordination Manager Nancy Laidler
Senior Content Coordinator Carla Cagnina
Content Coordinator Hannah McDowell
Head of Production Jasper John
Production Coordinator Genevieve Sibayan

Published by
Chambers and Partners
165 Fleet Street
London
EC4A 2AE
Tel +44 20 7606 8844
Fax +44 20 7831 5662
Web www.chambers.com

CONTENTS

CONTENTS

INTRODUCTION

Contributed by: Simon Bushell, Gareth Keillor and Jade Hu, **Seladore Legal**

Seladore Legal is a disputes-only law firm specialising in major and complex litigation and arbitration, with a particular emphasis on multi-party, multi-jurisdictional disputes. By specialising solely in litigation, the firm minimises the prospect of commercial and legal conflicts of interest. Seladore Legal Limited is made up of experienced litigators who have previously worked at other top-tier UK, US and international law firms, and who regularly act in significant commercial disputes across a range of different sectors.

Contributing Editor

Simon Bushell is the senior partner at Seladore Legal, specialising in international commercial litigation and arbitration, including civil fraud and asset tracing. Simon has over 30 years' experience in high-stakes commercial litigation. He acts for a broad range of clients, including large corporates, private equity houses, financial institutions, banks and ultra-high net worth individuals, in addition to foreign government agencies and state-owned companies. He has undertaken investigations into complex, worldwide frauds, conspiracies and insolvencies, and has broad experience in co-ordinating parallel cross-border disputes and proceedings.

Co-authors

Gareth Keillor is a partner at Seladore Legal. Gareth has over 19 years' experience in a wide range of commercial disputes of varying size and complexity, including High Court litigation and offshore jurisdictions (most notably BVI, Cayman Islands, Isle of Man, Guernsey, Jersey and Bermuda), as well as in arbitrations. He has acted for a wide variety of international clients, from major companies to ultra-high net worth individuals, and has a particular interest in fraud cases, commercial contract disputes, shareholder disputes and disputes involving injunctive relief.

Jade Hu is a senior associate at Seladore Legal, with experience of advising clients across a range of sectors and geographies on complex multi-jurisdiction and/or multi-party matters, including contractual, banking, civil fraud, trust and private wealth disputes. Jade's clients have included high net worth individuals, corporates, banks and other financial institutions. Prior to joining Seladore Legal, Jade was senior legal counsel at one of the world's largest sovereign wealth funds by assets under management. Her in-house experience also includes secondments to the litigation teams at Abrdn and BNP Paribas.

INTRODUCTION

Contributed by: Simon Bushell, Gareth Keillor and Jade Hu, **Seladore Legal**

Seladore Legal

20–22 Bedford Row
London WC1R 4EB
UK

Tel: +44 20 3882 2201
Email: info@seladorelegal.com
Web: www.seladorelegal.com

It is with great pleasure that we introduce this latest edition of the Chambers *International Fraud & Asset Tracing* guide. This publication provides the latest legal know-how in relation to civil law fraud, causes of action, litigation procedure, evidence gathering, asset preservation, third-party disclosure, damages principles and enforcement.

Strategies for Civil Law Fraud

Fraud litigation can be a very wide label covering a variety of disputes, but all fraud cases involve a few key areas.

First, there is the importance of identifying and securing assets – fraudsters tend to be sophisticated in hiding and moving assets, often through different forms, and without regard for borders (indeed, often deliberately through multiple jurisdictions to try to mask their trail). Unless action is taken at an early stage to lock down those assets, there may well not be anything to fight about through litigation. It is no good having a judgment but no assets to enforce against.

Second, there is the issue of identifying the right defendants. In cases where the identity of the wrongdoer is unknown, this could mean identifying them through, for example, a Norwich Pharmacal order. Such an order in England would require an innocent third party (such as a bank) that has been "mixed up" in the fraud to provide documents or information. Although there is also well-established jurisprudence for bringing claims against unknown persons, this is only useful if the assets have already been secured – otherwise, you are faced with a judgment against an unknown person and no hope of enforcing your judgment. Identifying the right defendants can also mean working out which other parties might be possible defendants: are there individuals or corporates who assisted in the fraud (for example, banks making payments, or accountants involved in a transaction)? Might there be arguments that the person who now has the assets holds them on trust for the victim of the fraud?

Finally, there is the gathering of evidence. This can involve the use of investigators or forensic accountants, but might also mean recourse to the courts – for example, through third-party disclosure orders, potentially in different jurisdictions to that where the fraud occurred.

Looking ahead, fraud litigators will face a number of new challenges.

Technology-Driven Growth in Cross-Border Fraud

With the use of artificial intelligence (AI) and large language models, the rise in cyberfraud originat-

Contributed by: Simon Bushell, Gareth Keillor and Jade Hu, **Seladore Legal**

ing overseas will likely continue. Crypto-assets will also continue to remain of importance in fraud claims, both as assets to be stolen and as a means for transferring the proceeds of fraudulent activity, due to the ease and speed with which they can be exchanged and moved internationally. Indeed, a recent assessment by INTERPOL on global financial fraud concluded that the increased use of technology has enabled organised crime groups to target victims around the world more effectively.

Domestic courts may be able to exercise jurisdiction if it is unknown where assets have been dissipated. English courts, for instance, can grant a claimant permission to serve proceedings out of the jurisdiction, but a claimant must demonstrate a good arguable case that the claim falls within one of the jurisdictional "gateways" (for permission to serve out) under the English civil procedural rules.

