

# Enforcement of Judgments: Overview (Switzerland)

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A Practice Note providing an overview of the key practical issues concerning enforcement of judgments in Switzerland.

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Enforcement is a key stage in resolving a dispute. If the judgment debtor voluntarily complies with the judgment or if parties wish to rely on the judgment as *res judicata* and prevent another party from re-litigating a claim or defence, enforcement proceedings will not be necessary (though the judgment may still need to be recognised). However, in many instances, enforcement is necessary to give effect to the judgment. The entire process can be especially complex and time-consuming if the judgment is being enforced in an overseas jurisdiction.

This Note provides an overview of the legal framework for enforcement of judgments in Switzerland. It explains the key issues counsel must consider when advising on enforcement of domestic and foreign judgments, including:

- The procedure for enforcement.
- The grounds on which enforcement proceedings can be challenged.
- The interim measures that can be granted pending enforcement proceedings.
- The various methods of enforcing a judgment.

## Enforcement Legislative Framework (Domestic and Foreign)

### Domestic Framework

There is no statutory definition of judgment under Swiss law. However, for the purposes of enforcement of decisions, a judgment is an enforceable decision (including court orders) rendered by an ordinary court in *inter partes* proceedings at the end of a complete appraisal of evidence. The decision can be provisional, conservatory, or on the merits.

Money judgments must set out the amount of the claim, or the claim must be easily determinable. Decisions on security for costs are considered to be money judgments.

Non-money judgments are all judgments that order or prohibit an action or that order tolerance of an action (Article 343, *Swiss Civil Procedure Code*, 272 (CPC)).

### Foreign Framework

Where there are no bilateral or multilateral treaties (that is, where the *2007 Lugano Convention*, discussed below, does not apply), the *Swiss Federal Act on Private International Law, 291* (PILA) applies. There is no statutory definition of a foreign judgment under PILA. In the light of the definition of domestic judgments, a foreign judgment is a decision rendered by a foreign judicial authority. However, under Swiss case law, a foreign decision is any decision made by any authority (whether judicial, administrative, or religious) that falls within the scope of PILA, that is, any decision rendered in a private law matter.

Under the 2007 Lugano Convention, to which Switzerland is a party with some reservations (see *International Conventions/Agreements*), a judgment is any judgment given by a court or tribunal of a state party to the 2007 Lugano Convention, whatever the judgment is 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.

For a more detailed list of types of domestic and foreign and monetary and non-monetary judgments, see *Definition of Judgment*.

## International Conventions/Agreements

Switzerland is a party to the 2007 Lugano Convention, with some reservations. The 2007 Lugano Convention applies between members of the EU and the members of the *European Free Trade Association (EFTA)* except for Liechtenstein (that is, Switzerland, Norway, and Iceland).

Switzerland has made the following reservations:

- Under Article I, Paragraph 2 of Protocol No. 1 to the 2007 Lugano Convention, Switzerland reserves the right to request the compliance with other ways of transmittal, between public officers, of documents sent from or to Switzerland.
- Under Article III, Paragraph 1 of Protocol No. 1, Switzerland will not apply the following part of the provision in Article 34(2): "unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so."

## Definition of Judgment

### Domestic Definition

Swiss law distinguishes between the enforcement of money and non-money judgments. Money judgments are enforced under the *Swiss Federal Debt Collection and Bankruptcy Act, 281.1* (DCBA), with assistance from local debt collection offices. Non-money judgments are enforced under the CPC, with assistance from the civil courts.

### Foreign Definition

The recognition of foreign judgments in Switzerland is governed by the PILA and, where applicable, bilateral or multilateral treaties. Enforcement follows the domestic procedures applicable to money and non-money judgments.

## Enforceable/Excluded Judgments

### Domestic Judgments

The following types of domestic money judgments are enforceable:

- Orders for costs and security for costs.
- Decisions in provisional or interim proceedings.
- Ex parte judgments.
- Default judgments.
- Judicial settlements.
- Decisions issued by administrative authorities in civil matters.
- Decisions issued by criminal courts in civil matters (damages, costs, and so on).
- Domestic decisions declaring foreign decisions enforceable.

Money claims deriving from public law (for example, criminal fines, direct and indirect taxes, and social contributions) are enforced through civil debt collection proceedings. However, the provisions on bankruptcy do not apply where the money claims derive from public law (Article 43(1), DCBA).

Enforceable non-money judgments include:

- Judgments ordering or prohibiting the performance of certain acts.
- Decisions ordering tolerance of certain acts.
- Decisions in provisional or interim proceedings.
- Default judgments.
- Ex parte judgments.
- Judicial settlements.
- Enforceable official records.
- Decisions issued by administrative authorities in civil matters:
- Decisions issued by criminal courts in civil matters (damages, costs, and so on).
- Domestic decisions declaring foreign decisions enforceable.

The only domestic judgments that are not enforceable through civil or debt collection procedures are:

- Declaratory judgments, because they do not contain an injunction to do or not to do something. This includes Swiss judgments on recognition of foreign decisions (but not declarations of enforceability).
- Judgments that are legally binding but the enforcement of which has been suspended by a court.
- Non-money judgments deriving from public law.

## Foreign Judgments

The following judgments rendered in private law matters within the meaning of the PILA and in civil and commercial matters within the meaning of Article 1 of the 2007 Lugano Convention are enforceable in Switzerland:

- Money judgments, including:
  - default judgments, if proper notice was given;
  - judicial settlements;
  - orders for costs and security for costs;
  - decisions issued by administrative authorities in civil matters (damages, costs, and so on);
  - decisions issued by criminal courts in civil matters (damages, costs, and so on); and
  - interlocutory injunctions ordering conservatory measures on the assets of the defendant (*in rem* conservatory measures).
  
