

# Enforcement of judgments and arbitral awards in Switzerland: overview

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## JUDGMENTS: LEGAL FRAMEWORK

### Domestic framework

#### 1. What is the applicable domestic legislative framework for enforcement of judgments?

##### Domestic

Swiss law makes a distinction between the enforcement of money and non-money judgments. Money judgments are enforced under the Debt Collection and Bankruptcy Act, with assistance from local debt collection offices. Non-money judgments are enforced under the Code of Civil Procedure, with assistance from the civil courts.

##### Foreign

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

### International conventions/agreements

#### 2. What international conventions and agreements on enforcement of judgments is your jurisdiction a party to?

Switzerland is a party to the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (New Lugano Convention) with some reservations. The New Lugano Convention applies between members of the EU and members of the European Free Trade Association (EFTA) (Switzerland, Norway and Iceland).

Switzerland has made the following reservations:

- In accordance with Article I, Paragraph 2 of Protocol No 1 to the New 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.
- In accordance with 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".

## Definitions

#### 3. What is the definition of judgment in your jurisdiction for the purpose of enforcement proceedings?

##### Domestic

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 order tolerance of an action (Article 343, Code of Civil Procedure).

##### Foreign

There is no statutory definition of a foreign judgment under the Private International Law Act. 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) provided that it falls within the scope of PILA, namely that the decision is rendered in a private law matter.

Under the New Lugano Convention, a judgment is any judgment given by a court or tribunal of a state party to the 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 domestic and foreign, monetary and non-monetary judgments, see *Question 4*.

### Enforceable/excluded types of judgment

#### 4. What types of judgments in commercial matters are enforceable, and what types are excluded?

##### Domestic

**Enforceable.** The following types of domestic money judgments (for a definition, see *Question 3*) are enforceable:

- Order 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, 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), Debt Collection and Bankruptcy Act*).

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.

**Excluded.** 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), including 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

**Enforceable.** The following judgments rendered in private law matters within the meaning of the Private International Law Act (PILA) and in civil and commercial matters within the meaning of Article 1 of the New Lugano Convention are enforceable in Switzerland.

**Money judgments.** These include:

- Default judgments, provided proper notice was given.
- Judicial settlements.
- Order 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).
- Interlocutory injunctions ordering conservatory measures on the assets of the defendant (in rem conservatory measures).

**Non-money judgments.** These include:

- Judgments ordering or prohibiting the performance of certain acts (*ad personam* measures, including world freezing orders of English law).
- Decisions ordering tolerance of certain acts.
- Default judgments, provided proper notice was given.
- Judicial settlements.
- Enforceable official records.
- Decisions issued by administrative authorities in civil matters.

**Excluded.** Foreign judgments that are not enforceable through civil or debt collection procedures are:

- Non-Lugano judgments that are not final.
- Non-Lugano judgments issued by courts that lack jurisdiction under the PILA, unless the defendant proceeded without objection.
- Lugano judgments that are not in force.
- Lugano judgments issued by courts in breach of the rules provided in sections 3, 4 or 6, Title II or Articles 64(3), 67(4) or 68 of the New Lugano Convention.
- Declaratory judgments cannot be enforced by virtue of their nature (because they do not contain an injunction to do or not to do something), but can be recognised provided that the applicant demonstrates a legitimate interest in the recognition. The threshold is high to meet the requirement of legitimate interest.
- Ex parte judgments (because of the lack of notice and because the lack of the right to present a defence will be in breach of Swiss fundamental procedural rights and Swiss procedural public order).
- Default judgments where no proper notice was given (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 provided that the earlier decision will be recognised in Switzerland.
- Enforcement judgments (Swiss judges are exclusively competent to enforce foreign decisions as enforcement is an act of national sovereignty).

There is controversy surrounding the enforceability of final decisions in provisional or interim proceedings issued by a country that is not a state party to the New Lugano Convention (*see Question 17*).

A distinction must be made between the enforcement of judgments from a state party to the New Lugano Convention and enforcement of judgments from other countries subject to the PILA or rendered by a state party to the New Lugano Convention but outside its material scope (namely with respect to 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).

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## JUDGMENTS: PROCEDURE FOR ENFORCEMENT

### Overview

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#### 5. What is the general outline of enforcement proceedings?

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##### Domestic

The only condition for a domestic judgment to be enforceable is that the decision be in force. Swiss domestic civil judgments are enforceable throughout the country without any requirement for domestication or recognition proceedings.

Enforcement of domestic judgments differ, depending on whether they are money judgments or not.

The enforcement procedure for money judgments is governed by the Debt Collection and Bankruptcy Act (DCBA). Debt collection proceedings commence with a request to issue an order to pay to the competent debt collection office. The conditions of enforceability of the judgment are appraised during the proceedings on setting aside the objection to the order to pay. After the objection to the order to pay is set aside, the creditor requests the continuation of the debt collection procedure. The debt collection office is then in charge of seizing and realizing the assets of the debtor (see *Question 18*).

Non-money judgments are enforced under Article 335ff of the Code of Civil Procedure (CCP) before the civil enforcement court. Enforcement measures can be provided for in the judgment itself if the claimant requested them during the trial. Otherwise, separate proceedings on enforcement must be instituted by the creditor after the judgment comes into force (see *Question 18*).

##### Foreign

Foreign judgments are not subject to a prior registration procedure. Proceedings on the enforcement of foreign judgments (like domestic judgments) differ depending on whether they are money or non-money judgments.