This was recently considered by the English High Court in Osbourne v (1) Persons Unknown Category A (2) Persons Unknown Category B (3) Thembani Dube [2023] EWHC 39 (KB), where certain NFTs were stolen from someone domiciled in England. The claimant sought to establish that its claim fell within jurisdictional gateways based on an argument that the relevant assets were within the jurisdiction when the cause of action accrued against the third and fourth defendants, being an individual and unknown persons who ultimately possessed the stolen NFTs.

However, it was uncertain whether the assets remained in the jurisdiction when the cause of action accrued against those defendants. Ultimately, the judge found that a relevant gateway was established on the basis that the claim was made against the defendants as a constructive trustee, where such claim is governed by the law of England and Wales. The judge considered that there was a strong arguable case that a constructive trust may allegedly have been created when hackers transferred the NFTs from the claimant's wallet, and thus when the transfer occurred the third and fourth defendants became constructive trustees. The Court also gave permission to serve via alternative service by way of NFTs through the blockchain into the defendants' wallets.

While this has raised doubts about crypto-asset recovery where the recipients of such stolen assets have a less-established connection to the jurisdiction than the person who stole them, the Court's creativity in applying existing gateways, and the ability to serve via blockchain, demonstrates potential progress for new claims being brought.

Approaches in other jurisdictions will of course vary, and more cross-border collaboration is expected to continue as fraud schemes become increasingly co-ordinated across international borders.

Greater Regulation

Tackling fraud is also likely to be high on the regulatory agenda in multiple jurisdictions. The UK hosted the world's first Global Fraud Summit in early 2024, with the aim of increasing collaboration between law enforcement agencies and the private sector across the world.

This increased focus on tackling fraud will likely continue to be reflected in legislative changes. The UK, for instance, recently introduced the Economic Crime and Corporate Transparency Act 2023 (ECCTA), which stems from the government's attempt to crack down on dirty money and corrupt corporate elites in the UK, address-

Contributed by: Simon Bushell, Gareth Keillor and Jade Hu, **Seladore Legal**

ing London's reputation as a place where money laundering and fraud are commonplace. The introduction of the ECCTA has laid a potential minefield for corporates, with new offences (such as an offence of corporate liability for the failure to prevent) remaining in focus for 2024. Civil practitioners will be paying close attention to whether any proceedings or investigations could give rise to possible civil claims for vicarious liability.

Regulatory efforts targeting fraud and related offences have also intensified in other jurisdictions, including Australia, the USA and Europe.

Class Actions and ESG

More class actions involving financial fraud across multiple jurisdictions are also expected, a trend that has been continuing since the 2008 financial crisis.

Claims relating to environmental, social and governance (ESG) fraud will also be a key area to watch. ESG litigation has remained on the horizon for a number of years now, and with new rules from the UK's Financial Conduct Authority attempting to tackle greenwashing, misrepresentation of green credentials and mis-selling of "green products", there is a strong chance that 2024 could see a spike in fraud claims with an ESG element.

Further, we have seen an increase in the use of "crowdfunding" for claims in England. While this still remains very small, and has tended to be in the public interest sphere, it is easy to see how this could become a source of funding for ESG fraud claims.

Conclusion

It is the job of the fraud litigator to adapt to these new challenges and to pull all the elements of a claim together, and often to do so across a number of different jurisdictions and in a very compressed timeframe. For this reason, a guide such as this one will be of great value to practitioners in this space.

SWITZERLAND

Law and Practice

Contributed by:
Antonia Mottironi
Ardenter Law

Contents

Ardenter Law advises on the implementation of global strategies aimed at the efficient resolution of complex disputes, in particular in the fields of asset tracing and recovery and international crime. Its asset recovery activity stands on the three pillars of (i) economic and financial crime, (ii) cross-border insolvency and (iii) enforcement of foreign judgments and arbitral awards. Its expertise on ESG norms and standards also makes it an active stakeholder in the fight against the most heinous international crimes. With an international network of lawyers and experts, as well as a deep understanding of international organisations and NGOs, Ardenter implements, co-ordinates and monitors the legal teams involved in multi-jurisdictional proceedings. As a law firm based in Geneva, Ardenter represents the interests of its clients before Swiss courts and authorities.

Author

Antonia Mottironi is an attorney-at-law at Ardenter 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 multi-jurisdictional disputes, in particular with common law jurisdictions. She has in-depth experience in cross-border insolvency cases involving foreign bankrupt banks and fraud schemes.

Ardenter Law

Rue Verdaine 6
CH-1204
Geneva
Switzerland

Tel: +41 22 319 21 20
Email: info@ardenterlaw.ch
Web: www.ardenterlaw.ch

Ardentěr
— Law
strategy across borders

1. Fraud Claims

1.1 General Characteristics of Fraud Claims

Switzerland being a civil law jurisdiction, civil remedies often need to be supported by criminal remedies. The institution of criminal proceedings enables the victims of fraud participating as plaintiffs to request that the law enforcement authorities issue broad freezing and disclosure orders from defendants and third parties holding assets or information (see **2.5 Criminal Redress**).

"Fraud" has a narrower meaning under Swiss law than the general terms "civil fraud" of common law and refers to notions of criminal law rather than of private law. For the purpose of this article, the term "fraud" is defined broadly to include, in particular but not limited to, the following felonies of Swiss criminal law: embezzlement, fraud, criminal mismanagement, money laundering, felonies committed in bankruptcy, forgery, conspiracy, corruption and bribery.

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).

1.2 Causes of Action After Receipt of a Bribe

There are no specific causes of action available in Switzerland to a claimant whose agent has received a bribe and general rules on liability for damages will apply.

It is worth mentioning, however, that an agreement entered into through the payment of a bribe is not, by that very fact, illegal or immoral. A contract obtained by bribing a civil servant is void only if the reprehensible nature of the conduct extends to the content of the agreement. The agreement may however be voided on the ground of misrepresentation.

