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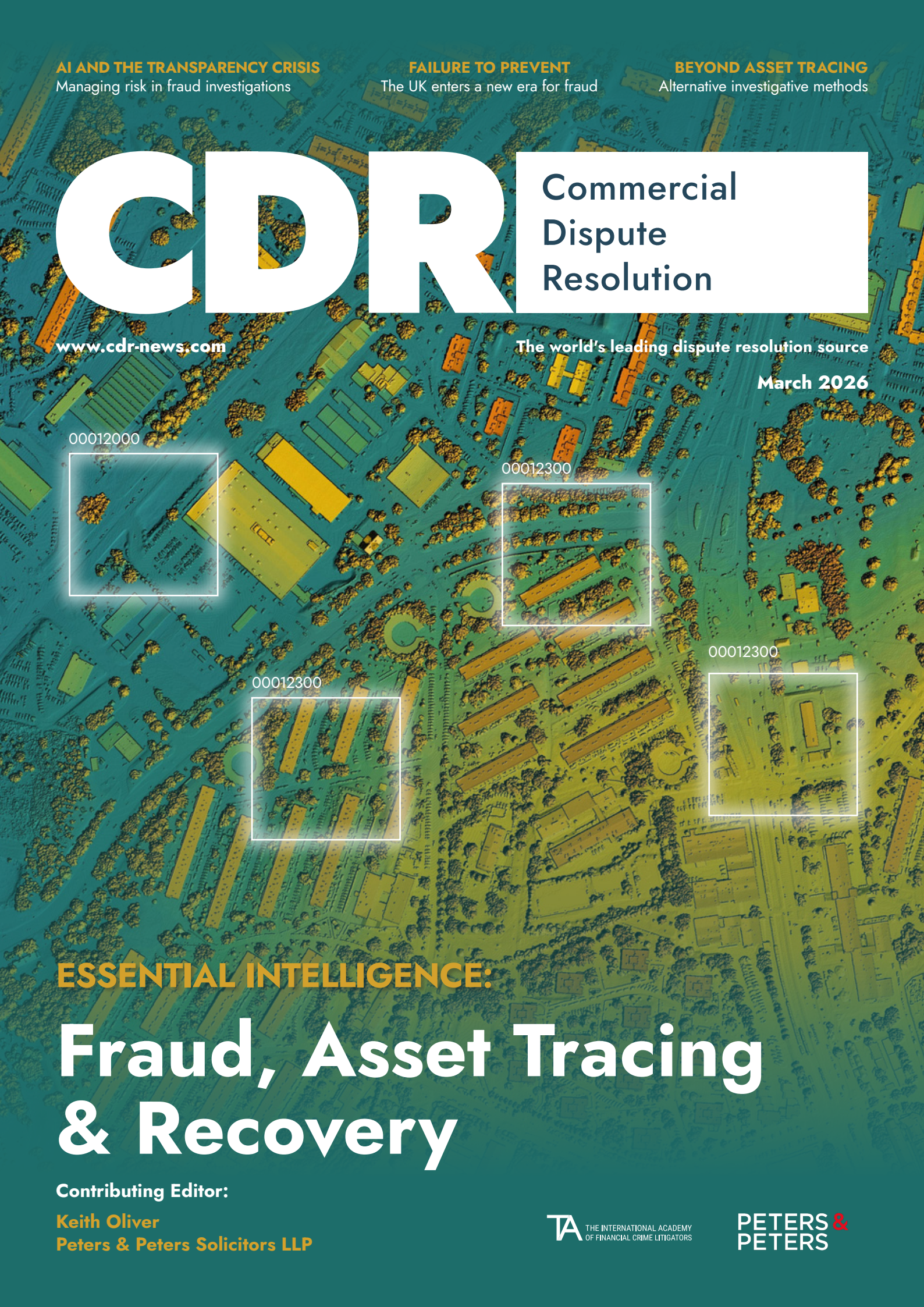

ESSENTIAL INTELLIGENCE:

Fraud, Asset Tracing & Recovery

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THE INTERNATIONAL ACADEMY OF FINANCIAL CRIME LITIGATORS

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I Executive summary

Switzerland, though small in size, holds significant global standing as a banking centre and commodity trading hub. Unsurprisingly, it is a key jurisdiction for both domestic and international asset recovery disputes. Swiss authorities are dedicated to investigating money laundering and supporting victims in reclaiming assets obtained through criminal activity.

Criminal proceedings allow investigating authorities to seize assets *ex officio* using coercive measures, not only from perpetrators but also from third parties along the paper trail, with confiscated assets prioritised for victim compensation. Civil law does not permit such coercive measures. So-called "civil attachment proceedings" require the claimant to clearly identify the assets' location. However, civil proceedings give the claimant greater control and increase the likelihood of reaching out-of-court settlements regarding compensation.