The procedure also differs depending on whether the Private International Law Act or the New Lugano Convention applies.

Swiss courts issue judgments merely recognising foreign judgments in exceptional cases (because they are declaratory judgments, see *Question 4*), namely where the claimant shows a legitimate interest in obtaining recognition independently from actual enforcement of the judgment.

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

**Money judgments.** The enforceability of a foreign money judgment is decided in the context of debt collection proceedings where the judge must decide to set aside the objection to the order to pay under Article 80 of the DCBA (see *Question 9* and *Question 18*).

For New Lugano Convention judgments, 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 (see *Question 9*).

For non-Lugano judgments, there is no declaration of enforcement and a decision on enforcement rendered in one particular debt collection proceeding is not binding on another debt collection proceeding (see *Question 9*).

**Non-money judgments.** When enforcing non-money judgments, the application for enforcement must be filed with the civil enforcement court under Article 335ff of the CCP (see *Question 9* and *Question 18*).

For New Lugano Convention judgments, enforcement proceedings before the civil enforcement court commence concurrently with the request for a declaration of enforceability before the court. The

declaration of enforceability is binding throughout Switzerland (see *Question 9*).

For non-Lugano judgments, there is no declaration of enforcement and the decision on enforcement rendered in one particular enforcement proceeding is not binding on another proceeding (see *Question 9*).

##### Foreign judgments: formal/simplified proceedings

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#### 6. Is the enforcement of a foreign judgment subject to formal proceedings or simplified procedures?

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The enforcement of all foreign judgments (like the enforcement of domestic judgments) is subject to summary proceedings. In principle, only documentary evidence is admissible.

#### 7. Must applicants institute a new action on the foreign judgment in the form of main proceedings instead of making an application for enforcement based on the judgment?

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A new action in the form of main proceedings is only necessary if the statutory conditions for recognition of a foreign judgment are not met (usually for jurisdictional reasons). Swiss courts will not be bound by a foreign court's findings.

##### Form of application

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#### 8. What documents and information must be provided with an application for enforcement?

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##### Domestic

A certificate of enforceability issued by the court that delivered the judgment (no other certification is necessary), must be provided, together with a power of attorney (if applicable) in the proceedings to set aside the objection to the order to pay. Typically, only a translation of the dispositive part of the domestic judgment written in another national language of Switzerland (German, French or Italian) to be enforced is requested. However, if clarification is needed, a full translation can be requested by the court.

##### Foreign

For a non-Lugano judgment to which ordinary Private International Law Act (PILA) rules apply, the following documents are legally required (*Article 29, PILA*):

- A complete and certified copy of the judgment.
- Confirmation from the foreign court or authority 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 lies at the discretion of the competent court.
- In the case of a default judgment, a document showing that the defendant was duly served with the claim and was granted sufficient time to defend it.

In the case of a Lugano judgment, the following documents are legally required (*Articles 41, 53 and 54, New Lugano Convention*):

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

Switzerland is a state party to the HCCH Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961 (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 New 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.

## 9. What information must be included in the application regarding the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, and that the judgment is no longer appealable?

For money judgments, the judge setting aside the objection to the order to pay under the Debt Collection and Bankruptcy Act decides on both the enforceability and any concrete measures of enforcement. With regard to non-money judgments, both of these issues are decided by the enforcement court under Article 335ff of the Code of Civil Procedure (CCP).

In order to be admissible, any application before the civil judge must contain the following information (*Articles 219 and 221(1), CCP*):

- 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.

A factual summary of the proceedings that led to the domestic or foreign decision being enforced is usually provided, particularly when it is expected that enforcement will be challenged.

### Domestic

The allegations of fact can be limited to the existence, nature and enforceability of the domestic judgment. It is, however, common practice to provide a little more context. Specific allegations of fact may be required in respect of the enforcement of the claims awarded in the judgment (setting aside the objection to the order to pay in a money judgment and steps for enforcement of a non-money judgment).

### Foreign

The enforceability of a foreign judgment is usually decided by the enforcement court that rules on the concrete measures for enforcement. 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.

**Decisions under the Private International Law Act (PILA).** Factual statements must be made 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 (see *Question 12*).
- The decision is no longer subject to an ordinary appeal or is final (see *Question 10*).
- There is no ground for denial under Article 27 of the PILA (see *Question 10*).

Foreign authorities have jurisdiction if (*Article 26, PILA*):

- It derives from a provision of PILA or, failing that, the defendant was domiciled in the state in which the decision was rendered (see *Question 12*).
- 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 (see *Question 13*).
- 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.

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 (*Article 27(2) to 27(4), PILA*):

- It did not receive proper notice under the law of its domicile or its habitual residence, unless the party proceeds 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 with respect to the same subject matter is the subject of pending proceedings in Switzerland or has already been decided there, or that the dispute has previously been decided in a third state, provided that the latter decision fulfils the pre-requisites for recognition.

**Money judgments.** For non-Lugano money judgments, the Swiss Federal Court ruled that the declaration of enforcement is compulsorily 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 at the time the creditor applies for declaration of enforceability, it had not already requested the order to pay be issued, an autonomous judgment on enforceability can be issued by the enforcement judge (*Federal Court Decision 116 Ia 394 and TF 5P.65/1991*).

Where the creditor chooses to request that an order to pay be issued, it 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 is not binding, except for the particular debt collection proceedings instituted by the request for an order to pay.

**Non-money judgments.** A request for enforcement of a non-money judgment 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 are to be taken (*Article 339(1)(a) and 339(1)(b), CCP*).