1.3 Claims Against Parties Who Assist or Facilitate Fraudulent Acts

Article 50 paragraph 1 SCO provides that where two or more persons have together caused damage, whether as instigator, perpetrator or accomplice, they are jointly liable to the person suffering damage. The court determines at its discretion whether and to what extent they have right of recourse against each other (Article 50 paragraph 2 SCO). Where the participants of the criminal offence caused the same damage together, the claimant may bring claims against any of the participants.

The recipient of fraudulently obtained assets shall be liable in torts if they handled (knowingly or in bad faith) stolen "goods" (excluding claims), by taking possession of, accepting as a gift or as the subject of a pledge, concealing, or assisting in the disposal of goods which they know or must assume have been acquired by way of an offence against property (Article 160 paragraph 1 of the Swiss Penal Code (SPC)) only to the extent that they received a share in the gains or caused damage due to their involvement (Article 50 paragraph 3 SCO).

The recipient of other fraudulently obtained assets (such as claims), including the person who participated in the concealment of stolen assets and of the proceeds of felonies, shall also be jointly liable with the main perpetrators. The most recent case law specifies that in cases where the assets subject to confiscation derive from crimes against property, the crime of money laundering protects not only the interest of the State in confiscation but also the protection of the person harmed by the predicate offence. Therefore, the liability of the money launderer also extends to the damage caused by the predicate offence to the extent of the assets whose confiscation was impeded by the money laundering.

1.4 Limitation Periods

As mentioned in **1.1 General Characteristics of 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 ten 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, as described in **1.1 General Characteristics of Fraud Claims**, 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).

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).

This longer civil statute of limitation cannot lead to apply foreign criminal law and the actual institution of criminal proceedings is not required.

1.5 Proprietary Claims Against Property

The legal remedies mentioned in **1.1 General Characteristics of Fraud Claims** do not enable persons harmed by fraud to bring property claims over the misappropriated assets.

Constructive trusts do not exist under Swiss law.

The insolvency office holder and the creditors may open claw-back actions pursuant to Articles

286 to 288 of the Debt Collection and Bankruptcy Act (DCBA), 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 DCBA). Plaintiffs will bring restitution claims in these legal actions.

In fraud-related cases, criminal redress will be more efficient in this regard (see **2.5 Criminal Redress**). 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 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.

1.6 Rules of Pre-action Conduct

There are no specific rules of pre-action conduct in relation to fraud claims.

General principles of law apply. In particular, the injured party must not allow the damage to increase inappropriately and must do whatever is required in good faith to prevent and reduce the damage (Article 44 SCO).

The legal provisions on the legal profession and the rules of professional conduct also provide that attorneys-at-law have the professional duty to endeavour to settle disputes amicably, in the best interests of their clients. They shall refrain from any behaviour likely to jeopardise the confidence placed in them.

1.7 Prevention of Defendants Dissipating or Secreting Assets

There are three ways of securing assets:

- civil attachment orders;
- insolvency freezing orders; and
- criminal freezing orders.

Civil Attachment Orders

If the claimant has sufficient evidence to show likelihood of the presence of assets in Switzerland, a civil attachment may be obtained ex parte, in particular in the case of the post-trial enforcement of judgments (including foreign interim reliefs) and arbitral awards, as well as in the event the defendant is not domiciled in Switzerland and 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 will be met if the claimant shows likelihood of the commission of money laundering in Switzerland as this entails liability in torts. 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. The amount of the banking assets actually attached will be disclosed to the claimant only if the inter-partes attachment proceedings are successful.

One should note that documents and information obtained abroad via gag and/or without

notice disclosure orders, such as NPOs or discovery pursuant to Section 1782 of Title 28 of the United States Code, are admitted as evidence in Swiss proceedings.

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

Insolvency Freezing Orders

In the case of foreign insolvency proceedings, recognition of the foreign insolvency decree (Articles 166ff of the Private International Law Act (PILA)) will be granted ex parte, without further inter-partes hearings. Third parties concerned may however appeal against the recognition. The publication of the decision of recognition in the federal and cantonal gazettes put on notice all debtors of the debtor (including banks) on Swiss territory that they can no longer make payments to the bankrupt debtor under penalty of having to pay twice, and that the holders of the assets of the bankrupt, in any capacity whatsoever, are required to place them immediately at the disposal of the bankruptcy office. Subject to the extraordinary application of the principle of transparency (see **3.2 Claims Against Ultimate Beneficial Owners**), assets of third parties cannot be frozen. Banking secrecy does not apply to the assets of the debtor.

Advances for costs may be requested to secure the costs of the liquidation proceedings – mainly court and administrative costs. Security for damages cannot be ordered against the foreign liquidators or creditors, as the duty to manage the assets of the estate relies on the State (or the appointed ancillary insolvency office holder).

Criminal Freezing Orders

Where criminal proceedings are instituted (see **2.5 Criminal Redress**), broad freezing of assets may be ordered by the public prosecutor in order to secure restitution to the plaintiffs, procedural costs, fines and penalties, forfeiture (Article 263 paragraph 1, litterae b-d Swiss Code of Penal Procedure (SCPP)) and replacement claims (Article 71 paragraphs 1-2 SPC). These freezing orders can be drafted in a generic form, without identification of specific Swiss assets. Banking secrecy does not apply.

Security for damages cannot be ordered against the plaintiff who requires the issuance of criminal freezing orders.

Where ordered under Article 263 paragraph1, litterae b-d SCPP, the criminal freeze takes precedence over any civil order obtained by plaintiffs. Where ordered under Article 71 paragraphs 1-2 SPC, the State has no preferable rights over the assets otherwise seized by the plaintiffs.