II Important legal framework and statutory underpinnings to fraud, asset tracing and recovery schemes

1. Legal background

The Swiss legal system belongs to the tradition of civil law. Thus, its primary legal framework is established in written statutes. Whilst the common law rule of binding precedent is not present in Switzerland, judicial decisions do play an important role within the legal framework. Judicial opinions and interpretations of the law that have been confirmed in multiple rulings over time may indeed be viewed as legal precedent. In addition, the view of legal scholars is often taken into consideration in the application and interpretation of the codified law and established precedents.

Whilst the Swiss procedural rules are regulated at a federal level, the cantons retain the autonomy to organise their judiciary. They are free in the organisation of their courts, but must fulfil the requirements set forth within federal law. Cantons are required to provide courts of two instances – a court of first instance as well as a court of appeal – within their judiciary system, and are further granted the power to establish specialised courts, e.g. commercial courts

that may serve as the court of first and sole instance for commercial disputes in that canton. The cantons Zurich, Bern, St. Gallen and Aargau have enacted commercial courts. Additionally, many cantons have other specialised courts for labour and tenant disputes.

The cantons further remain autonomous in how they choose to compose their courts. Switzerland does not have a jury system.

Disputes that pertain to fraud, asset tracing and recovery may be addressed either in civil litigation, i.e. in civil courts or, in the cantons that have established specialised commercial courts, in said commercial courts (see "Civil litigation" below). These disputes may further be addressed within criminal proceedings that may take place at either the cantonal or federal courts (see "Criminal proceedings" below). The civil and the criminal route may be combined in parallel proceedings (see "Parallel proceedings" below).

2. Civil litigation

a) Civil proceedings in general

Civil litigants in Switzerland may enact civil tort law, which allows the plaintiff to seek recovery or compensation of the damages that he or she has incurred through unlawful and, in particular, criminal acts of the defendant. The plaintiff is entitled to compensation of its negative interest, i.e. to be put back in the situation in which it would have found itself if the loss-causing event had not occurred.

To begin Swiss civil proceedings, a claimant must normally initiate a pre-suit conciliation hearing. The aim of such pre-suit conciliation hearing is to reach an agreement between the parties. If the parties cannot agree, the claimant may file a written claim with the courts. Following the revision of the Civil Procedure Code (CPC) on 1 January 2025, conciliation proceedings are optional in cases where a single cantonal court (commercial court) has jurisdiction.

Within Swiss civil proceedings there is the option for the defendant to extend the liability by bringing the claim against them to a third party by "notice of litigation". Whilst there are no class action suits in Switzerland, there is the possibility of joinder claims that are admissible if two or more claims subjectable to the same type of proceedings are in the same matter and raise a common question of either law or fact.

The parties are free, within the submission of their briefs, to evaluate what they deem to be relevant evidence and facts of the case, and are not bound by any general pre-trial disclosure regulations. The claimant filing the suit is expected to submit all the facts and

evidence supporting his or her claim from the beginning of the proceedings. Accordingly, the defendant will then be given the opportunity to either refute the claimant's facts or submit his or her own facts and evidence. Both parties must submit all evidence available to them without delay, i.e. generally with their initial briefs. Each party must submit proof to support the facts of his or her claim or defence. The courts are given broad discretion in the evaluation of the evidence submitted and will declare which evidence is admissible in the form of a procedural order.

Witnesses and experts, if they are called to provide testimony, are not subjected to cross-examination, but the parties have a right to make statements on the questions put forth by the court and may put forth their own questions. Until the revision of the CPC on 1 January 2025, privately commissioned expert opinions were not considered evidence. Under the newly revised art. 177 CPC, private expert opinions commissioned by the parties are now regarded as documents and are therefore classified as admissible evidence under art. 168 CPC, making them subject to the court's free assessment of evidence.

Within Swiss civil litigation, persons who are called upon to provide testimony or evidence within civil proceedings have a duty to cooperate and provide testimony, unless they are prohibited from doing so by confidentiality obligations (professions with statutory confidentiality, e.g. doctors, lawyers) or may refuse due to the threat of self-incrimination or their relationship with one of the parties to the proceedings. Contacting and preparing witnesses is generally not allowed within Swiss litigation proceedings.

Whilst Switzerland does not have the principle of contempt of court *per se*, indifference or lack of cooperation with the courts may lead to unfavourable conjecture with the court.

Before the court reaches its ruling, the parties may give a final opening to provide statements on the evidence submitted to the courts. In most civil proceedings, the courts are bound by the principle of party presentation, and may not go beyond the facts brought forth by the parties.

Within the final judgment, the court decides on the costs of the proceedings and the obligation to bear such costs. Under Swiss civil procedure law, the party that does not prevail before the court must bear the costs of the proceedings and the legal cost of the prevailing party as set by the court. Punitive damages as such are not awarded or recognised within Swiss law.

b) Injunctive relief/attachment proceedings

Beyond the ordinary procedures, Swiss civil law additionally provides for injunctive and interim relief within civil litigation and allows for the enforcement of a court ruling in favour of the claimant.

The remedy that is utilised the most is so-called "attachment proceedings". In order for a petition of attachment to be granted by the court, the petitioner must fulfil the following three main requisites:

- firstly, the petitioner must have a *prima facie* claim, i.e. the petitioner must credibly show that such claim exists;
- secondly, the petitioner must identify assets which are located within Switzerland; and
- lastly, the petitioner bases the request on valid grounds meriting an attachment.

