

INTERNATIONAL DISPUTE RESOLUTION SPECIALTY GROUP

SWITZERLAND

QUESTIONNAIRE

The aim of this questionnaire is to provide a framework for each country representative to describe the process, procedure and any other relevant issues, involved in enforcing a foreign judgment in that country. The questionnaire deals with both enforcement of judgments and arbitral awards.

In the event that there are further issues not covered by the questions below that should be considered by a party attempting to enforce a foreign judgment in a particular country, please include an appropriate question and answer, which deals with this issue.

PART I: ENFORCEMENT OF FOREIGN JUDGMENTS

Enforcement and recognition

1. What procedures exist for recognition and enforcement of foreign judgments pursuant to conventions?

Switzerland is party to the *Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters* of 16 September, 1988 (hereinafter "Lugano Convention").

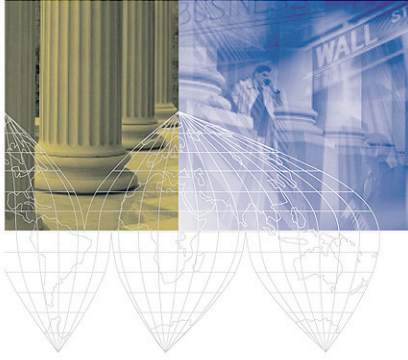
The Lugano Convention is almost identical to the E.U.-regulation Nr 44/2001 of 22 December, 2000 (formerly "the Brussels Convention"). The Lugano Convention is applicable between Switzerland and 18 other European jurisdictions (Iceland, Norway, Poland and 15 members of the E.U., but not the 10 States recently admitted).

In civil and commercial matters, in which the Lugano Convention is applicable, there is a simple and fast procedure for the recognition and enforcement of judgments emanating from another jurisdiction. The characteristics are that the recognizing State may in principle not scrutinize the jurisdiction of the State of origin. In addition, during the recognition procedure, the defendant cannot bring a claim with respect to the merit of the case.

2. What procedures exist for recognition and enforcement of foreign judgments pursuant to statute or common law?

The *Swiss Private International Law Act* ("PILA") of 18 December 1987 applies when no international convention exists.

According to the terms of Article 25 PILA, a foreign decision will be recognized in Switzerland if *three conditions* are given:



- a) the foreign court rendering the decision had jurisdiction under the PILA ;
- b) the decision is no longer subject to any ordinary appeal, i.e. it is a final decision ;
- c) the decision is not clearly incompatible with Swiss substantive public policy according to art. 27 PILA. This is the case if the content of the decision conflicts with fundamental principles of the Swiss legal order or if elementary procedural rights of contradictory procedure were violated (for example the rights of proper notice, due process, the right to be heard or equal treatment of the parties).

If the three requirements are met, Swiss Courts will recognize the foreign decision. According to art. 28 PILA, the decision that is recognized shall be declared enforceable in Switzerland upon request of the interested party.

3. Are there any practical problems or special time factors that a party seeking to enforce a foreign judgment should bear in mind?

a) Practical problems: necessary documents

A party seeking recognition and enforcement of foreign judgments in Switzerland needs to transmit to the Swiss Court original final foreign judgments or certified copies. All documents need to be validated by a Swiss Consulate in the country where the Decision was rendered or bear the Apostille according to The Hague Convention. Translations in German, French or Italian (depending on the language of the proceedings) will be required.

b) Special time factors

There are no procedural time limits to request the recognition and enforcement of a foreign judgment in Switzerland, as long as the claim itself is not time-barred.

4. Are there any public policy or other issues which may affect enforceability?

A foreign decision will not be recognized in Switzerland if, among other, it is contrary to Swiss public policy or if elementary procedural rights were violated. A judgment ordering payment of punitive damages would, for example, probably not be enforceable in Switzerland.

Limitation Issues

5. What are the time limits for bringing civil claims?

Article 148 PILA provides that the law applicable to a right governs the statute of limitations and extinction of such right. In other words, Swiss law will only govern the limitation issues if it governs the relation between the litigants (for example, if their contract contains a choice in favour of Swiss law).

The general limitation periods are laid down by the *Swiss Code of Obligations*.