2. Procedures and Trials

2.1 Disclosure of Defendants' Assets

Civil Proceedings

In civil proceedings, except in matters where the parties have a legal duty of mutual information on common assets, such as heirs or spouses, a claimant has no means to obtain disclosure of the assets of the defendant. Contrary to World Freezing Orders issued ad personam, pre-trial civil attachment of assets are orders in rem on identified Swiss assets and can only be granted if the claimant shows likelihood that there exist assets in Switzerland. Outside of the assets identified in the attachment order, the defendant cannot be compelled to disclose its Swiss or worldwide assets. Assets held with Swiss banks cannot be disclosed before the end of the inter-partes proceedings of attachment.

Criminal Proceedings

In criminal proceedings, holders of assets of the accused or of third parties have the duty to hand over items and assets that may be seized pursuant to Articles 263 paragraph 1 and 265 paragraph 1 SCPP (**1.7 Prevention of Defendants Dissipating or Secreting Assets**). If and only if they refuse to comply with the invitation of handing over, the public prosecutor will issue disclosure orders pursuant to Article 263 SCPP.

The accused is not subject to the duty to hand over (Article 365 paragraph 2 SCPP) but may be subject to criminal disclosure orders and to searches, where they may request the sealing of items and assets protected under Article 264 SCPP. Suspicion of detention in bad faith is enough to obtain the disclosure of assets formally held by third parties.

Subject to restrictions justified by legally protected interests such as privacy of third parties, banking secrecy does not apply.

Insolvency Proceedings

The scope of the duty to disclose assets in insolvency proceedings (Article 222 paragraph 1 DCBA) – should they be domestic or ancillary proceedings, is narrower than in criminal proceedings, since the duty to disclose assets only applies to the debtor, usually excluding nominees or ultimate beneficial owners of the debtor. The debtor cannot invoke banking secrecy to resist to an insolvency disclosure order.

The piercing of the corporate veil may be obtained but under the strict requirements of corporate law (see **3.2 Claims Against Ultimate Beneficial Owners**).

The debtor who refuses to comply with a disclosure order, and so conceals assets, may be prosecuted for fraudulent bankruptcy and fraud against seizure and sentenced to a custodial sentence not exceeding five years (Article 163 paragraph 1 SPC). It is also liable to a fine pursuant to Article 323 paragraph 4 SPC.

In any type of judicial proceedings, Article 292 SPC provides that any person who fails to comply with an official order that has been issued by a competent authority or public official under the threat of the criminal penalty for non-compliance to an order and shall be liable to a fine.

2.2 Preserving Evidence

Civil Proceedings

Article 158 of the Swiss Code of Civil Procedure (SCCP) provides for the possibility of taking evidence located in Switzerland at any time if the applicant shows likelihood that the evidence is at risk or that it has a legitimate interest to obtain the requested evidence. The precautionary taking of evidence may also be granted if the trial will take place outside of Switzerland. In practice, however, this Article has a very narrow scope.

Conservatory measures may also be requested before or during proceedings if the applicant shows likelihood that a right to which it is entitled has been violated or a violation is anticipated and that the violation threatens to cause not easily reparable harm to the applicant. They can also be requested in support of foreign proceedings pursuant to Article 10 PILA.

Criminal Proceedings

Items and assets belonging to the accused or to a third party may be frozen if it is expected that they will be used as evidence (Article 263 paragraph 1, littera a SCPP; see **1.7 Prevention of Defendants Dissipating or Secreting Assets** and **2.1 Disclosure of Defendants' Assets**). If

the holder of these items and assets refuses to comply, searches can be ordered at their domicile, seat or premisses. These searches are conducted under warrant of the prosecutor and with the support of the police.

Private parties cannot conduct searches or take any coercive measures against any other parties.

2.3 Obtaining Disclosure of Documents and Evidence From Third Parties

There are several alternative ways of obtaining evidence from third parties:

- criminal disclosure and search orders;
- civil precautionary taking of evidence and civil production orders; and
- orders of disclosure of information by the bankruptcy authorities.

Civil Disclosure Orders

In principle, pre-trial collection of evidence is not available in Switzerland, subject to very narrow exceptions. For example, as mentioned in **2.2 Preserving Evidence**, Article 158 SCCP provides for the precautionary taking of evidence.

During the civil trial, the claimant has to assert its damage by quantified prayers of relief and to allege all the facts necessary to prove the damage immediately in its first submissions. Therefore, requesting the production of evidence during a civil trial is an inefficient strategy in fraud-related cases.

Criminal Disclosure Orders

As mentioned in **1.7 Prevention of Defendants Dissipating or Secreting Assets**, **2.1 Disclosure of Defendants' Assets** and **2.2 Preserving Evidence**, items and assets belonging to an accused or to a third party may be seized if it is expected that the items or assets:

- will be used as evidence;
- will be used as security for procedural costs, monetary penalties, fines or compensation;
- will have to be returned to the persons suffering harm;
- will have to be forfeited; or
- will be used to cover compensation claims made by the State in accordance with Article 71 SPC.

As also mentioned in **2.1 Disclosure of Defendants' Assets**, holders of assets of the accused or of third parties have the duty to hand over items and assets that may be seized pursuant to Article 263 paragraph 1 SCPP.

Where the assets are held with Swiss banks, the type of documents that may be obtained include banking statements, SWIFT messages, KYC documents, visit reports and compliance reports.

Evidence obtained in criminal proceedings can be used in any other parallel proceedings (see **2.5 Criminal Redress**).