The judge decides *inter partes* in summary proceedings (*Articles 339(2) and 341(2), CCP*). The defendant can challenge the enforceability of the judgment under Article 27 of the PILA (see *Question 10*). The findings on enforceability of the foreign judgment are not binding except for the particular measures for enforcement in those specific proceedings.

**Decisions under the New Lugano Convention.** Under the New Lugano Convention, 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), New Lugano Convention*). The judgment must be declared enforceable immediately on completion of the formalities described in *Question 8* without any review. The party against whom enforcement is



sought is not at this stage of the proceedings entitled to make any submissions on the application.

As a consequence, a party seeking recognition or applying for a declaration of enforceability must only produce a copy of the judgment that satisfies the conditions necessary to establish its authenticity (*Article 53(1), New Lugano Convention*) (usually a certified copy). When the party applies for a declaration of enforceability, 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), New 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), New 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.

Under Article 34, a judgment cannot be recognised:

- If recognition is manifestly contrary to public policy in the state in which 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 such a way as 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 in which 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, provided that the earlier judgment fulfils the conditions necessary for its recognition in the state addressed.

Article 35 provides that a judgment will not be recognised if it conflicts with sections 3, 4 or 6 of Title II, or under Article 68. 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 those 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 (*see Question 8*). The judge decides in *ex parte* summary proceedings, issues an attachment order and, separately, a declaration of enforceability. The debtor must appeal the declaration of enforceability must object to the order to pay.

**Non-money judgments.** A request for enforcement of a non-money judgment 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 are to be taken (*Article 339(1)(a) and 339(1)(b), CCP*).

Contrary to enforcement of non-Lugano judgments, the judge decides *ex parte* in summary proceedings on the enforceability of the foreign judgment (*Article 41, New Lugano Convention, Article 339(2)*

and 341(2), CCP). 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 against on the grounds for refusal under Articles 34 and 35 of the New Lugano Convention.

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

## CHALLENGING ENFORCEMENT Service

### 10. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

#### Domestic

The enforcing court reviews enforceability *ex officio*, which is usually proven by a certificate of enforceability delivered by the court of origin of the judgment. However, 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 within the proceedings to set aside the objection to the order to pay.

Subject to the provisions on international service outside of Switzerland (Switzerland is a party to the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention)), a domestic decision is served by registered email and is deemed served when received (*Article 138(1) and 138(2), Code of Civil Procedure (CCP)*). Exceptions can apply. In particular, e-service is permitted only with the consent of the party concerned (*Article 139, CCP*). Service by publication is only possible in exceptional circumstances (*Article 141, CCP*).

Analogue rules apply with respect to service of criminal and administrative decisions.

#### Foreign

**Non-Lugano judgments.** Under Article 27(2) of the Private International Law Act, recognition must be denied if a party established 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.

**Lugano judgments.** Under Article 34 of the New Lugano Convention, a judgment cannot be recognised 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 such a way as 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).

#### Final/provisional judgments

### 11. Must a judgment be final and have conclusive effect, and what is the effect of pending appeal proceedings?

#### Domestic

Domestic judgments need not be final to be enforceable if they are enforceable notwithstanding appeal by law or by decision of the originating court. Decisions in preliminary/provisional/interim proceedings are also enforceable notwithstanding appeal. The issue of enforceability is considered *ex officio*.

#### Foreign

For both non-Lugano and Lugano judgments, the issue of enforceability is considered *ex officio*.

Interlocutory measures ordered in *ex parte* proceedings are not capable of being recognised in Switzerland.

Under the Private International Law Act (PILA), a decision must be final to be enforceable (not subject to appeal). This is why enforcement of foreign orders issued in preliminary/provisional/interim proceedings is controversial (see *Question 4*), because they become final after all rights of appeal have been exhausted, but can be revoked at any time during the trial conducted abroad.

In practice, instead of seeking (uncertain) enforcement of foreign interim measures, a claimant can file an application for autonomous interim measures under Article 10(b) of the PILA, which 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 (unenforced) interim measures. Similarly, with regard to New Lugano Convention judgments, an application can be made 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, New Lugano Convention*).

Under the New Lugano Convention regime, a judgment must be enforceable but not final, provided applicable law provides for enforceability notwithstanding appeal.

Article 32 of the New Lugano Convention defines a judgment from the court of a state party to the Convention very broadly, covering interlocutory orders. Within the scope of application of the Convention, foreign interlocutory orders can be enforced, provided that the defendant was given the opportunity to be heard. Interlocutory injunctions ordering in rem conservatory measures are enforceable under the Debt Collection and Bankruptcy Act (DCBA) (see *Question 4 and Question 18*). Interlocutory injunctions ordering *ad personam* conservatory measures are enforceable under the CPC (FCD 5A 899/2016 of 27 November 2017) (see *Question 4 and Question 18*).

### Foreign judgments: jurisdiction

#### 12. Is the enforcing court entitled to consider the grounds on which the court assumed jurisdiction, and if so, on what jurisdictional grounds can enforcement be refused?

Under ordinary Private International Law Act (PILA) rules, 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*). Under Article 26 PILA, foreign authorities have jurisdiction if:

- Jurisdiction derives from a provision of PILA, the general rule being the forum of the place where the defendant is domiciled. Other forums are provided for in provisions of PILA on specific private law matters or, failing that, if the defendant was domiciled in the state in which 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 *Question 13*).
- In the case of a counterclaim, the authority that rendered the decision had jurisdiction to entertain the main claim and if there was a nexus between the claim and counterclaim (*Article 8, PILA*).