- Non-money judgments, including:
  - judgments ordering or prohibiting the performance of certain acts (*ad personam* measures, including worldwide freezing orders under English law);
  - decisions ordering tolerance of certain acts;
  - default judgments, if proper notice was given;
  - judicial settlements;
  - enforceable official records; and
  - decisions issued by administrative authorities in civil matters.

Foreign judgments that are not considered enforceable are the following, which generally apply to both Lugano and non-Lugano judgments except where noted:

- Judgments that are not final, except Lugano judgments, which can be enforced once they are enforceable under the laws of the country of issuance.
- Judgments issued by courts that lack jurisdiction under the PILA, unless the defendant proceeded without objection; except Lugano judgments.
- Lugano judgments issued by courts in breach of the rules in Articles 8 to 17, 22, 64(3), 67(4), or 68 of the 2007 Lugano Convention.
- In some cases, declaratory judgments. Declaratory judgments generally cannot be enforced because of their nature, that is, because they do not contain an injunction to do or not to do something. However, they can be recognised if the applicant demonstrates a legitimate interest in the recognition of the judgment. The threshold is high to meet the requirement of legitimate interest.
- Ex parte judgments, because the lack of notice and lack of the right to present a defence are in breach of Swiss fundamental procedural rights and Swiss procedural public order.

- Default judgments where no proper notice was given, because this is a breach of Swiss fundamental procedural rights and Swiss procedural public order.
- Judgments breaching Swiss substantive or procedural public policy.
- Judgments that are contrary to a decision rendered in Switzerland between the same parties.
- Judgments that are contrary to an earlier decision rendered outside Switzerland between the same parties on the same subject and in the same case, if the earlier decision will be recognised in Switzerland.
- Enforcement judgments. Swiss judges are exclusively competent to enforce foreign decisions because, in Switzerland, enforcement is an act of national sovereignty.
- Judgments issued by a Lugano state party but outside its material scope (that is, regarding the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession, bankruptcy and other insolvency proceedings, and arbitration) that are not otherwise enforceable under the PILA rules.

There is controversy regarding the enforceability of final decisions in provisional or interim proceedings issued by a country that is not a state party to the 2007 Lugano Convention (see *Finality*).

## Enforcing Domestic Judgments

### Enforcement Procedure

In principle, a domestic judgment is enforceable once issued, subject to appeal with suspensive effect. Swiss domestic civil judgments are enforceable throughout the country without any requirement for domestication or recognition proceedings.

The enforcement process for domestic judgments differs depending on whether the judgment is a money judgment.

**Money judgments.** The enforcement procedure for money judgments is governed by the DCBA. The process is the same for both domestic and foreign money judgments. The steps are:

- The creditor requests from the debt collection office in the domicile of the debtor the issuance of an order to pay, which is a form stating the amount of the claim and its basis (Article 67, DCBA). The order to pay can be preceded by an attachment request (see *Interim Remedies*).
- The debt collection office serves the order to pay on the alleged debtor, without verifying the merits of the claim (Article 69ff, DCBA).
- The debtor then has ten days to state, in principle on the order to pay itself, whether it objects to the order to pay (Article 74, DCBA). The creditor must advance the debt collection office's fees (maximum of CHF400 for the order to pay, plus translation costs in case of service abroad).
- The creditor then has one year to apply to lift the objection to the order to pay (Article 88(2), DCBA).
- A creditor holding a domestic or foreign money judgment that is in force can file with the competent civil court a request for a final setting aside of the objection (Article 80, DCBA). The competent court is that of the canton of the debt collection office that issued the order to pay (Article 84(1), DCBA).
- The debtor is summoned to appear in court and can file an oral or a written defence. The only available defences are that the amount of the claim was wholly or partially paid or suspended, is statute-barred, or was miscalculated (Article

81, DCBA). For foreign judgments, the debtor can raise grounds to refuse to recognise or enforce provided in Article 27 of the PILA (see *Challenging Enforcement: Grounds*). Evidence must be brought by documents produced by the debtor, and no other evidentiary procedure can take place. The creditor must advance the court's fees (a maximum of CHF2,000).

- The setting aside procedure is conducted in summary proceedings, so there is no possibility for the parties to apply for security for costs. The court must issue its decision within five days from receipt of the debtor's defence brief (Article 84(2), DCBA), but in practice, it may take longer. There is no legal remedy for a longer delay, except appeal against undue delay by the court under Article 319(c) of the CPC.

**Non-money judgments.** Non-money judgments are enforced under Article 335 to 346 of the CPC before the civil enforcement court. Enforcement measures can be provided for in the judgment itself if the claimant requested them during the trial. Otherwise, the creditor must institute separate proceedings on enforcement after the judgment comes into force.

## Limitation Period

Under Article 137(2) of the *Swiss Code of Obligations*, 220, if the claim has been confirmed by court judgment, the new statute of limitation period for enforcement of a domestic judgment is always ten years.

## Competent Court

For money judgments, the cantonal debt collection offices are competent. Articles 46 to 55 of the DCBA provide for jurisdiction at:

- The place of the domicile of the debtor.
- The place of the attachment.
- The place of the permanent establishment or of the elected domicile of the debtor domiciled abroad.
- The place of the pledge.

Districts of debt collection offices may be instituted by cantonal laws.