In most cases, petitioners base their petition of attachment on grounds of the defendant's lack of a domicile or registered office in Switzerland. A petitioner may further base the petition on a ruling that was passed in the petitioner's favour against the defendant or on a certificate of unpaid debt from the defendant.

If the petition is filed on the grounds that the defendant lacks a domicile or registered office in Switzerland, the petitioner must show a sufficient nexus between the claim put forth and Switzerland.

The requirement of a nexus to Switzerland is usually fulfilled when one of the parties has its domicile in Switzerland, the place of execution or performance of the contract is in Switzerland or, in the case of a tort claim, the unlawful act took place in Switzerland or the harmful result of that act transpired in Switzerland.

The Swiss attachment degree is an *in rem* order and may only seize property located within Switzerland that was identified by the petitioner. The attachment order may extend to claims that the defendant holds against a third party, provided that said third party also has its domicile or registered office within Switzerland.

3. Criminal proceedings

a) Seizure and forfeiture of illegal proceeds

In accordance with art. 70 para. 1 of the Swiss Criminal

Code (SCC), the court orders the forfeiture of assets that have been acquired through the commission of a criminal offence, unless the assets are to be passed on to the person harmed for the purpose of restoring the prior lawful position. Thus, in case of fraud or other criminal offences against financial interests, the forfeiture operates in favour of the victim.

The forfeiture extends to assets that have a natural and adequate causal link to the criminal offence. However, they do not necessarily have to be the direct and immediate consequence of the offence. For example, income from legal transactions that have been concluded based on bribery can also be forfeited. Also, it is undisputed that surrogates of assets acquired through a criminal offence can be forfeited as well.

It is an issue of controversy whether the amount to be recovered in forfeiture and compensation claims should be determined on a net or gross basis. For generally prohibited activities (e.g. drug trafficking), gross calculations apply, whereas for acts that are permitted in principle but are only tortious in specific instances (e.g. a contract that has been obtained based on corruption), net calculations are used, i.e. the production costs are deducted.

Law enforcement authorities may order the provisional seizure of assets if they are likely to be returned to the persons harmed, to be forfeited or to serve to enforce the compensation claim (art. 263 para. 1 *lit.* c, d and e CPC). The provisional seizure of assets, which may be requested by victims of fraud or other criminal activities, is regularly a very effective and efficient tool for recovering assets. In particular, it is noteworthy that in criminal proceedings only, any assets resulting directly or indirectly (surrogates) from a criminal offence will be used to compensate the person harmed to the exclusion of all other creditors pursuing the civil route. These preferential rights should be kept in mind when deciding on whether to seek recovery by way of criminal or civil proceedings.

If the assets which are subject to forfeiture no longer exist, e.g. because they have been consumed or disposed of, the court will order a compensation claim for the same amount (art. 71 para. 1 SCC), which can be awarded to the person harmed (art. 73 SCC). The compensation claim may be enforced in any assets, including assets which may have been legally acquired. However, the seizure of unrelated assets does not accord the state preferential rights in the enforcement of the equivalent claim (art. 263 para. 1 *lit.* e CPC).

As forfeiture and compensation claims involve objective measures and not penalties, these sanctions are applied regardless of the criminal liability or conviction of a particular person; provided, however, that all objective and subjective elements of the underlying offence can be proven.

Another efficient way to obtain a *de facto* freezing of assets consists of giving a reasoned written notice to the bank where the assets are deposited, indicating the risk to the bank of being held criminally and civilly liable in the event that it allows the assets to be withdrawn and/or transferred. In view of the fact that Swiss law criminalises money laundering (see art. 305*bis* SCC), the bank faces not only a civil but also a criminal liability risk in this regard. This will usually prompt it to comply with the freezing request. Furthermore, in cases of suspicion of money laundering or another felony, the bank must notify the Money Laundering Reporting Office (MROS), which in turn involves the criminal authorities if a reasonable suspicion exists. Thus, the victim's interest in recovering his or her assets is also protected by the criminal provision of money laundering.

In addition to the freezing of assets, victims of fraud and other financial misconduct can request that the prosecutor orders the seizure of an accused's or a third party's bank documents in order to be able to establish the paper trail. The prosecutor will order such seizure if the bank documents are expected to be relevant as evidence for proving the crime or the existence of criminal proceeds (art. 263 para. 1 *lit.* a CPC).

