

## **Factsheet on the Swiss procedure for debt enforcement**

### **Effect of a summons for the payment of a debt**

1. The summons for payment ("Zahlungsbefehl"/"commandement de payer"/"precetto esecutivo") requests the debtor to pay the debt specified together with debt enforcement costs. The summons for payment is issued on the instructions of the creditor; no verification is made that the debt claimed is genuine.

### **Objection (contesting debt enforcement)**

**2. If the debtor wishes to contest all or part of the debt or the plaintiff's right to bring debt enforcement proceedings, they must do so immediately by declaring their objection directly to the person serving the summons for payment, or do so verbally or in writing within 10 days of service at the debt enforcement office that issued the summons ("Rechtsvorschlag"/"opposition"/"opposizione").**

3. No justification need be given for the objection. However, if the debtor faces debt enforcement proceedings for a debt that has resulted in a total or partial loss in **bankruptcy** proceedings or which is subject to the same restrictions under Art. 267 DEBA, and the debtor files an objection because they have no new assets, they must declare this expressly (for example by entering "no new assets" in the "Bemerkungen"/"Remarques"/"Osservazioni" field). In such a case, if the debtor does not wish to contest the debt itself, they must also expressly state this (for example by adding the remark "debt undisputed").

4. If only **part of the debt** is contested, the disputed amount must be indicated when filing the objection; otherwise it is assumed that the entire debt is disputed. In the case of debt enforcement by enforcement of a pledge, unless there is a remark to the contrary, it is assumed that both the debt and the right to the pledge are being contested.

5. If the alleged debtor so requests, they must be given a certificate confirming the objection free of charge.

### **Continuation of the debt enforcement procedure**

6. Provided the debtor does not file an **objection** (Points 2 to 4) or if the objection is dismissed in subsequent court proceedings, the creditor can request that the debt enforcement procedure is continued. Before doing so, the creditor must wait at least 20 days and no more than one year from the date of service of the summons for payment. When the procedure continues, debt enforcement goes ahead in the form of foreclosure or bankruptcy procedures.

7. If the debtor files an objection, the creditor must justify the claim in civil or administrative proceedings (Art. 79 DEBA). If the debt is substantiated by an enforceable court decision or an acknowledgement contained in a public deed or confirmed by a signature, the creditor can request the court under Art. 80–83 DEBA to dismiss the objection (leave to continue enforcement proceedings). The deadlines mentioned in Point 2 are suspended between the initiation and conclusion of these court or administrative proceedings (Art. 88 DEBA).

### **Further important information**

8. If the debtor is unable to file an objection in time due to circumstances beyond their control, they can request the supervisory authority to reinstate the deadline. To do this, they must apply to the competent authority as soon as possible, giving their reasons for reinstating the deadline, and they must then file the objection within the same period as has expired (Art. 33 DEBA). Debt enforcement holidays (7 days before and 7 days after Easter and Christmas as and from 15 to 31 July, see Art. 56 DEBA) and a stay of enforcement (Art. 57 DEBA) do not affect the deadlines. However, if a deadline falls within one of these periods, it will be extended until the third day after the end of the period. In calculating the three-day period, Saturdays and Sundays and national public holidays are not counted (Art. 63 DEBA).

9. The debtor can ask the debt enforcement office to tell the creditor to provide evidence in support of the debt. This evidence should be made available for inspection at the debt enforcement office (Art. 73 DEBA). The debtor may also at any time request the court to declare that the debt does not exist, no longer exists or has been deferred (Art. 85 and Art. 85a DEBA).

10. If ordinary debt enforcement proceedings by seizure or bankruptcy are instituted for a pledge-secured debt, the debtor has 10 days to file an appeal with the supervisory authority requesting that the creditor first demand the sale of the pledge (Art. 41 para. 1<sup>bis</sup> DEBA). This does not apply if the case involves debt enforcement measures for mortgage-secured interest or a bill of exchange. **The debtor may also file an appeal with the supervisory authority on the grounds that the debt enforcement office has acted unlawfully or unreasonably** in some other way (Art. 17 DEBA). However, if only the existence of the debt is disputed, the objection (cf. n. 2 above) will suffice.

11. If there is a community of property regime between the debtor and his or her spouse (Art. 221 ff. Swiss Civil Code), the debt enforcement office must be informed of this, so that the spouse can also be served with a summons for payment. In such cases, the spouse can also file an objection (Art. 68a-b. DEBA). Special rules on service apply if the debtor is a minor or is subject to an adult protection measure (Art. 68c-d DEBA).

12. The details of the debt enforcement procedure in the **debt enforcement register** remain accessible to third parties for 5 years, unless the creditor notifies the debt enforcement office that the procedure has been withdrawn, a court dismisses the claims on the merits or the debtor files a successful request to not communicate a debt enforcement to third persons in accordance with Art. 8a para. 3 lit. d DEBA.

Federal Supervisory Authority for Debt Enforcement and Bankruptcy, 1 March 2020

This factsheet provides a summary of the legal position. More information can be obtained from any debt enforcement office or at [www.betreibungsschalter.ch](http://www.betreibungsschalter.ch). In complex cases, we recommended that you seek professional legal advice.