For non-money judgments, the civil enforcement court is competent. Article 339 of the CPC provides that enforcement can be sought at:

- The domicile or registered office of the unsuccessful party.
- The place where the measures are to be taken.
- The place where the decision to be enforced was made.

The competent jurisdiction is designated by cantonal laws.

## Application for Enforcement

### Required Documents

To set aside the objection to the order to pay, the creditor must provide:

- A certificate of enforceability issued by the court that delivered the judgment (no other certification is necessary).
- If applicable, a power of attorney.

In typical cases, the court requests a translation of the dispositive part of a domestic judgment written in another national language of Switzerland (German, French, or Italian). However, if clarification is needed, the court can request a full translation.

### **Information to Include**

For money judgments, the judge setting aside the objection to the order to pay under Articles 80 to 84 of the DCBA decides on both the enforceability of the judgment and any concrete measures of enforcement.

For non-money judgments, the enforcement court decides both of these issues under Articles 335 and 336 of the CPC.

To be admissible, any application before the civil judge must contain:

- The designation of the parties and their representatives, if any.
- The prayers for relief.
- A statement of the value in dispute.
- The allegations of fact.
- Notice of the evidence offered for each allegation of fact.
- The date and signature.

(Articles 219 and 221(1), CPC.)

A creditor usually provides a factual summary of the proceedings that led to the domestic or foreign decision being enforced, particularly when the creditor expects the debtor to challenge enforcement.

The allegations of fact can be limited to the existence, nature, and enforceability of the domestic judgment. However, the common practice is to provide a little more context. Specific allegations of fact may be required for enforcement of the claims awarded in the judgment.

## **Staying Enforcement**

### **Grounds to Stay Enforcement**

The enforcing court reviews enforceability *ex officio*. Enforceability is usually proven by a certificate of enforceability delivered by the court of origin of the judgment. However, within the proceedings to set aside the objection to the order to pay, the defendant can challenge the enforceability of the decision by raising a defence of non-enforceability of a default judgment for lack of proper service.

Subject to the provisions on international service outside of Switzerland (Switzerland is a party to the [Hague Service Convention](#)), a domestic decision is served by registered email and is deemed served when received (Article 138(1) and (2),

CPC). Exceptions may apply. In particular, e-service is permitted only with the consent of the party concerned (Article 139, CPC). A change is expected in this regard by 2027 and the implementation of the federal program Justicia 4.0. Service by publication is only possible in exceptional circumstances (Article 141, CPC).

Similar rules apply to service of criminal and administrative decisions.

Besides grounds of stay stemming from the foreign judgment, the debtor can also raise that they have obtained a stay of execution after the judgment (Article 81, paragraph 1, and Article 85, DCBA). The debtor can also request the stay of the enforcement proceedings under Articles 85 and 85a DCBA on the grounds of stay of execution, extinction of the claim, or inexistence of the claim.

## Interim Remedies

**Money judgments.** A creditor can seek an attachment order, which is an interlocutory order designed to secure the enforcement of a claim for money. It causes a temporary freezing of assets located in Switzerland to secure a basis for later enforcement, pending a final determination of the litigation on the merits. Attachment is available for a money claim only.

A claimant can apply for an attachment:

- As a pre-trial interlocutory order before filing a claim.
- At any time after filing the main action in Switzerland or abroad as an ancillary remedy.
- As a post-trial conservatory order after the creditor has obtained judgment.

The money claim for which an attachment order is sought must be prima facie due and payable.

To obtain an attachment order, a creditor must demonstrate three conditions:

- There is a cause for attachment.
- Assets can be attached.
- The claim exists.

The cause for attachment can be that:

- The defendant has no fixed place of residence or abode anywhere, in Switzerland or abroad.
- The defendant has dissipated assets, fled the jurisdiction, or is preparing to flee to defeat enforcement of undischarged debts.
- The defendant is in transit or is a person visiting markets or fairs, if the relevant claim is of a nature that requires immediate payment.
- The defendant has no residence in Switzerland and no other reasons for an attachment are fulfilled, but the claim has a sufficient nexus with Switzerland or is based on a written acknowledgment of debt.
- The creditor holds certificates evidencing former unsuccessful attempts at enforcement in respect of undischarged debts of the debtor.



- The claimant has a title for final enforcement under the DCBA.

(Article 271, DCBA.)

Under Article 271(6) of the DCBA, if a creditor is entitled to final enforcement under the DCBA (by having an enforceable judgment, arbitral award, or public deed), the order will have a Swiss-wide effect. An application brought regarding certain assets located in a particular Swiss canton can also extend to other assets known to be located in another Swiss canton.

The attachment order is granted *ex parte*, and the creditor (or affected third parties) has ten days from the moment of service to file an objection. The attachment remains in place during the first and second instance objection proceedings.

Under the 2007 Lugano Convention, the claimant will concurrently commence proceedings for a declaration of enforceability. An *ex parte* decision on exequatur is granted simultaneously with the attachment and must be appealed separately from the attachment, within 30 days if the debtor is domiciled in Switzerland, and 60 days if they are domiciled abroad.

**Non-money judgments.** The enforcement court can order protective measures, if necessary, without hearing the opposing party beforehand (Article 340, CPC). These measures can be ordered *ex officio* or on request.

For interim orders issued by a state party to the 2007 Lugano Convention, the creditor can obtain provisional, including protective, measures in accordance with Article 340 of the CPC. A declaration of enforceability under Article 41 is not required. The declaration of enforceability carries with it the power to proceed to any protective measures (Article 47(2), 2007 Lugano Convention). This means that once the declaration of enforceability is granted, the creditor has a right to conservatory measures.