It is noteworthy that in criminal proceedings, the state attorney will *ex officio* establish the relevant facts and, in particular, seek and freeze criminally acquired assets in favour of the person harmed regardless of whether these assets are still held by the accused or have meanwhile been transferred to a third party (*in rem* forfeiture). In contrast, in civil proceedings the burden of proof lies with the plaintiff and a civil attachment requires that the plaintiff establishes a *prima facie* claim and clearly indicates where the assets to be attached are located (no search arrest). If the assets are no longer there, e.g. in the bank account

of the offender, the attachment will fail without the plaintiff being informed as to whether and where the assets have been transferred. This should also be kept in mind when deciding on whether to take the criminal or civil route.

b) Pursuing civil compensation claims in criminal proceedings

Under Swiss law, victims of fraud and other financial offences have the possibility to assert their civil claims in the course of the criminal proceedings conducted against the accused (so-called "adhesion claims"; see art. 122 para. 1 CPC). They are thus not obliged to bring a separate civil action, but shall be spared the burden of conducting two separate proceedings. In practice, these adhesion claims are very common, especially as the state attorney establishes the facts *ex officio* in criminal proceedings, whereas in civil proceedings the parties have to investigate and present the facts.

In this context, it is important to note that the CPC differentiates between the person suffering harm and the so-called "private claimant". The person suffering harm is defined as either the person whose rights have been directly violated by the offence (art. 115 para. 1 CPC) or the person entitled to file a criminal complaint (art. 115 para. 2 CPC).

The private claimant is defined as a person suffering harm who expressly declares that he or she wishes to participate in the criminal proceedings as a criminal and/or civil claimant (art. 118 para. 1 CPC). The role of a private claimant therefore requires explicit confirmation that he or she wishes to act either as a criminal or civil claimant, or both, within the proceedings, whilst the role of a person suffering harm is granted *ex lege*.

In the latter case, the person suffering harm may do either or both of the following (art. 119 para. 2 CPC):

- request the prosecution and punishment of the person responsible for the offence (a criminal complaint); and/or
- file private law claims based on the offence (a civil claim).

The degree of participation the person suffering harm wishes to take within the proceedings is at his or her discretion. He or she may further extend his or her participation, e.g. from that of a solely civil claimant to that of a criminal and civil claimant, or *vice versa*, within the course of the proceedings.

The person suffering harm who declares that he or she wishes to join the proceedings as a private claimant is deemed an official party to the proceedings alongside the accused, and, once the stage of the main hearings have begun, the public prosecutor (art. 104 para. 1 CPC).

The private claimant therefore enjoys all rights provided to a party within criminal proceedings. These include, but are not limited to, the right to be heard and

inspect the files (art. 107 CPC), the right to file submissions to the prosecutor and/or the court (arts 109 and 346 CPC), the right to appoint legal counsel (art. 127 CPC), the right to participate in the taking of evidence (art. 147 CPC) and the right to appeal (art. 382 CPC).

Civil claims which are filed in the course of the criminal proceedings are subject to special procedural rules: with the declaration of the person suffering harm to participate in the criminal proceedings as a civil claimant, the civil claim becomes pending as of that point. The quantification and statement of the grounds on which the civil claims rely must be specified, at the latest, prior to the court hearing within the deadline set by the court (art. 123 para. 2 CPC). However, in a recent judgment, however, the Federal Supreme Court explicitly left the question open whether and when the conclusions of the civil claim must be quantified and reasoned in order to interrupt the limitation period. Thus, the statute of limitations must be kept in mind, especially in the case of long-lasting criminal proceedings.

The criminal court's jurisdiction over the civil claims is established by its jurisdiction over the criminal proceedings. The prayers for relief which the private claimant may submit have their basis in civil law and would, without a connection to the criminal proceedings, be customarily submitted to civil courts.

The criminal court decides on pending civil claims in the event that it:

- convicts the accused; or
- acquits the accused and the court is in a position to make a decision (art. 126 para. 1 CPC).

However, the civil claim filed in the criminal case will be referred to separate civil proceedings in the following circumstances (art. 126 para. 2 CPC):

- the criminal proceedings are abandoned;
- the civil claim cannot be settled under the summary penalty order procedure (because the amount exceeds CHF 30,000 or the assessment is not possible without further evidence; art. 353 para. 2 CPC);
- the private claimant has failed to justify or quantify the claim sufficiently;
- the private claimant has failed to lodge a security in respect of the claim; or
- the accused has been acquitted but the court is not in a position to make a decision on the civil claim.

If a full assessment of the civil claim would cause unreasonable expense and inconvenience to the criminal court, it may make a decision over whether the merits of the civil claim are given, and refer it to civil proceedings for quantification (art. 126 para. 3 CPC).

4. Enforcement of foreign judgments

According to Swiss law, foreign judgments or orders are required to be recognised and affirmed to be enforceable by a Swiss court under exequatur proceedings before they may be enforced in Switzerland.

The requirements for the recognition and enforcement of foreign judgments are regulated within the Federal Act on Private International Law (PILA; see arts 25–27). Switzerland further has ratified the Convention on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters of 30 October 2007 (Lugano Convention). Art. 32 of the Lugano Convention defines judgment as "*any judgment given by a court or tribunal of a State bound by this Convention, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court*". Subsequently, interim orders of another court, e.g. worldwide freezing orders, are included within the definition of a judgment according to the Lugano Convention and thus may be recognised and enforced within Switzerland.

The Federal Supreme Court has opted this view, but declared that the defendant must be given the opportunity to seek the discharge or adaption of the freezing order.