Under the New Lugano Convention, the jurisdiction of the foreign court cannot be reviewed by the Swiss court from which enforcement

is sought, except (if raised by a party) for jurisdiction in matters relating to insurance, consumer contracts and cases of exclusive jurisdiction.

#### 13. If the court assumed jurisdiction on the basis of an exorbitant ground of jurisdiction, can the enforcing court review the judgment on that ground?

##### Exorbitant ground of jurisdiction

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, provided that jurisdiction derives from a provision in the Private International Law Act (PILA) or, failing that, if the defendant was domiciled in the state where the decision was rendered.

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

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 New Lugano Convention on the ground of 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 New Lugano Convention.

##### Voluntary acknowledgment

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 based on voluntary acknowledgment of jurisdiction are recognised in Switzerland provided that they do not derogate from the mandatory New Lugano Convention provisions of Title II, sections 3, 4 and 6 and from Articles 64(3), 67(4) and 68.

### Foreign judgments: review of judgment

#### 14. Can the enforcing court review the judgment as to its substance if all formalities have been complied with and if the judgment meets all requirements?

A review of the merits of non-Lugano Convention judgments is expressly excluded by Article 27 of the Private International Law Act. Review can only concern service, jurisdiction, public policy or *lis pendens*.

Under the New Lugano Convention, under no circumstances can a foreign judgment be reviewed as to its substance (*Article 36*).

##### Foreign judgments: public policy

#### 15. Can enforcement of a judgment be refused on grounds of public policy? Does public policy include matters of substantive law?

Under the Private International Law Act (PILA) rules, 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*). Breach of substantive public policy is considered *ex officio* by Swiss courts, while violation

of fundamental principles of procedural law must be established by the party who relies on it (*FCD 5A 441/2011*).

Under the New Lugano Convention, the public policy exception applies to both substantive and procedural deficiencies (*Article 34(1)*).

The European 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 New Lugano Convention is at variance to an unacceptable degree with the legal order of the state in which enforcement is sought (inasmuch as 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 in which enforcement is sought, or of a right recognised as being fundamental within that legal order (*Case C-394/07 – Gambazzi, by reference to C-7/98 – Krombach*).

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## 16. In what circumstances and against which types of judgments has the principle of public policy generally been applied?

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Swiss public policy is an exception to the principle of recognition and enforcement of foreign judgments that are final and/or enforceable. As such, it can only be successfully invoked when the incompatibility with law and morality is serious. Swiss public order is appraised 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 grant to 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 is controversial but high).** Compound interest is acceptable, though prohibited under Swiss substantive law.
- **Punitive damages entirely disproportionate to the damage caused.** In this case, the enforcement and recognition can only be partially recognised.
- **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.** With respect to the New 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 for the Protection of Human Rights and Fundamental Freedoms (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, with regard to the aim pursued, a manifest or disproportionate breach of the guaranteed rights (*Case C-394/07 – Gambazzi, by reference to C-7/98 – Krombach*).
- **Serious violation of the right to be heard, including lack of proper notice and disproportionate costs of the proceedings (the acceptable limit is controversial).**

- 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.

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## Domestic and foreign: other conditions for recognition and enforcement

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## 17. What other conditions must be satisfied for recognition and enforcement of judgments?

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### Domestic

All the conditions for recognition and enforcement are covered in *Question 8*.

### Foreign

Under Article 148(1) of the Private International Law Act (PILA), the law that governs a right also governs the statute of limitations and the extinction of the right. In the event of extinction by set-off, the applicable law is that governing the right against which set-off is asserted (*Article 148(2), PILA*). Novation, release and set-off agreements are governed by the provisions of PILA relating to the law applicable to contracts under Article 116ff of the PILA (*Article 148(3), PILA*).

Recognition must be denied if a party establishes that (*Article 27(2) to 27(4), PILA*):

- It did not receive proper notice under the law of its domicile or its habitual residence, unless the party proceeds 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 with respect to the same subject matter is the subject of pending proceedings in Switzerland or has already been decided there, or that the dispute has previously been decided in a third state, provided that the latter decision fulfils the pre-requisites for recognition.

For details of the issues relating to substantive and procedural public policy, see *Question 16*.

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## JUDGMENTS: METHODS OF ENFORCEMENT

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## 18. What is the enforcement procedure after a declaration of enforceability is granted?

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### Money judgments

The enforcement of money judgments is the same for any money claim (domestic or foreign). A request must be made for the issue of an order to pay against the debtor.

The creditor requests from the Debt Collection Office of the domicile of the debtor the issue of an order to pay, which is a form stating the amount of the claim and its basis (*Article 67, Debt Collection and Bankruptcy Act (DCBA)*). The order to pay can be preceded by an attachment request (see *Question 19*). The Debt Collection Office serves the order to pay to 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*).

The 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 Private International Law Act (PILA) (see *Question 10*). 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 Code of Civil Procedure).

Once the judgment setting aside the objection has entered into force, the debt collection office, at the request of the creditor, initiates seizure proceedings to freeze and liquidate debtor's assets to satisfy the claim (*Article 89ff, DCBA*).

If the debtor is not domiciled in Switzerland, the creditor must first identify the assets located in Switzerland and request their attachment (see *Question 19*). The order to pay can then be requested 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 appoint a lawyer, either in the debt collection, or the court proceedings.