## Costs and Interest

A successful judgment creditor is entitled to be awarded with reimbursement of court fees of up to CHF4,000 per judgment (and subject to ordinary courts costs where judgments on the merits are issued), enforcement costs, and legal costs based on cantonal and federal tariffs. As most of enforcement proceedings are conducted in summary proceedings, reimbursement from the debtor remains low.

Under Swiss law, including under both substantive and conflict of law rules, interest is a matter of substantive law. If Swiss law applies, interest accrues at 5% a year unless the parties have agreed otherwise. Interest continues to accrue during enforcement proceedings except when the defendant is declared bankrupt (Article 209(1), DCBA).

## Enforcement of Foreign Judgments

### Foreign Judgment Procedure

Foreign judgments do not need to be registered before a party begins enforcement proceedings.

Proceedings on the enforcement of foreign judgments (like domestic judgments) differ depending on whether they are money or non-money judgments and whether the PILA or the 2007 Lugano Convention applies.

In exceptional cases involving declaratory judgments, Swiss courts issue judgments recognising foreign judgments. These are cases where the claimant shows a legitimate interest in obtaining recognition independently from actual enforcement of the judgment (see [Enforceable/Excluded Judgments: Foreign Judgments](#)).

Proceedings for enforcement of a foreign judgment can last between six months and two years, including appeals.

**Money judgments.** The enforceability of a foreign money judgment is decided in debt collection proceedings where the judge must decide to set aside the objection to the order to pay under Article 80 of the DCBA. For information on the debt collection process in Switzerland, which is the same for both domestic and foreign judgments, see *Enforcing Domestic Judgements: Enforcement Procedure*. However, the process differs depending on whether the judgment is from a country that is a party to the 2007 Lugano Convention:

- For judgments from states that are party to the 2007 Lugano Convention, debt collection proceedings commence concurrently with the request for a declaration of enforceability before the court. The decision on the declaration of enforceability is binding throughout Switzerland.
- For non-Lugano judgments, a creditor does not need to seek a declaration of enforcement. A decision on enforcement rendered in one debt collection proceeding is not considered a ruling on the merits and is not binding on another debt collection proceeding. Therefore, courts may issue contradictory decisions.

**Non-money judgments.** When enforcing non-money judgments, the creditor must file the application for enforcement with the civil enforcement court under Articles 335 to 346 of the CPC. Enforcement differs based on whether the judgment is from a country that is party to the 2007 Lugano Convention:

- For judgments from states that are party to the 2007 Lugano Convention, enforcement proceedings before the civil enforcement court commence concurrently with the request for a declaration of enforceability before the court. The decision on the declaration of enforceability is binding throughout Switzerland.
- For non-Lugano judgments, a creditor does not need to seek a declaration of enforcement. As mentioned above, a decision on enforcement rendered in one enforcement proceeding is not binding on another proceeding.

### Decisions Under the PILA

The creditor must make factual statements about the conditions for enforceability of the judgment under the PILA rules. The requirements for recognition and refusal of recognition of foreign judgments are set out at Articles 25, 26, and 27 of the PILA. No reciprocity is required, except for recognition of bankruptcy judgments.

The conditions set out in Article 25 of the PILA include:

- The judicial or administrative authorities of the state where the decision was rendered had jurisdiction under the PILA.
- The decision is no longer subject to an ordinary appeal or is final.
- There is no ground for denial under Article 27 of the PILA.

Foreign authorities have jurisdiction if:

- Jurisdiction derives from a provision of PILA or, failing that, the defendant was domiciled in the state where the decision was rendered.
- In matters involving an economic interest, the parties submitted to the jurisdiction of the authority that rendered the decision by way of a valid agreement.

- In matters involving an economic interest, the defendant proceeded on the merits without reservation.
- In the case of a counterclaim, the authority that rendered the decision had jurisdiction over the main claim and there was a nexus between the claim and counterclaim.

(Article 26, PILA.)

Recognition must be denied *ex officio* if it is manifestly incompatible with Swiss public policy (Article 27(1), PILA).

Recognition must be denied if a party establishes that:

- It did not receive proper notice under the law of its domicile or its habitual residence, unless the party proceeded on the merits without reservation.
- The decision was rendered in violation of the fundamental principles of Swiss procedural law, including the fact that the party did not have an opportunity to present its defence.
- A dispute between the same parties and regarding the same subject matter is the subject of pending proceedings in Switzerland or has already been decided there, or the dispute has previously been decided in a third state in a decision that fulfils the prerequisites for recognition.

(Article 27(2) to (4), PILA.)

**Money judgments.** For non-Lugano money judgments, the Swiss Federal Court ruled that the declaration of enforcement must be made in the proceedings to set aside the objection to the order to pay when the creditor has already requested that an order to pay be issued. However, if the creditor applies for a declaration of enforceability when it has not already requested the order to pay be issued, the enforcement judge can issue an autonomous judgment on enforceability (*Swiss Federal Court, 3 October 1990* (BGE 116 Ia 394); Swiss Federal Court, 25 June 1991 (5P.65/1991), published in *Semaine Judiciaire*, 1991 p. 611 and *Journal des Tribunaux* 1993 II 123 ).

Where the creditor chooses to request that an order to pay be issued, the creditor cannot obtain an autonomous declaration of enforceability. The judgment that sets aside the objection to the order to pay only allows the creditor to collect its claim by seizing the debtor's assets. The findings of the judge on enforceability of the foreign judgment are not binding, except for the particular debt collection proceedings instituted by the request for an order to pay.