A foreign judgment may be declared enforceable based on the Lugano Convention if the judgment is deemed enforceable within the state of the judgment's origin, and if the following documents set out in art. 53 *et seqq*. of the Lugano Convention are submitted:

- a copy of the judgment that meets the conditions necessary to establish its authenticity;
- a certificate issued by the court or the competent authority where the judgment was given; and
- a certified translation of the aforementioned documents.

5. Outcome of legal action

Within civil litigation, if successful, the claimant acquires a settlement or judgment in his or her favour. If the defendant's assets have been successfully attached, the claimant may then pursue enforcement action against those assets within the scope of the Federal Act on Debt Collection and Bankruptcy.

In the course of criminal proceedings, multiple results may be possible. If the accused has accepted responsibility for the offence in the preliminary proceedings or if his or her responsibility has otherwise been satisfactorily established, the public prosecutor often issues a summary penalty order. In this case, the public prosecutor may decide on the civil claim, if the accused recognised the civil claims or if their assessment is possible without further evidence and the amount does not exceed CHF 30,000 (art. 353 para. 2 CPC). If the amount is over CHF 30,000 – and the accused has accepted the civil claims of the private claimant – this will be recorded in the summary penalty order. Otherwise, the claims are referred to civil proceedings.

The proceedings may further be concluded through simplified proceedings in which the accused is required to acknowledge his or her unlawful conduct as well as, if only in principle, the civil claims in exchange for a milder sentence.

Finally, criminal proceedings may be conducted through an ordinary trial procedure. In this instance, the criminal court will either decide on pending civil claims or refer them to civil proceedings. In addition, the court or the prosecution may order the restitution of the proceeds of the crime to the person suffering harm, the forfeiture or a compensation claim.

III Case triage: main stages of fraud, asset tracing, and recovery cases

1. Preliminary steps

When mapping out the legal strategy for asset recovery, it is essential to maintain a clear understanding of all available facts, while keeping the client's objectives at the centre of focus. This involves not only a thorough assessment of the circumstances but also the determination of whether multi-jurisdictional efforts are necessary. Where such efforts are required, close coordination with the client's legal counsel in other jurisdictions becomes vital to ensure the most effective approach is adopted.

Asset recovery efforts can generally be divided into two distinct phases:

(1) Asset Tracing: The initial phase involves locating assets that have been illegally diverted. The guiding principle in asset tracing is to "follow the money", beginning with the last known location of the stolen asset – often identified by the victim, such as a fraudster's bank account to which funds were transferred. From this starting point, the flow of funds is traced further. However, victims seldom possess sufficient documentation to uncover all unlawful transactions, making access to records in insolvency or criminal proceedings particularly valuable.

(2) Asset Recovery: Once assets are identified, the second phase focuses on returning them to their rightful owner through legal action. If the defendant's assets are primarily held in Switzerland, priority may be given to seeking interim or injunctive relief, which could include a request for a freezing (attachment) order for those assets.

Strategic planning typically begins with identifying the jurisdictions in which recoverable assets are located. This assessment informs the measures needed in each jurisdiction to seize and forfeit assets, and to support proceedings elsewhere when recoverable assets are involved. In cases where the money trail leads abroad, specialised expertise and strong international contacts, especially with colleagues in the relevant jurisdiction, are crucial to effectively follow the flow of funds. The documentation available to victims is rarely sufficient to uncover the unlawful transactions. Access to records in insolvency or criminal proceedings is often particularly valuable. If the defendant holds assets mainly in Switzerland, a priority could be made towards filing for interim or injunctive relief, with a potential request for a freezing order (attachment order) for relevant assets.

In common law countries, legal proceedings against third parties such as banks are often particularly effective. Civil courts have the authority to compel banks to disclose documents relevant to the transactions in question, aiding in the tracing of assets.

2. Legal action in Switzerland

Following the tracing stage, the recovery phase begins. It is typically divided into the following steps:

a) Protective measures

Once assets have been traced, the first priority is to secure them using legal instruments such as freezing orders and seizures. Freezing orders (attachment orders) are sought via civil courts to prevent asset dissipation, including bank accounts and real estate. To obtain a freezing order, the creditor's claim must be due and stated in Swiss francs; any foreign currency claims must be converted. The applicant must also demonstrate a legal ground for the asset freeze. The most common grounds are: (i) the debtor is not resident in Switzerland and cannot otherwise be pursued in Switzerland for debt enforcement purposes (so-called *Ausländerarrest*); or (ii) the creditor holds a strong title for debt enforcement such as an enforceable Swiss or foreign judgment. Finally, there must be assets held by the debtor in Switzerland, e.g. a Swiss bank account or real estate, and the creditor must be able to show *prima facie* evidence of their existence.

Seizures, in contrast, are the domain of the criminal authorities and require reasonable suspicion of a criminal offence. Victims must substantiate this suspicion in their criminal complaint, providing sufficient evidence to prompt the prosecutor to open proceedings and establish Swiss jurisdiction. If criminal proceedings commence, the prosecutor gains powers to compel the disclosure of information and seize assets. However, claimants have limited influence over the process and timeline.