The foreign creditor who requests an order to pay must elect domicile in Switzerland, or the creditor is deemed to have elected domicile with the Debt Collection Office (*Article 67(1.1), DCBA*). The 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 elect domicile in Switzerland (*Article 140, CCP*). If a party is represented in Switzerland, service is made, by law, to the representative (*Article 137, CCP*).

The debt collection proceedings are conducted concurrently with the proceedings on recognition and/or enforcement of the foreign judgment. The debt collection 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). Enforcement must be requested from the enforcement court.

In a domestic judgment, on request from the successful party, enforcement measures for non-money judgments are ordered in the judgment itself (*Article 236(3) and 337(1), CCP*).

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 CCP, the enforcement court will examine enforceability *ex officio*. It allows the defendant a brief period within which 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. Extinction and deferment must be proved 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 *Question 10*). The court decides in summary proceedings.

Under *Article 343* of the CCP, 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 not recovered, the state will seek enforcement by instituting debt collection proceedings. The rules that apply to enforcement of money judgments applies 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, CCP*). The enforcement court must determine the relevant amount.

## JUDGMENTS: INTERIM REMEDIES AND INTEREST

### Interim remedies

### 19. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

#### Domestic

Interim measures do not differ whether the judgment is domestic or foreign.

**Money judgments.** The attachment order 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 subsequent enforcement, pending a final determination of the litigation on the merits in respect of a money claim only.

A claimant can apply for an attachment as a pre-trial interlocutory order before a claim is filed, but also at any time after filing the main action in Switzerland or abroad as an ancillary remedy, as well 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 that the following three conditions are fulfilled:

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

The cause for attachment can be any of the following (*Article 271, Debt Collection and Bankruptcy Act (DCBA)*):

- 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 in order to defeat enforcement of undischarged debts.



- The defendant is in transit or is a person visiting markets or fairs, provided the relevant claim is of a nature that requires immediate payment.
- The defendant has no residence in Switzerland, 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 disposes of a title for final enforcement under the 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 with respect to certain assets located in a particular Swiss canton can extend also 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 New Lugano Convention, the claimant will concurrently commence proceedings for a declaration of enforceability and an *ex parte* decision on *exequatur* is granted simultaneously with the attachment and must be appealed against separately from the attachment.

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

For interim orders issued by a state party to the New Lugano Convention, the creditor can obtain provisional, including protective, measures in accordance with Article 340 of the CCP without a declaration of enforceability under Article 41 being required. The declaration of enforceability carries with it the power to proceed to any protective measures (*Article 47(2), New Lugano Convention*). This means that once the declaration of enforceability is granted, the creditor has a right to conservatory measures.

### Foreign

See above, *Domestic*.

### Interest

## 20. Is the judgment creditor entitled to interest? If so, on what basis is it calculated?

### Domestic

Under Swiss law (both substantive and conflict of law rules), interest is a matter of substantive law. If Swiss law applies, interest will accrue 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), Debt Collection and Bankruptcy Act*).

### Foreign

Interest will depend 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 provided that the actual amount of the computed interest rate does not breach Swiss public policy.

## Currency

## 21. Must the value of a foreign judgment be converted into the local currency?

Any money judgment, whether domestic or foreign, expressed in a foreign currency, must be converted into Swiss francs 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.

## ARBITRAL AWARDS: LEGAL FRAMEWORK

### Domestic framework

## 22. What is the applicable domestic legislative framework for enforcement of arbitral awards?

### Domestic

The general comments in Question 1 apply to the enforcement of arbitral awards.

Domestic awards include all awards rendered by an arbitral tribunal with a seat in Switzerland. If the parties to the arbitration are both domiciled in Switzerland (national award), Article 353ff of the Code of Civil Procedure (CCP) applies, unless the parties opt out in favour of Article 176ff of the Private International Law Act (PILA).

If one or more parties are domiciled outside Switzerland (international awards), Article 176ff of the PILA apply.

Once notice of a domestic award has been given to the parties, it has the effect of a legally-binding and enforceable judicial decision (*Article 387, CCP*), except where both parties are domiciled outside Switzerland and agree to exclude any appeal against the award before the Swiss federal court. In this case, the provisions of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) apply (*Article 192, PILA*).

### Foreign

Foreign awards are those rendered by an arbitral tribunal with seat outside of Switzerland.

The recognition and enforcement of foreign arbitral awards is governed by the New York Convention, irrespective of reciprocity. Article 194 of the PILA extends the scope of the New York Convention to any foreign award, whether or not the place of arbitration was in a state party to the New York Convention.

### International conventions/agreements

## 23. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

Switzerland has been a party to the New York Convention since 1965. No reservation was made, in particular with respect to reciprocity. Switzerland applies the New York Convention to the recognition and enforcement of all foreign arbitral awards, whether the place of arbitration was in state party or not (*Article 194, Private International Law Act*).

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## Definitions

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### 24. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

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There is no statutory definition of what constitutes an arbitral award.

Domestic arbitration can either be national or international.

Articles 353 to 399 of the Code of Civil Procedure (CCP) apply to Swiss national arbitration proceedings, namely to arbitration proceedings when the arbitration tribunal is in Switzerland and the Private International Law Act (PILA) does not apply (that is, when both parties are domiciled in Switzerland and did not opt in favour of the provisions of PILA).

Articles 176 to 194 of the PILA apply to Swiss international arbitration proceedings, namely to arbitration proceedings if the arbitral tribunal is in Switzerland and if, at the time when the arbitration agreement was entered, at least one of the parties had neither its domicile nor its habitual residence in Switzerland.