**Non-money judgments.** The judge decides *inter partes* in summary proceedings (Articles 339(2) and 341(2), CPC). The defendant can challenge the enforceability of the judgment under Article 27 of the PILA. The findings on enforceability of the foreign judgment are not binding except for the particular measures for enforcement the court judge orders in those specific proceedings.

### Decisions Under the 2007 Lugano Convention

A judgment given in a state that is party to the Convention must be recognised in the other states without any special procedure being required (Article 33(1), 2007 Lugano Convention). The judgment must be declared enforceable immediately on completion of the formalities (see *Documents for Application*) without any review. At this stage of the proceedings, the party against whom enforcement is sought is not entitled to make any submissions on the application.

Therefore, a party seeking recognition or applying for a declaration of enforceability only needs to produce a copy of the judgment that satisfies the conditions necessary to establish its authenticity, which is usually a certified copy (Article 53(1), 2007 Lugano Convention).

The declaration of enforceability must be served on the party against whom enforcement is sought, accompanied by the judgment, if it has not already been served (Article 42(2), 2007 Lugano Convention). The decision on the application for a declaration of enforceability can be appealed by either party on the grounds in Articles 34 and 35 of the Convention.

A judgment cannot be recognised:

- If recognition is manifestly contrary to public policy in the state where recognition is sought.
- Where it was given in default of appearance, if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in a way to enable it to arrange a defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible to do so.
- If it is irreconcilable with a judgment given in a dispute between the same parties in the state where recognition is sought.
- If it is irreconcilable with an earlier judgment given in another state bound by the Convention or in a third state involving the same cause of action and between the same parties, if the earlier judgment fulfils the conditions necessary for its recognition in the state addressed.

(Article 34, 2007 Lugano Convention).

Article 35 provides that a judgment will not be recognised if it conflicts with Articles 8 to 17, 22, or 68 of the Convention. A judgment can also be refused recognition in any situation set out under Article 64(3) or 67(4).

**Money judgments.** In the proceedings to set aside the objection to the order to pay, the issue of whether the enforcement court can issue a declaration of enforceability of the foreign judgment on request from the claimant or *ex officio* is controversial. When a declaration of enforceability under Article 41 is issued, it is binding throughout Switzerland. Otherwise, the findings of the judge on enforceability of the foreign judgment are not binding except in the particular debt collection proceedings instituted by the request for an order to pay.

If the debtor is domiciled outside Switzerland, or if the creditor wants to act by surprise, the creditor can apply for both civil attachment of assets and a declaration of enforceability. The creditor must provide all requested documents listed in Articles 53 and 54 of the 2007 Lugano Convention (see [Documents for Application](#)). The judge decides in *ex parte* summary proceedings, issues an attachment order and, separately, issues a declaration of enforceability. The debtor must appeal the declaration of enforceability and must object to the order to pay.

**Non-money judgments.** Contrary to enforcement of non-Lugano judgments, the judge decides *ex parte* in summary proceedings on the enforceability of the foreign judgment (Article 41, 2007 Lugano Convention; Articles 339(2) and 341(2), CPC). The declaration of enforceability must be served on the party against whom enforcement is sought, accompanied by the judgment (if it has not already been served on that party). A declaration of enforceability can be appealed on the grounds for refusal under Articles 34 and 35 of the 2007 Lugano Convention.

A declaration of enforceability issued under Article 41 is legally binding.

### Simplified Procedure

The enforcement of all foreign judgments, like the enforcement of domestic judgments, is subject to summary proceedings (see [Enforcing Domestic Judgements: Enforcement Procedure](#)). In these summary proceedings, only documentary evidence is admissible and, in principle, there is no re-examination of the merits of the underlying claim.

### **New Action**

A new action in the form of main proceedings is only necessary if the statutory conditions for recognition of a foreign judgment (whether a Lugano or non-Lugano judgment) are not met, which usually happens for jurisdictional reasons. See *Decisions Under the PILA*.

Swiss courts are not bound by a foreign court's findings.

### **Limitation Period for Foreign Judgments**

Under Swiss law, limitation is considered a substantive law issue. In a controversial ruling, the Federal Court recently ruled that limitation periods of foreign judgments are governed by the law of the country where the judgment was rendered if the limitations rule pursues the same goal of preventing the enforcement of a claim as under Swiss law (*Swiss Federal Court, 2 August 2022 (5A\_110/2021)*). In that decision, the Federal Court also stated that limitations of foreign judgments can be invoked against their enforcement in Switzerland, but not their recognition.

### **Competent Court for Filing Foreign Judgment Enforcement**

The enforceability of a foreign judgment is usually decided by the enforcement court that rules on the concrete measures for enforcement, which is usually a cantonal civil court. Cantonal laws designate cantonal districts and competent jurisdiction in each canton's territory. For money judgments, enforceability is decided in the proceedings to set aside the objection to the order to pay. For non-money judgments, it is decided in the proceedings for enforcement.

For non-money non-Lugano judgments, a request for enforcement must be filed in an application to the civil court of the domicile or registered office of the unsuccessful party, or at the place where the measures will be taken (Article 339(1)(a) and (b), CPC).

### **Application for Enforcing Foreign Judgments**

#### **Documents for Application**

**Lugano judgments.** For a judgment from a state that is a party to the 2007 Lugano Convention, regardless whether the judgment is a money or non-money judgment, the following documents are required:

- A complete and certified copy of the judgment.
- A certificate of enforceability issued by the foreign court on the standard form in Annex V of the Lugano Convention.

(Articles 41, 53, and 54, 2007 Lugano Convention.)