For assets located abroad, international mutual legal assistance is generally necessary, requiring requests to foreign authorities for protective measures. These procedures are often slow and burdensome. A more effective approach is to take swift action directly against the foreign recipient bank, followed promptly by binding legal measures in the relevant jurisdiction. Close collaboration with local legal experts is therefore essential.

b) Judicial recognition of the claim

Once the assets are secured, the claim must be enforced in court. In Switzerland, victims can assert civil claims for damages directly in criminal proceedings through an ancillary civil action (*Adhäsionsklage*). The criminal court then rules not only on criminal liability but also on whether the victim is entitled to damages.

However, pursuing the claim in civil court is often more efficient, as criminal proceedings are lengthy and offer victims limited control over the outcome. When initiating civil attachment proceedings, it is important to keep in mind that the successful attachment of the defendant's assets may establish Swiss jurisdiction within civil proceedings. However, the claimant is free to prosecute the attachment in another jurisdiction. The Swiss court at the location of debt enforcement or at the location of the assets will review and grant the asset freeze (attachment) in an *ex parte* procedure, without hearing the debtor, if the conditions are met. The court may or may not request the creditor to post a security for potential damage caused by the freezing order. This could also happen later in the procedure over an opposition against the freezing order. If the creditor prevails in the follow-up procedure(s), the frozen asset will eventually be liquidated and the proceeds will be used to the benefit of the creditor.

Given the challenges of criminal and civil proceedings, insolvency proceedings are increasingly utilised in asset recovery, especially where fraudsters have operated through companies. Perpetrators of investment fraud typically operate through one or more companies to which victims transfer their funds. This makes these companies themselves viable targets of recovery efforts. Fraudsters often siphon off corporate assets to fund their lifestyle, leaving the companies insolvent once the scheme is uncovered. Courts may appoint a liquidator or insolvency administrator at the request of creditors. Control over the company then shifts from the fraudsters to the state or court-appointed professionals. Authorities may also intervene if there is a suspected violation of financial market laws. Insolvency administrators gain control of company accounts and documentation, enabling comprehensive asset tracing and recovery. They may reclaim unlawfully transferred assets and hold directors or banks accountable for supervisory shortcomings, offering broader recovery options for victims.

c) State enforcement of the judgment

Obtaining a final and binding judgment does not guarantee payment. Even once victims obtain a final judgment, further steps are usually necessary. Perpetrators rarely comply voluntarily. Victims regularly must initiate enforcement proceedings, relying on state authorities to compel compliance. At least, previously frozen assets may be used to benefit the creditor.

IV Parallel proceedings: a combined civil and criminal approach

As stated above in section I, Swiss law allows for parallel criminal and civil proceedings in the same matter.

The specific case at hand should determine whether victims of fraud and other financial misconduct shall file a criminal complaint or bring a civil action, or both. The question as to whether a criminal complaint shall be filed is often dependent on the amount of information or evidence available to the plaintiff prior to the

commencement of civil proceedings. In cases of lack of evidence, criminal proceedings can assist the plaintiff in obtaining disclosure of valuable information for his or her claim, such as bank documents, as well as the freezing of assets. Where a criminal complaint is filed, it has to be assessed whether it is prudent not only to participate in the criminal proceedings as a criminal complainant, but also to assert civil claims within the criminal proceedings (through an ancillary civil action), rather than bringing a separate civil action before a civil court. In this context, it is important to note that filing civil claims within criminal proceedings invokes *lis pendens* and thus would prevent the plaintiff from filing his or her claims in separate civil proceedings.

A combined civil and criminal strategy can be beneficial, particularly when establishing or quantifying the civil claim is complex and may be more effectively addressed in a civil court. Conversely, criminal proceedings alone may suffice for asset tracing and recovery, especially when assets have already been provisionally seized by the prosecution and earmarked either for restitution to victims or for enforcement of compensation awards.

V Key challenges

As mentioned above, certain challenges may arise when pursuing claims within Swiss civil proceedings. In particular, there is no cross-examination of witnesses within proceedings, nor is there the principle of general discovery or disclosure prior to proceedings. Within pending proceedings, a civil court may order the defendant or third parties to disclose specific documents relevant to the case, but this remains an exception. However, if a party requests the opposing side to produce a document, non-compliance with such request may lead to an unfavourable inference by the court.

Another limitation within civil proceedings in Switzerland is that any attachment orders issued within Switzerland are of an *in rem* nature, with the consequence that only assets within Swiss territory may be seized or frozen.

On the other hand, and as stated above, worldwide freezing orders may be recognised under the Lugano Convention in Switzerland. Interim or injunctive relief in Switzerland, however, does not grant the same provisions to the claimant as such foreign orders. A claimant who seeks recognition in Switzerland will most likely pursue a declaration of bare enforceability from a court as the sole remedy.

In summary, where it is possible to pursue the claim in an alternative jurisdiction, the claimant should carefully assess whether the legal mechanisms available there offer greater advantages than those in Switzerland.