An arbitral award with a seat outside Switzerland is considered to be a foreign award within the meaning of Article 194 of the PILA, by reference to Article 1(1) of the New York Convention.

## ENFORCEABLE/EXCLUDED TYPES OF ARBITRAL AWARD

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### 25. What types of arbitral awards are enforceable, and what types are excluded?

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#### Domestic

**Enforceable.** Domestic arbitral awards, whether complete or partial, and whether issued in the context of national or international arbitration proceedings, are enforceable in Switzerland without additional exequatur, subject to the exception described above (see *Question 22*). Once notice of the award has been given to the parties, it has the effect of a legally binding and enforceable judicial decision (*Article 387, Code of Civil Procedure (CCP)*). Any party can require the Swiss court at the seat of the arbitral tribunal to certify the enforceability of the award (*Article 193(2), Private International Law Act (PILA); Article 386(3), CCP*).

The ordinary court or (unless the parties have agreed otherwise), the arbitral tribunal can at the request of a party order interim measures, including measures to protect the evidence.

However, interim measures issued by domestic arbitral tribunals are not directly enforceable and, in the absence of voluntary compliance, must be issued by an ordinary court. If the person concerned does not comply with the measure ordered by the arbitral tribunal, the tribunal or a party can apply to the ordinary court for it to issue the necessary orders. If the application is made by a party, it requires the consent of the arbitral tribunal (*Article 183, PILA; Article 374, CCP*).

Where an award is confirmed on appeal in the state of the seat of arbitration, enforcement is still governed by the New York Convention, not by the provisions relating to enforcement of foreign judgments (*FCD 4A 233/2010*).

**Excluded.** By their very nature, declaratory awards are not enforceable, subject to the existence of a legitimate interest of the applicant. They can, however, be incidentally recognised by Swiss courts as binding the parties.

#### Foreign

**Enforceable.** Final awards (whether complete or partial) are enforceable in Switzerland.

**Excluded.** By their very nature, declaratory awards are not enforceable, subject to the existence of a legitimate interest of the applicant. They can, however, be incidentally recognised by Swiss courts as binding the parties.

Interim measures issued by foreign arbitral tribunals are not directly enforceable and, in the absence of voluntary compliance, must be issued by an ordinary court (*Article 183(2), PILA*). The Swiss judge has jurisdiction to order interim measures on the basis of Article 10 of the PILA (see *Question 17*). Swiss law must be applied, namely Article 261ff of the CCP.

## ENFORCEMENT PROCEEDINGS Procedure

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### 26. What is the procedure for making an application to enforce an arbitral award?

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#### Domestic awards

The enforcement procedure for domestic arbitral awards is the same as that for domestic judgments (see *Question 1, Question 5 and Question 18*) except where both parties are domiciled abroad and have excluded the possibility to challenge the award before the Swiss Federal Court. In this case, the provisions of the New York Convention apply.

#### Foreign awards

The enforcement procedure for foreign arbitral awards is similar to that for foreign non-New Lugano Convention judgments governed by the Private International Law Act (see *Question 5*).

### 27. Can parties seek to enforce only part of the award?

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Nothing prevents a party from only partially enforcing an award, except when the award itself is not partially enforceable.

#### Form of application

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### 28. What documents and information must be provided with an application to enforce an award?

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#### Domestic

In principle, a domestic arbitral award (whether Swiss or international) is enforceable from the moment it is served on the parties.

A certified copy of the arbitration agreement, the award and a power of attorney must be provided. Switzerland is a state party to the Apostille Convention.

Requirements for translation of awards drafted in other national official languages vary from one canton to another. The more exotic the language, the more likely the need for certification of the translation.

For money judgments, conversion of the value of the domestic award into Swiss francs is necessary.

#### Foreign

The documents required to enforce a foreign arbitral award are specified in Article IV of the New York Convention, plus a power of attorney.

The same principles on translation and currency conversion apply as for domestic awards (see *Question 8 and Question 27*).

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## 29. What information must be included in the application?

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### Domestic

The general comments contained in *Question 9* apply to applications made before a judge deciding (for money judgments) to set aside the objection to the order to pay, and before the civil enforcement court (for non-money judgments).

The applicant must make factual allegations about the conditions of enforceability of the domestic award and request the appropriate relief. In particular, a certificate of enforceability issued by the competent authority designated by the law of the place of arbitration must be produced. In Switzerland, the arbitral tribunal is competent to issue this certificate.

If there are issues that are expected to be contentious at the enforcement stage, the application can address those in advance.

The facts and legal grounds of the case do not need to be re-stated because the court does not review the merits of the claim.

### Foreign

See above, *Domestic*.

## CHALLENGING ENFORCEMENT Service

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## 30. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

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The requirements for service of domestic or foreign awards are lower than the ones for service of judgments, the main issue being proof of reception by the parties. There are no prescribed or exclusive methods of notice. Service by e-mail is accepted.

### Domestic

Lack of proper notice of the arbitration can be raised by the defendant but will not be considered *ex officio*.

### Foreign

Defences about proper service are limited to those available under Article V(1)(b) of the New York Convention. The court will not consider it *ex officio*.

### Pending challenge proceedings

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## 31. What is the effect of pending challenge proceedings to the award?

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### Domestic

The enforcing court will not stay the enforcement proceedings. It will expect the Federal Supreme Court (before which the appeal proceedings take place), to decide on a request for a stay.

