

SWISS INVESTMENT REPORT

APRIL 2023



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The Swiss Investment Report provides background information on the Swiss investment-related legal framework as well as information on current developments in the Swiss legislation from a foreign investor's perspective.

Interruption of the statute of limitations
by a request for conciliation and the
effect when using a foreign currency.

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|-----|--|
| I | New Judgement by the Federal Supreme Court |
| II | Requests in the wrong currency |
| III | Effects on the statute of limitations |
| IV | Summary |

Interruption of the Statute of Limitations by a Request for Conciliation and the Effect when Using a Foreign Currency.

I. New Judgement by the Federal Supreme Court

The following article will analyse the new judgment by the Swiss Federal Supreme Court regarding a patient who has filed a request for conciliation for responsibility in Swiss Francs. However, the damage and client's home address were in France with the currency of Euro.

It aims to discuss and explain the judgment, meaning and consequences of filing a complaint in a different currency.

The subject of the proceedings was a request for conciliation for liability in Swiss francs filed by a patient against a private hospital and the treating doctors. This request should be made within the time limit of 10 years from the date of the surgical intervention. The cantonal courts rejected the patient's Swiss franc claims because they should have been denominated in euros since the damage occurred in France, the patient's residence. The patient then submitted a second request for conciliation, with legal claims denominated in euros. This request was made after the expiry of the period of 10 years from the date of the surgical intervention. The cantonal courts dismissed this second request because the legal claims made in euros were time-barred, as the first conciliation request had not interrupted the statute of limitations. On appeal, the Federal Supreme Court overturned this ruling, dismissed the statute of limitations plea, and returned the case to the cantonal court to continue the proceedings.

II. Request in the wrong currency

The Federal Supreme Court first reiterated its case law regarding the currency in which a creditor must file its claims and the consequence of filing requests in the wrong currency.

According to the court, a claimant must claim monetary debts in the currency of the state in which the reduction of assets occurs, i.e. in the currency of his

domicile or registered office, irrespective of the reason. An action wrongly brought in the wrong currency must be dismissed.

However, the claimant can still file a new request in the correct currency and enforce its rights and claims.

III. Effects on the statute of limitations

In principle, a request in the wrong currency will be dismissed, and the claimant can file a request in the correct currency. However, if the statute of limitations has expired during this period, the question arises whether the first conciliation request with wrong currency interrupts this statute of limitations, and the claimant is entitled to still request conciliation or arbitration in the correct currency. Otherwise, the statute of limitations has elapsed, and the claimant no longer has a legal remedy.

Statute of limitations put a time limit on actions, protecting potential defendants from late requests that may be difficult to counter, and thus tend to prevent the injustice that could occur if the courts were called upon to rule on events that occurred far in the past, based on evidence that could no longer be relied upon and that was incomplete.

However, the claimant has the option of interrupting the statute of limitations. According to Art. 135 No. 2 Code of Obligation (“CO”), the statute of limitations is interrupted if the claimant asserts his rights through legal proceedings, a request for conciliation, an action or a plea before a court or an arbitration tribunal or by intervening in a bankruptcy.

In order to validly interrupt the statute of limitations in accordance with this provision, the claimant must make known his intention to assert his claim, and this act must make it possible to individually identify his claim (which counterparty, which legal claim, amount of claim, etc).

The Federal Supreme Court pointed out that the incorrect designation of a party had no consequences about the interruption of the statute of limitations if the identity of the correct party was clearly recognisable.

Following the case law and the principle of reliance on which the validity of the interruption of the statute of limitations is based, and despite the incorrect designation of a party, the Federal Supreme Court stated that it must be assumed that a claimant who timely filed an initial claim in Swiss francs for a claim owed in foreign currency to a conciliation authority effectively interrupts the statute of limitations.

When the first request is sufficiently identified, the claimant has thus duly communicated to an official body his intention to obtain payment of his claim and the defendant can understand this intention according to the principle of reliance. By filing the first request for conciliation within the ten-year statute of limitations, the claimant gives notice that he wishes to enforce a claim for damages based on, for example, an injury suffered. In doing so, he effectively interrupted the statute of limitations, irrespective of the further course of the proceedings and may still file a lawsuit or arbitration in the correct currency.

IV. Summary

The Supreme Court has concluded that a request for conciliation in the wrong currency effectively interrupts the statute of limitations if the claim is identified by the claimant sufficiently and accordingly. Consequently, the claimant still has the option to file a new request for conciliation or arbitration in the correct currency, although the statute of limitations would have already elapsed.

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