Many obstacles encountered in civil proceedings can often be mitigated by opting for criminal proceedings instead, and by asserting civil claims within the criminal proceedings (through an ancillary civil action). Thus, the injured party or plaintiff is more likely to have the defendant or third parties, e.g. the defendant's bank, forced to disclose beneficial information, and to secure the tracing and confiscation of assets to facilitate compensation.

VI Cross-jurisdictional mechanisms: issues and solutions in recent times

Large-scale fraud regularly operates on an international level. Thus, asset tracing and recovery often needs to be conducted within a multi-jurisdictional context.

As a caveat, practitioners should first take note of the blocking statute of art. 271 SCC. This criminal law provision prohibits the commission of acts on behalf of a foreign state which, from a Swiss perspective, would fall within the competence of a public official. Thus, the collection of evidence for foreign proceedings, to the extent it is characterised as an official act under Swiss law, would be deemed unlawful and in violation of art. 271 SCC.

This applies in particular to any processes in relation to the serving of documents and the taking of witness interviews or statements, but also to the gathering of information and evidence for, or upon request of, a foreign authority. In contrast, the prohibition does not apply to the voluntary production of evidence in foreign proceedings which a party has in its possession or control, where such production constitutes a purely procedural act of such party.

Finally, based on the respective application, the competent federal departments may grant an exception to art. 271 SCC and allow direct cooperation with a foreign authority if it is deemed in the interest of the applicant. Such authorisations have been granted, e.g. in order to allow Swiss banks to cooperate in the US Department of Justice programme to settle the tax dispute between the Swiss banks and the USA.

In civil proceedings, cross-jurisdictional judicial assistance – in particular, serving persons with judicial documents and the obtainment of evidence within foreign jurisdictions – is regulated through the titular Hague Conventions. The Convention on Civil Procedure of 1 March 1954, the Convention on the Service Abroad

of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965, and the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 18 March 1970 are particularly noteworthy. The same procedure and regulations derived from the conventions are applicable when foreign proceedings require Swiss assistance. For the recognition and enforcement of foreign judgments, see section I above.

As for criminal proceedings, any international coordination or cooperation needed is regulated within the unilateral Federal Act on International Mutual Assistance in Criminal Matters. In addition, as is the case in civil matters, there are various bilateral and multilateral treaties, such as the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. The main goal of such international cooperation is usually the gathering of information from, or the freezing and restitution of illegally acquired assets held by, Swiss banks.

In addition, in the case of so-called "failed states", the Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons allows the precautionary freezing and repatriation of illicitly acquired assets even where, due to the total or substantial collapse of the judicial system of the relevant state, the ordinary channels of mutual assistance in criminal matters are not successful.

VII Using technology to aid asset recovery

The steady advancement of technology comes with the advancement and adaptation of the tactics used by fraudsters. With the ever-increasing amount of data being stored digitally, this simultaneously allows for potential data breaches, giving fraudsters potential access to bank accounts, digital currency, electronic devices, or even personal information.

This has led to more specialised approaches within law enforcement and increased security within the private sector. Banks, in particular, through necessity, have been required to improve their security technologies to safeguard their customers from fraud. Artificial intelligence may also be used by banks to flag unusual patterns in transactions and block transfers. In general terms, however, the improvement in technology has increased the difficulty in tracing unlawfully acquired assets, and the engagement of companies specialising in international asset recovery has become more commonplace.

In law enforcement, the Swiss Federal Police have established specialised cybercrime divisions, with certain cantonal police departments (e.g. Zurich) following suit. On an international scale, cooperation in the fight against cybercrime is further aided through the Convention on Cybercrime (the Budapest Convention) and the coordination channels of the European Union Agency for Criminal Justice Cooperation (Eurojust).

VIII Highlighting the influence of crypto assets: is this a game changer?

Crypto assets are not a game changer from a legal perspective; it is widely accepted that crypto assets can be seized and confiscated, pursuant to art. 263 para. 1 CPC in conjunction with art. 70 SCC. The term "assets" as used in art. 70 SCC is to be interpreted broadly and includes also non-physical objects such as claims or other rights. Thus, crypto assets are, in principle, a suitable object for seizure and confiscation in criminal proceedings.

However, the seizure of crypto assets raises a variety of practical problems. First of all, the criminal authorities need to know the public key in order to access the assets. Second, it is also necessary to gain access to the private key or to the corresponding wallet. Only the access to the private key guarantees power of disposal over crypto assets.

In addition, it is possible that the person concerned does not store the crypto assets himself, but has it managed in a special web wallet by a commercial service provider. In this case, the difficulty lies in the fact that the private keys, are not stored with the accused, but with a provider.

Another challenge is that after gaining knowledge of the private keys, the criminal authority must ensure that the accused person can no longer dispose of the seized crypto assets. This requires the immediate transfer of the assets to a state wallet, i.e. independent infrastructure for the secure storage of crypto assets.