Pre-trial Collection of Evidence in Insolvency Proceedings

In insolvency proceedings, the debtor is obliged, under threat of penal law sanctions, to divulge all assets to the bankruptcy office and to hold themself at the office's disposal (Article 222 DCBA). The debtor must open premises and cupboards at a bankruptcy official's request. If necessary, the official may use police assistance. Third parties who have custody of assets belonging to the debtor or against whom the debtor has claims have the same duty to divulge and deliver up as the debtor. Creditors and other interested parties have a right to consult the bankruptcy file and to use the evidence that it contains.

The Swiss Federal Court judged that in the specific context of insolvency, there is also a public interest in the disclosure of internal information of Swiss banks that may enable Swiss and foreign insolvency trustees to identify claims, to assess their amounts and to collect all supporting evidence for the purpose of bringing a legal action against the bank itself. In other words, the scope of the duty of banks and any other service provider to inform insolvency trustees is much broader than their contractual duty of accountability.

2.4 Procedural Orders

If the claimant has sufficient evidence to show likelihood of the presence of assets in Switzerland, a civil attachment may be obtained ex parte and without notice, in particular in the case of post-trial enforcement of judgments and arbitral awards, as well as in case the defendant is not domiciled in Switzerland and the claim has sufficient ties with Switzerland (see **1.7 Prevention of Defendants Dissipating or Secreting Assets**).

In the case of foreign insolvency proceedings, recognition of the foreign insolvency decree (Articles 166ff PILA) will be granted ex parte, without further inter-partes hearings. Third parties concerned may however appeal against the recognition (see **1.7 Prevention of Defendants Dissipating or Secreting Assets**).

Subject to the limits provided for in the SCCP and SPC protecting the administration of justice, there is no duty of full and frank disclosure in ex parte proceedings.

Where criminal proceedings are opened against unknown persons, disclosure of assets and evidence, as well as the freezing of assets, may also be orders by the public prosecutor against third parties, with the compelling order to be bound by secrecy. In principle, access to the file is not granted to the plaintiffs at this stage.

2.5 Criminal Redress

As mentioned in **1.1 General Characteristics of Fraud Claims**, 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 supplement it, and criminal proceedings do not suspend the civil action. In principle, there is no secret in the investigations in criminal proceedings. 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 kinds (including arbitration), both in Switzerland and abroad.

Before or in parallel to civil proceedings, a person aggrieved by fraud may file a criminal complaint before the law enforcement authorities. Any individual or legal entity whose rights, as legally protected by the applicable provision of the SPC, have been directly harmed by a crime is deemed to be an aggrieved person and may be admitted as plaintiffs.

Persons who are indirectly aggrieved by a crime, such as the shareholders, the directors, the employees, the creditors or the assignees of the direct victim of the crime are not considered to be aggrieved persons (exceptions apply, in particular in corruption and bribery cases, as well as for felonies committed in bankruptcy).

During a criminal investigation, the plaintiff has essentially the same party rights as the suspect, as set out below.

- The right to access the file, with the right to take a copy and to use criminal evidence in any other proceedings (with the notable exception of states acting as plaintiffs where mutual legal assistance requests from those states are pending execution). In principle, there is no secrecy in the investigations.
- The right to request the award of damages against the accused person when the plaintiff made an additional civil plaintiff declaration within the criminal proceedings. The award part of the criminal judgment has the same effect as a judgment issued by a civil court. It qualifies as such, in particular pursuant to Article 1 of the Lugano Convention on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Lugano Convention").
- The right to be restituted with their property and assets.
- The right to be allocated with a monetary penalty or fine, objects and assets that have been forfeited, or the proceeds of their sale, compensatory claims and the amount of the good behaviour bond.

2.6 Judgment Without Trial

Civil Default Judgments

In civil proceedings, a party is in default if they fail to accomplish a procedural act within the set limitation period or do not appear when summoned to appear. The proceedings shall continue without the act defaulted on unless the law provides otherwise (Article 147 paragraphs 1-2 SCCP). The court may on application grant a period of grace or summon the parties again for a new appearance provided the defaulting party shows credibly that they were not responsible for the default or were responsible only to a minor extent. The application must be submitted within ten days of the day on which the cause of default has ceased to apply. If notice of a decision has been given to the parties, restitution may be requested only within six months after the decision has come into force (Article 148 SCCP). In the event that a party fails to attend the main hearing, the court shall consider the submissions made by the parties and may rely on the representations of the party present and on the information on file (Article 234 paragraph 1 SCCP). In other words, the court cannot dismiss the party in default for this reason alone and still needs to appraise the evidence on file.

The party in default must have been properly served with the summons to appear to be found in default (see **4.2 Service of Proceedings out of the Jurisdiction**).

Criminal Judgment in Abstentia

In criminal proceedings, a trial can be conducted in absentia pursuant to Articles 366ff SCPP. If an accused who has been duly summoned fails to appear before the court of first instance, the court shall fix a new hearing and summon the person again or arrange for them to be brought before the court. If the accused fails to appear for the re-arranged trial or if it is not possible to bring them before the court, the trial may be held in the absence of the accused. Proceedings in absentia may only be held if the accused has previously had adequate opportunity in the proceedings to comment on the offences of which they are accused and sufficient evidence is available to reach a judgment without the presence of the accused.

If it is possible to serve the judgment in absentia personally, the person convicted shall be notified that they have ten days to make a written or oral

application to the court that issued the judgment for it to re-assess the case in a new trial. The court shall reject the application if the person convicted was duly summoned, but failed to appear at the trial without excuse. If the convicted person again fails to appear for the trial, the judgment in absentia shall remain valid. The court shall issue a new judgment, which is subject to the customary rights of appeal.

2.7 Rules for Pleading Fraud

There is no specific rule for pleading fraud.

General criminal sanctions for crimes against the administration of justice (such as false accusations or misleading the judicial authorities) and crimes against honour (such as defamation) apply to any parties to criminal and civil proceedings.