### Foreign

In principle, interim measures are granted *ex parte*. A stay of the enforcement while interim measures are maintained can be obtained while there is an appeal before the competent authority of the country in which (or under the law of which) the award was made, even if that authority did not suspend the award.

## Review/opposition

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## 32. Can the enforcing court review an award if all formalities were complied with and if the award meets all requirements?

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### Domestic

The enforcing court does not review the merits of the award. An appeal to the Federal Supreme Court is available, so all defences must be made to that court.

### Foreign

The available defences are limited to those in Article V of the New York Convention. The enforcing court will only review non-capacity to settle by arbitration and public policy *ex officio*.

## 33. What are the grounds for refusing enforcement?

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### Domestic

The grounds for refusing enforcement include that the obligation for which enforcement is sought has been performed, become objectively impossible, or has become time-barred by statute.

Enforcement of a domestic award can also be refused if the dispute was not subject to arbitration. For Swiss national awards, any claim that the parties can freely dispose of can be subject to an arbitration agreement (*Article 354, Code of Civil Procedure*). With regard to Swiss international awards, any dispute involving an economic interest can be subject to arbitration (*Article 177(1), Private International Law Act*).

### Foreign

The grounds for refusing enforcement of a foreign arbitral award are limited to those set out in Article V of the New York Convention.

Under Article V(1)(e) of the New York Convention, enforcement of a foreign award can be refused if it has not yet become binding or has been set aside by authorities in its country of origin. The stay of the award in the country of origin only constitutes a ground to oppose enforcement under that article when it was granted by judicial decision, not if it simply results *ex lege* from the appeal against the award at the place of the arbitration (*FCD 4A 403/2008*).

In addition, the defendant can object because the obligation for which enforcement is sought has been performed, become objectively impossible, or has become time-barred by statute.

### Public policy

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## 34. Which country's public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or foreign award?

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### Domestic

Public policy cannot be invoked against a domestic award because it is already covered in the provisions on capacity to settle the dispute by arbitration (*Article 354, Code of Civil Procedure and Article 177, Private International Law Act (PILA)*).

### Foreign

Public policy under Article V(2)(b) of the New York Convention corresponds to the principles described in Question 15 with respect to Swiss public policy under the PILA.

Public policy, which can be both substantial and procedural, is examined *ex officio* by the enforcing court.

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**35. In what circumstances and against which awards has the principle of public policy generally been applied?**

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As described in Question 16, Swiss courts only refuse to enforce foreign awards on grounds of breach of public policy in very few circumstances. The Swiss Federal Court ruled that Article 6(1) of the ECHR is not directly applicable when applying the conditions of Article V of the New York Convention (*FCD 4A\_233/2010*).

Lack of independence of an arbitrator is a matter of Swiss public policy. However, the party that intends to challenge the independence of an arbitrator must raise the grounds as soon as it becomes aware of it so the argument cannot be used as a way to delay enforcement (good faith principle).

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**ACTUAL ENFORCEMENT**

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**36. What is the execution procedure when a declaration of enforceability is granted?**

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Actual enforcement of foreign awards follows the same rules described in *Question 18* with respect to enforcement of foreign judgments.

Enforceability is decided incidentally in the judgment ordering concrete measures of enforcement.

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**37. Can defendants oppose the execution procedure, and if so, on what grounds/defences?**

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**Domestic**

The grounds for opposing the execution procedure are essentially procedural or relate to the interpretation of the award, such as the calculation of the amount or interest due.

For money claims, the defendant must prove with documents that since the judgment was rendered the debt has been discharged or deferred, or that the claim is statute-barred (*Article 81(1), Debt Collection and Bankruptcy Act*).

For non-money claims, the defendant can only argue that matters preventing the enforcement of the decision have occurred since notice of it was given, such as extinction, deferment, statute limitation or forfeiture of the right to due performance. Extinction and deferment must be proved with documents (*Article 341(3), Code of Civil Procedure*).

In addition, defences opposing recognition of the award can be raised (see *Question 32*).

**Foreign**

See above, *Domestic*.

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**ARBITRAL AWARDS: INTERIM REMEDIES AND INTEREST**

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**Interim remedies**

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**38. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?**

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**Domestic**

The interim remedies described in *Question 19* are also available for domestic and foreign awards.

**Foreign**

See above, *Domestic*.

**Interest**

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**39. Is the creditor entitled to interest? If so, on what basis is it calculated?**

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See *Question 20*.

**Currency**

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**40. Is it required to convert the value of foreign awards into the local currency?**

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See *Question 21*.

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**JUDGMENTS AND ARBITRAL AWARDS: PROPOSALS FOR REFORM**

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**41. Are any changes to the law currently under consideration or being proposed?**

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**Judgments**

On 22 September 2017, in the context of an ex parte appeal against the partial granting of an attachment request in the context of the enforcement of foreign arbitral award, the Geneva Court of Appeal ruled that the Federal Court's case law 5A 328/2013 of 4 November 2013, regarding the attachment of future claims of football clubs against UEFA, also applied in the context of commodities trading future claims (*ACJC/1182/2017*).

On 11 April 2018, the Swiss Federal Court confirmed that an Italian judgment extending the effects of an Italian arbitral award rendered against an offshore company to its beneficial owner (lifting of the corporate veil) is enforceable in Switzerland under the rules of the DCBA (*FCD 5A 1056/2017 and 5A 953/2017*).