The information must include the place and date of the judgment and the fact that it is enforceable (as evidenced on the Annex V form). A certified translation of the documents may be requested by the enforcement judge (Article 55(2), 2007 Lugano Convention).

**Non-Lugano judgments.** For a non-Lugano judgment to which ordinary PILA rules apply, regardless whether the judgment is a money or non-money judgment, the following documents are required:

- A complete and certified copy of the judgment.

- Confirmation from the foreign court or authority either that no ordinary appeal has been filed against the judgment or that the judgment is final. There are no specific rules about the form of this confirmation, so it is at the discretion of the competent court.
- In the case of a default judgment, a document showing that the defendant was properly served with the claim and was granted sufficient time to defend it.

(Article 29, PILA.)

Switzerland is a state party to the *HCCH Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention). The Apostille Convention replaces the traditional and cumbersome legalisation process with a single formality; the issuance of a certificate called an Apostille. A public document that has been apostilled is automatically recognised as a foreign public document under the law of the country where it is to be used, if that country is also a party to the Apostille Convention.

Practice on translation differs depending on the language and the canton concerned. Translations of decisions originally drafted in English are often not required. Under the 2007 Lugano Convention, certification from a qualified person is required, while under the PILA, the Swiss court can decide whether and how the certification must be provided.

## Challenging Enforcement: Grounds

The grounds on which Swiss courts can deny enforcement vary based on the applicable legal regime (see *Foreign Judgment Procedure*).

### Review of Merits

The law applicable to review of the merits of a foreign judgment depends on whether the judgment comes from a 2007 Lugano Convention country.

- **Non-Lugano judgments.** Article 27 of the PILA expressly precludes review of the merits of non-Lugano Convention judgments. A Swiss court can only review service, jurisdiction, public policy, or *lis pendens*.
- **Lugano judgments.** Under the 2007 Lugano Convention, a Swiss court cannot review the substance of a foreign judgment under any circumstances (Article 36, 2007 Lugano Convention).

### Due Process

The law applicable to review of whether a foreign judgment complied with due process depends on whether the judgment comes from a Lugano Convention country.

- **Non-Lugano judgments.** Swiss courts must deny recognition if a party establishes that it did not receive proper notice under the law of its domicile or that of its habitual residence, unless that party proceeds on the merits without reservation. (Article 27(2), PILA).
- **Lugano judgments.** A judgment cannot be recognised where it was given in default of appearance, that is, if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in a way that would enable it to arrange a defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible to do so. (Article 34, 2007 Lugano Convention).

### Finality

For both non-Lugano and Lugano judgments, courts consider the issue of enforceability.

Swiss courts do not recognise interlocutory measures ordered in *ex parte* proceedings, regardless whether the judgment is a Lugano or non-Lugano judgment.

**PILA.** A decision must be final (that is, not subject to appeal) to be enforceable. This is why enforcement of foreign orders issued in preliminary (or provisional or interim) proceedings is controversial, because they can be revoked at any time during the trial conducted abroad and only become final after all appeal rights are exhausted.

In practice, instead of seeking enforcement of foreign interim measures, which can be uncertain, a claimant can file an application for autonomous interim measures under Article 10(b) of the PILA. This article provides that jurisdiction to order interim relief lies with the Swiss courts or authorities at the place where the interim measures will be enforced. The foreign interim order is not binding, but the Swiss judge will generally rely on it. The Swiss interim order then co-exists with the foreign interim measures, which are not being enforced in Switzerland.

**Lugano judgments.** Similarly, a party can make an application to the Swiss enforcement judge for provisional measures available under the law of that state, even if, under the Convention, the courts of another state have jurisdiction over the substance of the matter (Article 31, 2007 Lugano Convention). A judgment must be enforceable, but it need not be final if applicable law provides for enforceability notwithstanding appeal.

A judgment from the court of a state party to the Convention is very broadly defined, covering interlocutory orders (Article 32, 2007 Lugano Convention). Within the scope of application of the Convention, foreign interlocutory orders can be enforced if the defendant was given the opportunity to be heard. Interlocutory injunctions ordering *in rem* conservatory measures are enforceable under the DCBA. Interlocutory injunctions ordering *ad personam* conservatory measures are enforceable under the CPC.

### Jurisdiction

**PILA.** Foreign judgments can only be recognised in Switzerland if the judicial or administrative authorities of the state where the decision was rendered had jurisdiction (Article 25, PILA). Foreign authorities have jurisdiction if:

- Jurisdiction derives from a provision of PILA, with the general rule being that the forum of the place where the defendant is domiciled has jurisdiction. Other forums are set out in provisions of PILA on specific private law matters or, failing that, if the defendant was domiciled in the state where the decision was rendered.
- In matters involving an economic interest, the parties submitted to the jurisdiction of the authority that rendered the decision by valid agreement (Article 5, PILA).
- In matters involving an economic interest, the defendant proceeded on the merits without reservation (Article 6, PILA) (see *Voluntary Acknowledgement of Court's Jurisdiction*).
- In the case of a counterclaim, the authority that rendered the decision had jurisdiction to entertain the main claim and there was a nexus between the claim and counterclaim (Article 8, PILA).

(Article 26, PILA).

**Lugano judgments.** The Swiss court from which enforcement is sought cannot review the jurisdiction of the foreign court except if a party raises the issue regarding jurisdiction in matters relating to insurance, consumer contracts, and cases of exclusive jurisdiction.