The legal provisions on the legal profession and the rules of professional conduct described in **1.6 Rules of Pre-action Conduct** also apply.

2.8 Claims Against "Unknown" Fraudsters

It is not possible to institute civil proceedings against unknown defendants, but criminal complaints can be filed against unknown persons.

Articles 376ff SCPP provide for the possibility to proceed to independent forfeiture of assets where requirements of forfeiture are met (Articles 69ff SPC). These proceedings are similar to the US proceedings of civil forfeiture.

Independent forfeiture may be ordered in specific circumstances, in particular where the perpetrators are unknown or cannot be subject to criminal investigations in Switzerland because they are located in non-co-operative jurisdictions.

On a case-by-case basis, independent forfeiture of assets may be ordered in view of restitution to the person who suffered harm or of a replacement claim. It is also used in cases of assets placed in Switzerland and related to organised crime.

2.9 Compelling Witnesses to Give Evidence

In civil proceedings, if a third party refuses to co-operate without justification (eg, protection against self-incrimination), the court may impose a disciplinary fine up to CHF1,000, threaten fines under Article 292 SPC, order the use of compulsory measures and charge the third party the costs caused by the refusal (Article 167 paragraph 1 SCCP).

In criminal proceedings, any person who refuses to testify without having the right to do so may be liable to a fixed penalty fine and may be required to pay the costs and compensation incurred as a result of such refusal. If a person who is obliged to testify insists on refusing to do so, they will again be requested to testify and cautioned as to a fine under Article 292 SPC. In the event of continued refusal, criminal proceedings for breach of Article 292 SPC shall be commenced (Article 176 SCPP), which may (only) result in conviction to a fine.

In spite of the very loose sanctions provided for in the case of refusal to testify of witnesses, it must be outline that in any judicial proceedings, false testimony related to the facts of the case is a felony punished by Article 307 paragraphs 1-2 SPC. Persons providing information (in particular, plaintiffs and persons who cannot be excluded as the perpetrator of or as a participant in the offence under investigation or another related offence) may be subject to criminal prosecution for false accusation, for misleading judicial

authorities and for assisting offenders (Articles 178ff SCPP).

3. Corporate Entities, Ultimate Beneficial Owners and Shareholders

3.1 Imposing Liability for Fraud on to a Corporate Entity

Corporate Civil Liability

A legal entity may be liable in torts for the acts of individuals. Under Article 55(2) of the Swiss Civil Code (SCC), the governing officers bind the legal entity by concluding transactions and by their other actions. Under Article 55 paragraph 1 SCO, the employer is liable for the damage caused by its employees in the performance of their work unless it proves that it took all due care to avoid damage of this type or that the loss or damage would have occurred even if all due care had been taken.

Corporate Criminal Liability

On the criminal side, Swiss law provides for two types of criminal corporate liability for Swiss or foreign legal entities:

- subsidiary criminal liability if it is not possible to attribute to a specific person a felony or misdemeanour committed within a company due to its inadequate organisation (Article 102 paragraph 1 SPC); and
- primary liability with regard to money laundering, organised crime and bribery independently of the criminal liability of individuals if a company did not take all the reasonable and necessary organisational measures to prevent such offences (Article 102 paragraph 2 SPC).

3.2 Claims Against Ultimate Beneficial Owners

Swiss private law applies the principle of separateness of legal entities and good faith is presumed. Only the manifest abuse of a right is sanctioned by law (Article 2 paragraph 2 SCC).

Criminal findings of fraud may enable courts to motivate findings of bad faith but do not suffice to obtain the piercing of the corporate veil.

The presence of anti-money laundering forms in banking documentation identifying a legal or natural person as the ultimate beneficial owner of a bank account is not sufficient to demonstrate a manifest abuse of rights.

However, according to the principle of transparency, the formal existence of two legally distinct persons cannot be accepted without reservation when all or almost all of the assets of a company belong either directly or through intermediaries to the same person, whether natural or legal. The claimant must demonstrate that despite the legal duality of persons, there are not two independent entities, the company being a mere instrument in the hand of its author, who together form a single economical unit. In accordance with economic reality, there is an identity of persons whenever the fact of invoking the diversity of subjects constitutes an abuse of rights or has the effect of manifestly prejudicing legitimate interests.

In criminal proceedings, forfeiture of assets (that may then be allocated to the plaintiff) 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 (Article 70 paragraph 2 SPC). In other words, forfeiture against

third parties can be ordered if the assets were acquired in bad faith and without consideration.

3.3 Shareholders' Claims Against Fraudulent Directors

Article 754 paragraph 1 SCO provides that 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.

Outside of bankruptcy (namely as long as the company is solvent), in addition to the company, the individual shareholders are also entitled to sue for any losses caused to the company. The shareholder's claim is for performance to the company (Article 756 paragraph 1 SCO).

In the event of the bankruptcy of the damaged company, its creditors are also entitled to request that the company be compensated for the losses suffered. However, in the first instance, the insolvency office holder may assert the claims of the shareholders and the company's creditors (Article 757 paragraph 1 SCO). Subject to any assignment of claims to creditors (Article 757 paragraph 3 SCO), where the insolvency office holder waives 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. 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 (Article 757 paragraph 2 SCO).

4. Overseas Parties in Fraud Claims

4.1 Joining Overseas Parties to Fraud Claims

The joining of parties in civil or criminal proceedings depends on their legal standing as provided for by Swiss law.

Outside of mutual legal assistance in criminal and civil matters, Swiss courts and authorities do not exercise extraterritorial jurisdiction.

In criminal proceedings, as mentioned in **2.5 Criminal Redress**, only individuals or legal entities whose rights, as legally protected by the applicable provision of the SPC, have been directly harmed by a crime may be admitted as plaintiffs.