**Arbitral awards**

On 11 January 2017, the Swiss Government circulated for consultation a draft bill amending Chapter 12 of the Private International Law Act, relating to international arbitration. The consultation ended on 31 May 2017. The Swiss Government will take the positions received into account and should present a bill to parliament during 2018. The draft bill essentially aims to codify case law on the following topics:

- Correction and revision of arbitral awards.
- Form of the arbitration agreement.
- Failure to designate the seat of arbitration.
- Interim measures during arbitration.
- Costs.
- The possibility of appeals to the Federal Supreme Court being drafted in English.

No provisions directly concern the recognition or enforcement of domestic or foreign arbitral awards.



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#### Recent transactions/activities

Enforcement claims, judgments and arbitral awards above CHF100 million for:

- Banco Santos SA, in liquidation (Brazil).
- Banco Turco Romana SA, in liquidation (Romania).
- Bilta (UK) Ltd, in liquidation (England).
- Cerner Middle East, Ltd (UAE).
- Novoship (UK) Ltd (England).
- Saad Investments Company Limited, in official liquidation (Cayman Islands)
- Stanford International Bank Ltd, in liquidation (Antigua & Barbuda).

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#### Publications

- *Switzerland, The Asset Tracing and Recovery Review, 7th Edition*, Law Business Research, London, 2019 (co-author) (<https://thelawreviews.co.uk/edition/1001402/the-asset-tracing-and-recovery-review-edition-7>).
- *Switzerland: Improving Cooperation To Recover Assets In Cross-Border Insolvency Cases*, April 2018, *Legal Era* (co-author). ([www.legaleraonline.com/le\\_mag\\_pdf/Legal\\_Era\\_Magazine\\_April2018.pdf](http://www.legaleraonline.com/le_mag_pdf/Legal_Era_Magazine_April2018.pdf))
- *Switzerland - A new hope? The Swiss Government adopts its Dispatch to the Parliament on an amendment to the provisions governing recognition of foreign insolvencies*, *Lexology*, 22 June 2017 (co-author). ([www.lexology.com/library/detail.aspx?g=0d572091-c336-4c15-8b4c-a46288db55d2#\\_ftn2](http://www.lexology.com/library/detail.aspx?g=0d572091-c336-4c15-8b4c-a46288db55d2#_ftn2))
- *Enforcement of judgments and arbitral awards in Switzerland: overview, Enforcement of Judgments and Arbitral Awards in Commercial Matters Global Guide, 3rd, 4th and 5th, Edition*, Practical Law, Thomson Reuters, London, 2017, 2018 and 2019 (co-author).
- *Switzerland, Anti-Bribery and Anti-Corruption Review, 5th - 8th Edition*, Law Business Research, London, 2016, 2017, 2018, 2019. (<https://thelawreviews.co.uk/edition/1001280/the-anti-bribery-and-anti-corruption-review-edition-7>).
- *A Civil Perspective on Asset Recovery (with a Focus on Swiss Law), The International Who's Who of Asset Recovery Lawyers*, London, 2014.
- *Switzerland, Asset Tracing & Recovery - The FraudNet World Compendium*, Eric Schmidt Verlag, Berlin, 2009.

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**Professional associations/memberships.** International Association of Young Lawyers (Litigation Commission, Insolvency Commission, Commercial Fraud Commission, International Arbitration Commission); International Bar Association (Anti-Corruption Committee, Asset Recovery Subcommittee, Litigation Committee, Arbitration Committee, Business Crime Committee, European Regional Forum, Women Lawyers' Interest Group); Art Law Foundation; Swiss and Geneva Bar Associations.

### Publications

- *Switzerland, The Asset Tracing and Recovery Review, 7th Edition, Law Business Research, London, 2019 (co-author)* (<https://thelawreviews.co.uk/edition/1001402/the-asset-tracing-and-recovery-review-edition-7>).
- *Switzerland - Overlooked Tools For Pre-Trial Evidence Outside of Criminal Proceedings, Asset Recovery Magazine (inaugural edition), KNect365 Law, London, 2018* ([https://knect365.com/article/pdfs/b7a18b5b-92fb-4d3d-bc25-b245ea82f320\\_AssetRecoveryMagazine-Dec2018-Issue1.pdf](https://knect365.com/article/pdfs/b7a18b5b-92fb-4d3d-bc25-b245ea82f320_AssetRecoveryMagazine-Dec2018-Issue1.pdf)).
- *Switzerland: Improving Cooperation To Recover Assets In Cross-Border Insolvency Cases, April 2018, Legal Era (co-author)*. ([www.legaleraonline.com/le\\_mag\\_pdf/Legal\\_Era\\_Magazine\\_April2018.pdf](http://www.legaleraonline.com/le_mag_pdf/Legal_Era_Magazine_April2018.pdf)).
- *Switzerland - A new hope? The Swiss Government adopts its Dispatch to the Parliament on an amendment to the provisions governing recognition of foreign insolvencies, Lexology, 22 June 2017 (co-author)*. ([www.lexology.com/library/detail.aspx?g=0d572091-c336-4c15-8b4c-a46288db55d2#\\_ftn2](http://www.lexology.com/library/detail.aspx?g=0d572091-c336-4c15-8b4c-a46288db55d2#_ftn2)).
- *Enforcement of judgments and arbitral awards in Switzerland: overview, Enforcement of Judgments and Arbitral Awards in Commercial Matters Global Guide, 3rd, 4th and 5th Edition, Practical Law, Thomson Reuters, London, 2017, 2018 and 2019 (co-author)*.