#### Exorbitant Ground of Jurisdiction

**PILA.** In principle, Switzerland recognises and enforces foreign judgments where the foreign judge decided that a legal action instituted at the place of an exorbitant forum was within its jurisdiction, if jurisdiction derives from a provision in the PILA or, failing that, if the defendant was domiciled in the state where the decision was rendered.

Regarding non-Lugano Convention judgments, Switzerland recognises and enforces judgments issued where an attachment was executed when the PILA does not provide for any other forum in Switzerland (Articles 4 and 26(a), PILA).

**Lugano judgments.** Since Swiss domestic rules of conflict allow legal action to be instituted where the attachment was executed, a foreign judgment issued by a state party to the 2007 Lugano Convention on the ground of an exorbitant forum can be recognised and enforced in Switzerland under Article 35(1). Absence of court jurisdiction in the place of an exorbitant forum is not a ground to refuse enforcement within the meaning of Articles 34 and 35 of the 2007 Lugano Convention.

#### Voluntary Acknowledgement of Court's Jurisdiction

**PILA.** Switzerland recognises and enforces non-Lugano judgments based on voluntary acknowledgment of jurisdiction if, in matters involving an economic interest, the defendant proceeded on the merits without reservation (Article 26(c), PILA).

**Lugano judgments.** Lugano judgments based on voluntary acknowledgment of jurisdiction are recognised in Switzerland if they do not derogate from the mandatory provisions of Articles 8 to 17, 22, 64(3), 67(4), and 68 of the 2007 Lugano Convention.

#### Public Policy

**PILA.** The public policy exception expressly relates to substantive rules, that is, where a foreign decision is manifestly incompatible with Swiss public policy (Article 27(1), PILA); It also implicitly applies to procedural rules, meaning where the decision was rendered in violation of the fundamental principles relating to Swiss procedural law, including the fact that the relevant party did not have an opportunity to present its defence (Article 27(2)(b), PILA). Swiss courts consider breach of substantive public policy *ex officio*, while violation of fundamental principles of procedural law must be established by the party who relies on it (*Swiss Federal Court, 16 December 2011 (5A\_441/2011)*).

**Lugano judgments.** The public policy exception applies to both substantive and procedural deficiencies (Article 34(1), 2007 Lugano Convention).

The EU *Court of Justice (ECJ)* explained that recourse to a public policy clause can be envisaged only where recognition or enforcement of the judgment delivered in another state party to the 2007 Lugano Convention is at variance to an unacceptable degree with the legal order of the state where enforcement is sought, to the extent that it infringes a fundamental principle. The infringement must constitute a manifest breach of a rule of law regarded as essential in the legal order of the state where enforcement is sought, or of a right recognised as being fundamental within that legal order (*Gambazzi v DaimlerChrysler Canada Inc. and CIBC Mellon Trust Company (Case C-394/07) EU:C:2008:748, by reference to Krombach v. Bamberski (Case C-7/98) EU:C:1999:446; Diageo Brands BV v Simiramida-04 EOOD (Case C#681/13) EU:C:2015:471; Charles Taylor Adjusting Limited and FD v Starlight Shipping Company and Overseas Marine Enterprises Inc (C-590/21) EU:C:2023:633*).

For both Lugano and non-Lugano judgments, Swiss public policy is an exception to the principle of recognition and enforcement of foreign judgments that are final, enforceable, or both. Therefore, a party can only invoke it successfully when the incompatibility with law and morality is serious. Courts appraise Swiss public order in the light of the actual effect resulting from the foreign decision to be enforced, irrespective of its motives or the content of foreign law.



Recognition and enforcement cannot give the foreign judgment other or lesser effects than the ones granted by the foreign judgment on the sole basis that a Swiss judgment could not have deployed the same effect, subject to breach of Swiss public order.

Examples of substantive public policy incompatibility include:

- **Usurious interest rates.** The acceptable limit on interest rates is controversial but high. Depending on the circumstances, even a 20% or 25% rate may be acceptable, in particular where the rate was agreed by contract before judgment (see, for example, *Swiss Federal Court, 13 December 2016 (4A\_116/2016)*). Compound interest is acceptable, though prohibited under Swiss substantive law.
- **Punitive damages entirely disproportionate to the damage caused.** In this case, Switzerland can only partially grant enforcement and recognition.
- **Breaches of UN sanctions or embargoes.** UN sanctions or embargoes are part of Swiss public policy, and a judgment or arbitral award that would lead a party to breach them would be unenforceable in Switzerland.

Examples of procedural public policy breaches include:

- **Serious breach of rights of defence.** Regarding the 2007 Lugano Convention in particular, the ECJ ruled that the exercise of the rights of defence occupies a prominent position in the organisation and conduct of a fair trial and is one of the fundamental rights deriving from the constitutional traditions common to the EU member states and from the international treaties for the protection of human rights on which the member states have collaborated or of which they are signatories, including the *European Convention on Human Rights (ECHR)*. Restrictions to fundamental rights must in fact correspond to the objectives of public interest pursued by the measure in question and must not constitute, as to the aim pursued, a manifest or disproportionate breach of the guaranteed rights (*Gambazzi v DaimlerChrysler Canada Inc. and CIBC Mellon Trust Company (Case C-394/07) EU:C:2008:748*, by reference to *Krombach v. Bamberski (Case C-7/98) EU:C:1999:446*; *Diageo Brands BV v Simiramida-04 EOOD (Case C#681/13) EU:C:2015:471*; *Charles Taylor Adjusting Limited and FD v Starlight Shipping Company and Overseas Marine Enterprises Inc (C-590/21) EU:C:2023:633*).
- **Serious violation of the right to be heard, including lack of proper notice and disproportionate costs of the proceedings.** The limit of what constitutes disproportionate is controversial.
- **Certain contempt orders.** An "unless" order issued after the defendant was in contempt of court where the contempt was not the result of the wrongful behaviour of the defendant in the proceedings.