In civil proceedings, legal standing is usually given to the person who has a substantive claim. There exist few exceptions, such as the derivative action of the shareholder on behalf of the company provided for at Articles 754ff SCO (see **3.3 Shareholders' Claims Against Fraudulent Directors**).

Third parties may join civil proceedings by:

- principal intervention (Article 73 paragraph 1 SCCP), where the intervenor claims to have a better right in the object of a dispute, to the total or partial exclusion of both parties;
- accessory intervention (Article 74 SCCP), where the intervenor shows a credible legal interest in having a pending dispute decided in favour of one of the parties;
- third-party notice (Article 78 paragraph 1 SCCP), where a party notifies a third party of the dispute if, in the event of being unsuc-

cessful, they might take recourse against or be subject to recourse by a third party; and
- third-party action (Article 81 paragraph 1 SCCP), where a party notifies a third party, asserting the rights that they believe they will have against the notified third party in the event that they are unsuccessful in the court that is dealing with the main action.

4.2 Service of Proceedings out of the Jurisdiction

Courts and authorities' orders and decisions are served on parties by official channels. Notice by the parties is not considered as proper service. Improper service of documents instituting proceedings will entail the nullity of the proceedings and of the final decision. Therefore, it is not advisable to circumvent the process of service provided for in international treaties (notably the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters) and Swiss domestic law as this would eventually jeopardise the chances of recovery in Switzerland.

The Federal Office of Justice (FOJ) publishes an online guide on mutual assistance in civil and criminal matters, with a country index, which is frequently updated (www.rhf.admin.ch/rhf/fr/home/rechtshilfefuehrer/laenderindex.html). All information on requirements for service in each specific jurisdiction is accessible there. The FOJ guide is published for guidance purposes only.

For proper civil service, Article 141 paragraph 1 SCCP provides for alternative service by publication in specific circumstances. Service shall be effected by notice in the official gazette of the canton or in the Swiss Official Gazette of Commerce where:

- the whereabouts of the addressee are unknown and cannot be ascertained despite making reasonable enquiries;
- service is impossible or would lead to exceptional inconvenience; and
- a party with domicile or registered office abroad has not provided a domicile for service in Switzerland despite being instructed to do so by the court.

In this respect, the FOJ guide mentions the foreseeable duration of service in the requested state, from a few months to impossibility of service. Where the FOJ guide mentions that service in a country is impossible, Swiss case law and practice of courts impose a duty of effective attempt of service through official channels, which can take several months.

5. Enforcement

5.1 Methods of Enforcement

Money judgments are enforced under the DCBA and are executed by local debt collection offices. Non-money judgments are enforced under the SCCP, with assistance from the civil courts.

In the case of foreign decisions, the recognition of foreign judgments is decided incidentally pursuant to the rules of the PILA and, where applicable, bilateral or multilateral treaties. Switzerland is a party to the Lugano Convention and to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which applies erga omnes.

Enforcement follows the domestic procedures applicable to money and non-money judgments.

If the debtor is domiciled in Switzerland, enforcement proceedings will usually be instituted by a

simple request to issue an order to pay sent to the local debt collection office. The claim does not need to be documented at this stage. If the debtor opposes to the order to pay, the creditor may file a request of setting aside the opposition before the courts, where enforcement of the foreign decision will be requested. If the creditor succeeds, seizure of the Swiss assets of the debtor may be requested to and executed by the debt collection office over all the Swiss assets of the debtor up to the amount of the claims, subject to debt collection proceedings.

Debt collection proceedings can be preceded by a request for post-trial attachment of Swiss assets if the debtor is domiciled in Switzerland. If the debtor is not domiciled in Switzerland, a request for attachment of Swiss assets must precede the debt collection proceedings in order to create a forum for enforcement at the place of the assets (except in situations where the creditor can show a legitimate interest in seeking recognition outside of enforcement proceedings). The creditor will have to show likelihood of the presence of Swiss assets in the request for attachment and cannot be granted with an order of disclosure of assets by the court. The proceedings of attachment are conducted first ex parte, then inter partes in case the debtor opposes. The attachment proceedings will be conducted in parallel of debt enforcement proceedings. If the creditor succeeds, the debt collection office will seize the attached assets and will release them if favour of the creditor.

6. Privileges

6.1 Invoking the Privilege Against Self-Incrimination

In civil proceedings, a party (claimant or defendant) may refuse to collaborate if the taking of evidence could expose a close relative within the meaning of Article 165 to criminal prosecution or civil liability (Article 163 paragraph 1 littera a SCCP). The party does not benefit from the protection against self-incrimination.

The court may not infer from a party's or third party's legitimate refusal to co-operate that the alleged fact is proven (Article 162 SCCP). If a party refuses to co-operate without motives, the court will take this into account when assessing the evidence (Article 164 SCCP).

In criminal proceedings, the accused is not obliged to testify against themself. In particular, they have the right to refuse to give evidence and to refuse to co-operate with the proceedings. They are, however, obliged to submit to the coercive measures provided for by law (Article 113 paragraph 1 SCPP). Proceedings shall continue even if the accused refuses to co-operate (Article 113 paragraph 2 SCPP).

Switzerland being a contracting state to the European Convention on Human Rights (ECHR), the case law of the European Court of Human Rights (ECtHR) applies. In principle, and in absence of any other decisive evidence collected by the law enforcement authorities, the use of the right to remain silent cannot be used against the accused or construed as a confession. However, in cases where there is sufficient evidence for a conviction, the silence of the accused may be used against them. An aggravation of the sentence can be justified only if one can infer a lack of remorse or awareness of wrongdoing from the silence.