In practice, the criminal authorities may become aware of the existence of "tainted" crypto assets as a result of interrogations, a house search or the analysis of other seized documents such as (email/WhatsApp) correspondence or transcripts of phone conversations. Whilst third parties such as specialised vault providers may be obliged to disclose additional information, this is, in view of the privilege against self-incrimination, not the case with the accused person. Thus, the latter is, in principle, not obliged to disclose any holdings in

crypto assets, the private key or its location, nor the password to any wallet.

However, under certain circumstances, the accused may commit the offence of money laundering in the sense of art. 305*bis* SCC if he or she not only refuses to provide information but actively uses or transfers the crypto assets in order to avoid its confiscation.

The realisation of seized crypto assets is similarly associated with difficulties. In this regard, the Federal Supreme Court ruled that seized assets with an exchange and market price can, in principle, be realised immediately. However, according to the Federal Supreme Court, early and complete realisation can have a negative effect on the realisable proceeds, especially in the case of large cryptoholdings. In such cases, the prosecution authorities must proceed with adequate care and, where necessary, involve an external expert (Judgment of 18 October 2021, BGE 148 IV 74).

IX Recent developments and other impacting factors

Funds derived from criminal activities are often commingled in a bank account with funds derived from lawful activities. The extent to which such commingled funds may be forfeited and, even more importantly, qualified as an object of money laundering, has always been the subject of controversy.

In a landmark decision of 1 June 2021 (6B_379/2020), the Federal Supreme Court confirmed the so-called "sediment theory". It means that in the case of withdrawals from a commingled asset or bank account, there can be no money laundering provided these withdrawals do not exceed the legal portion of the account, with the consequence that the tainted "sediment" remains untouched and thus can still be secured and confiscated by the criminal authorities.

The "sediment theory" allows it to be argued that, e.g. in case of a company having profited from corruption or other criminal activities, payments to shareholders, employees, organs and suppliers do not constitute money laundering provided the tainted "sediment" on the profiting account remains unattained and can still be confiscated.

In another landmark decision of 5 December 2025 (7B_65/2023), the Federal Supreme Court confirmed the sediment theory again but implemented a corrective measure to it: if the account holder intentionally disposes of the proceeds of the crime or applies typical money laundering methods, the amount used is considered tainted.

In September 2025, the Federal Parliament adopted the Anti-Money Laundering Act and passed the new Act on the Transparency of Legal Entities and the Identification of Beneficial Owners. The revision of the Anti-Money Laundering Act introduces a paradigm shift: advisors (e.g. in M&A, real estate, fiduciary services as well as lawyers and notaries) are now covered under the Anti-Money Laundering Act and are generally required to perform customer identification, verify beneficial owners and fulfil reporting obligations, even when they are not directly receiving assets. In parallel, the Act on the Transparency of Legal Entities and the Identification of Beneficial Owners establishes a central transparency register for beneficial owners. The entry into force of these new provisions is expected for the second half of 2026.

Based on the Federal Act on the Implementation of International Sanctions (Embargo Act, EmbA), Switzerland, adopting European sanctions, has frozen financial assets worth CHF 7.5 billion against sanctioned Russian politics and oligarchs. It is an issue of controversy whether and under what conditions such seized assets could ultimately be confiscated and used for Ukraine's recovery. On 12 December 2025, the Federal Council adopted further sanctions against Russia in response Russia's military aggression against Ukraine. The Federal Council is thus adopting, in principle, the latest measures adopted by the European Union as part of its 19th package of sanctions. The measures include, *inter alia*, a ban on the provision of legal services to the Russian government and to Russian companies, as well as on holding seats on the boards of certain Russian state-owned companies. The Federal Council has ensured, nevertheless, that access to Swiss law shall be preserved and that the rule of law shall be fully guaranteed.

On 12 December 2025, the Federal Council decided to implement the reactivated UN Resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015). In addition, Switzerland is partially adopting the European Union sanctions that have been reactivated after previously being suspended. The measures were imposed due to Iran's activities in the nuclear sector, Iran's delivery of drones and missiles to Russia, and human rights violations. They include, among other things: a) goods sanctions (prohibitions or licensing requirements for the supply of dual-use goods, prohibitions on the supply of goods and technologies for unmanned aerial vehicles and missiles, prohibitions on the supply of arms and repression-related goods, prohibitions on the supply of graphite and raw metals or semi-finished metal products, etc.); b) financial sanctions (including bans on establishing banking relationships); and c) other measures (including entry and transit bans). On 1 January 2024, several selective amendments to criminal procedure law came into force, which are particularly aimed at increasing the efficiency of criminal prosecution. These improvements should also work in favour of asset recovery efforts of the injured party. **CDR**

Kellerhals Carrard employs more than 300 professionals, with offices in Basel, Bern, Geneva, Lausanne, Lugano, Sion and Zurich, as well as representation offices in Shanghai and Tokyo. The law firm is one of the largest in Switzerland and boasts a rich tradition going back to 1885.

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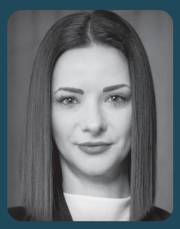

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