After *ten years*, all claims for which the federal civil law *does not provide otherwise* are barred by the statute of limitations (Article 127 of the SCO). In consequence, one must always check if any special rule exists on a specific matter, before concluding to the application of the general period of limitation.

Shorter limitation periods exist, among others, in insurance matters, in transportation matters, in matters relating to the fees of doctors, lawyers and notary publics, etc.

In *tort*, the claim for damages or reparations is barred by the statute of limitation after *one year* from the date when the damaged person has knowledge of the damage and of the identity of the liable person, but, in any event, *ten years* from the date when the act causing the damage took place (Article 60 of the SCO).

A claim for restitution of *unjust enrichment* is barred *one year* after the injured person knew of his claim, but, in any event, *ten years* after the claim arose (Article 67 of the SCO).

Confidentiality

6. Are court proceedings confidential or public?

In Switzerland, cantonal law regulates procedural questions. Since there are 26 different cantonal legislations, it is not possible to give a general picture on procedural law issues..

In Geneva and in the Canton of Vaud, Court proceedings are usually public. There are however exceptions, in particular in family matter.

Starting proceedings

7. How are civil proceedings commenced?

Each canton has its own provisions regarding the starting of civil proceedings.

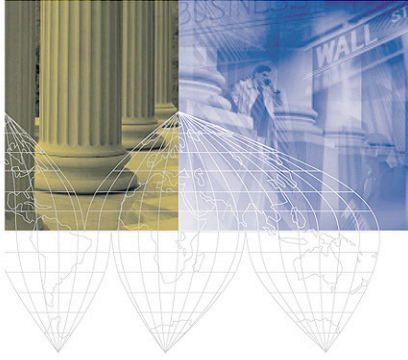
In most of them, notably in Geneva and the Canton of Vaud, the civil proceedings starts by filing a written claim, which must contain, among others, an exhaustive description of the facts grounding the claim, with the competent Court.

Interim remedies

8. What interim remedies are available?

Federal law provides that a Court can order, under some rather restrictive conditions, a civil freezing order of assets.

Cantonal procedural laws provide for various other interim remedies.



In Geneva and in the Canton of Vaud, the law provides for some interim remedies: attachment of goods whose ownership is claimed, ordering of an urgent appraisal, etc.

Inter partes costs

9. Does the court have power to order costs or to order security for costs?

These issues are regulated by cantonal law.

Usually, the claimant has to pay at the beginning of the proceedings provisional Court fees. The claimant can also be required by the Court to provide security for the defendant's costs.

When rendering its judgment, the Court determines which party has to bear the costs of the proceedings. The Court can also decide whether one of the parties has to pay to the other a part of its attorney's fees.

Jurisdiction

10. If a contract has some connection with your jurisdiction, are there mandatory laws under the local law that would apply to the contract irrespective of the parties' choice of law in the contract?

The parties are not free to make a choice of law for any kind of contract, according to the PILA. For example, restrictions with that regard exist in relation to consumer contracts of family law related contracts.

If the choice of law is valid under PILA, art. 18 PILA still makes a reservation in favour of the application of mandatory provisions of Swiss law.

PART II: ENFORCEMENT OF ARBITRAL AWARDS

Enforcement

11. What procedures exist for enforcement of foreign awards?

Art. 194 PILA provides that the recognition and enforcement of foreign arbitral awards is governed by the New York Convention of 10 June, 1958 on the recognition and enforcement of foreign arbitral awards. In application of this *renvoi*, the New York Convention will govern the recognition and enforcement of foreign awards regardless whether the award was rendered in a country that is party to that Convention.



Conventions

12. Is your country party to the New York Convention, Washington Convention and/or Geneva Convention?

Switzerland is a party to the New York Convention, the Washington Convention and the Geneva Convention.

UNCITRAL Model Law

13. Is the arbitration law based on the UNCITRAL Model Law?

Swiss international arbitration law is enacted in Chapter 12 PILA, which is *not* based on the UNCITRAL Model Law.

Arbitrability

14. Are there arbitration awards which will not be enforced due to the subject matter of the dispute?

According to Article 177 PILA, any dispute involving an economic interest may be the subject matter of an arbitration. Criminal matters, non-economical family matters, matters affecting the status of an individual or a corporation, bankruptcy and insolvency matters, other public law matters, among others, are not arbitrable.