## Interim Remedies for Enforcing Foreign Judgments

Available interim remedies are the same for foreign and domestic judgments (see *Enforcing Domestic Judgments: Interim Remedies*).

## Costs and Interest for Enforcing Foreign Judgments

The successful creditor is entitled to the reasonable expenses incurred in the enforcement proceedings, usually based on a cantonal tariff calculated as a percentage of the disputed value.

Interest depends on what the foreign judgment or the applicable substantive law provides.

Although compound interest is prohibited under Swiss substantive law, a foreign judgment with compound interest can be enforceable if the actual amount of the computed interest rate does not breach Swiss public policy.

### Currency

Any money judgment, whether domestic or foreign, expressed in a foreign currency, must be converted into Swiss francs (CHF) for enforcement purposes. The applicable exchange rate is taken from the date of the request to issue the order to pay. If an attachment request precedes the order to pay, the exchange rate is computed on the date the application for attachment was filed.

## Methods of Enforcement (Domestic and Foreign)

### Money Judgments

The enforcement of money judgments is the same for any money claim, whether domestic or foreign.

Once the judgment setting aside the objection has entered into force (see *Enforcing Domestic Judgments: Enforcement Procedure* and *Foreign Judgment Procedure*), the debt collection office, at the request of the creditor, initiates seizure proceedings to freeze and liquidate the debtor's assets to satisfy the claim (Article 89 to 95a, DCBA).

If the debtor is not domiciled in Switzerland, the creditor must first identify the assets located in Switzerland and request their attachment (see *Interim Remedies*). The creditor can then request the order to pay from the debt collection office at the place of attachment. The order to pay is then served abroad on the debtor. Within ten days of service of the minutes of attachment, the creditor must validate the attachment by requesting that an order to pay be issued. The issue of whether the attachment must be validated in each canton where it was executed or in the sole canton where the attachment was ordered is controversial. Within ten days from service of the minutes of attachment, the debtor can object to the attachment order before the judge who ordered it.

There is no requirement for the creditor or the debtor to retain a lawyer, either in the debt collection or the court proceedings.

A foreign creditor who requests an order to pay must identify a domicile in Switzerland, or the creditor is deemed to have chosen the debt collection office as its domicile (Article 67(1.1), DCBA). A foreign debtor does not have this obligation. Service abroad takes place with the assistance of the local authorities or, if international treaties permit or the recipient country consents, by mail (Article 66(2), DCBA).

In proceedings to set aside the objection, the court can order the parties to choose a domicile in Switzerland (Article 140, CPC). If a party is represented in Switzerland, law requires service to be on the representative (Article 137, CPC).

The debt collection proceedings are conducted concurrently with the proceedings on recognition or enforcement of the foreign judgment. The debt collection process itself does not differ.

### Non-Money Judgments

The enforcement of non-money judgments is the same as for any non-money claim, domestic or foreign. The successful party must request enforcement from the enforcement court.

In a domestic judgment, on request from the successful party, the court orders enforcement measures for non-money judgments in the judgment itself (Articles 236(3) and 337(1), CPC). Where that is not the case, or where there is a foreign judgment, the successful party must apply to the civil court for enforcement of the decision.

Under Article 341 of the CPC, the enforcement court examines enforceability *ex officio*. It allows the defendant a brief period to file any comments. On the merits, the defendant can only argue that matters preventing enforcement of the decision have occurred since notice was given, such as extinction, deferment, prescription, or forfeiture of the right to due performance. The defendant must prove extinction and deferment by documentary evidence. For foreign judgments, the debtor can raise grounds to refuse to recognise or enforce provided under Article 27 of the PILA (see [Challenging Enforcement: Grounds](#)). The court decides in summary proceedings.

Under Article 343 of the CPC, if the decision provides for an obligation to act, refrain from acting or to tolerate something, the enforcement court can:

- Issue a threat of criminal penalty under Article 292 of the Swiss Penal Code.
- Impose a disciplinary fine not exceeding CHF5,000.
- Impose a disciplinary fine not exceeding CHF1,000 for each day of non-compliance.
- Order a compulsory measure, such as taking away a movable item or vacating immovable property.
- Order performance by a third party.

These disciplinary fines are owed to the state but are not criminal in nature. If the fines are not recovered, the state will seek enforcement by instituting debt collection proceedings. The rules that apply to enforcement of money judgments apply to the judgments on disciplinary fines.

The winning party can demand damages if the unsuccessful party does not follow the orders of the court or convert the performance into a monetary payment (Article 345, CPC). The enforcement court must determine the relevant amount.

## Proposals for Reform

Currently, no changes to Swiss private international law on enforcement of judgments are contemplated.

Regarding judgments emanating from the UK after Brexit, Switzerland and other EFTA countries gave their consent to the UK's accession to the Lugano Convention by notification of 11 September 2020. The EU informed the Depositary by letter received on 28 June 2021 that it "is not in a position to give its consent to invite the United Kingdom to accede to the Lugano Convention." Consequently, the UK may not accede to the Lugano Convention. The UK deposited its Instrument of Accession to the [2005 Hague Convention on Choice of Court Agreements](#). However, Switzerland is not a party to this Convention. Consequently, for the time being, and without any international treaty between the UK and Switzerland the enforcement of UK judgments issued in proceedings instituted after 31 December 2020 is governed in Switzerland by PILA rules.

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