In insolvency proceedings, which are of administrative nature, the principle is reversed as the debtor has a duty to collaborate with the authorities. There is no statutory rule on the right to

remain silent. However, in cases where parallel criminal proceedings are pending, one can infer from ECtHR case law regarding proceedings for tax fraud that a debtor who is also an accused in parallel criminal proceedings may refuse to testify before the insolvency authorities or office holders where there is a risk that their declarations may very well be produced in the criminal proceedings.

6.2 Undermining the Privilege Over Communications Exempt From Discovery or Disclosure

Client-attorney privilege is protected in both civil and criminal proceedings, and extends to communications between lawyers and their clients, as well as documents collected or created within the performance of their mandate and within the scope of the typical activity of lawyers (representation before courts and advisory in legal matters). A lawyer may always refuse to collaborate even if they are released from client-attorney privilege, provided that it serves the mere interests of the client.

A lawyer cannot invoke client-attorney privilege to protect their own interests. The creation of documents for the purpose of committing, or assisting in the commission of, a criminal offence is, obviously, not a typical activity.

In civil proceedings, parties and/or third parties will therefore have the right to refuse to collaborate, including the right to refuse to provide communications with their lawyers (Article 160 paragraph 1, littera b SCCP) and the right of lawyers to invoke their professional secrecy (Articles 163 paragraph 1 littera b and 166 paragraph 1 littera b SCCP).

In criminal proceedings, pursuant to Article 264 paragraph1, litterae a and d SCPP, the following items may not be seized irrespective of their location and when they were created:

- documents used in communications between the accused and their defence lawyer; and
- items and documents used in communications between another person and their lawyer provided the lawyer is entitled to represent clients before Swiss courts in accordance with the Lawyers Federal Act and is not accused of an offence relating to the same case.

This does not apply to items and assets that must be seized with a view to their return to the person suffering harm or their forfeiture (Article 164 paragraph 2 SCPP).

In a landmark decision (BGE 147 V 385), the Swiss Federal Court ruled that prosecutors can seize communications between a third party to the criminal proceedings and their US attorney-at-law, since the legal privilege given to communications between a lawyer and third parties only extends, in summary, to Swiss and EU or EFTA lawyers.

7. Special Rules and Laws

7.1 Rules for Claiming Punitive or Exemplary Damages

Switzerland being a civil law country, punitive damages are, in principle, contrary to substantive public policy and punitive damages cannot be claimed under Swiss law. However, damages based on a penalty clause agreed by the defendant can be claimed, as long as they remain proportionate.

It is debated whether punitive damages adjudicated by foreign courts or arbitral tribunals can

be enforced. The mere fact that a foreign decision grants punitive damages does not suffice to conclude that it is contrary to procedural public policy. Where the amount of the claim appears disproportionate, partial enforcement remains possible.

7.2 Laws to Protect "Banking Secrecy"

The well-know, but misunderstood, Swiss banking secrecy is provided for at Article 47 of the Federal Banking Act. It is conceived as a criminal offence that punishes the breach of secrecy by the bank towards its client. The client of the bank 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.

Banking secrecy cannot be opposed in criminal and insolvency proceedings. In civil proceedings (including execution of letters rogatory), banking secrecy qualifies as "other legally protected secrets", far behind the professional secrecy of lawyers, priests or doctors.

Banking secrecy does not grant any privileged right to refuse to collaborate before courts and authorities. It is only an exception to the duty to collaborate of third parties holding information. Swiss banks may still resist a request of collection of banking information by arguing that the interest in keeping the secret outweighs the interest in finding the truth in the trial.

7.3 Crypto-assets

There is no definition of the terms crypto-assets or cryptocurrencies in Swiss law and the legal treatment of these assets will depend on each area of law. In general terms, crypto-assets are treated as property but, like for any other types of assets, the way they can be frozen, seized or forfeited will depend on the type of holding over them.

In criminal proceedings in particular, the Swiss Federal Court ruled that the immediate liquidation of seized crypto-assets and their conversion into Swiss francs in view of forfeiture infringed the legal provisions of the SCPP. In spite of the high volatility of this type of assets, law enforcement authorities must seek the advice of experts to proceed to the appropriate liquidation of crypto-assets, as they have a duty to care over the managed seized assets.

In February 2021, the Federal Act on adaptation of federal law to developments in Distributed Ledger Technology (DLT) entered into force. Among others, bankruptcy, anti-money-laundering and financial market laws were amended to take into consideration the increase of the development of the blockchain and DLT technologies.

Article 242a DCBA has been included in bankruptcy law under a new section "Restitution of crypto-assets". It provides that the bankruptcy office holder decides on the restitution of crypto-assets, of which the debtor had the power to dispose at the opening of the bankruptcy and that are claimed by a third party. The claim is justified if the debtor has undertaken to keep the crypto-assets at the disposal of the third party at all times and if the crypto- assets are individually attributed to the third party or are attributed to a community and the third party's share is clearly determined. This legal provision only targets the bankruptcy of a custodian company and aims at the restitution of their assets to the clients. Subject to these legal requirements, these clients have therefore a property claim that benefits from a priority over the ordinary creditors, who only dispose of a claim against the bankrupt estate.

With respect to the financial markets laws, platforms based on DLT have been included in the definition of financial market infrastructures (Article 2 littera a, 5a of the Financial Market Infrastructures Act, FinMIA). As a consequence, financial crimes can now also be committed on these types of platforms.

The federal Act on Money Laundering (AML) was also amended to include DLT-based platforms in the definition of financial intermediaries (Article 2 paragraph 2 AML). Initial coins offering and services provided in a permanent business relationship in connection with the transfer of cryptocurrencies are now considered as financial intermediation and are subject to the AML's obligations of diligence.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com