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Switzerland

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Switzerland.

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SWITZERLAND

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS



1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

The most important treaty for the recognition and enforcement of civil judgments in Switzerland is the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters concluded in Lugano on 30 September 2007 (Lugano Convention). The Lugano Convention applies to all judgments in commercial and civil matters that were rendered in another Lugano Convention State, such as any EU and EFTA member state. The Lugano Convention only covers the requirements for recognition and enforcement. The enforcement proceedings themselves remain, in essence, governed by Swiss law.

In addition, there are numerous multilateral and bilateral international treaties that apply depending on the field of law, in particular:

Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations concluded on 2 October 1973;

Hague Convention on the Recognition of Divorces and Legal Separations concluded on 1 June 1970;

European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and the Restoration of Custody of 20 May 1980;

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards concluded in New York on 10 June 1958 (New York Convention).

A full list of applicable treaties can be found here: <https://www.fedlex.admin.ch/de/cc/international-law/0.27>

2. What, if any, reservations has your jurisdiction made to such treaties?

Switzerland has made the following reservations to the Lugano Convention:

- In accordance with Article I, para 2 of Protocol No 1 to the 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, para 1 of Protocol No 1, Switzerland will not apply the following part of the provision in Article 34 para 2: "unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so".

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

To the extent the recognition and enforcement of a foreign judgment is not governed by an international treaty, the Federal Act on Private International Law of 18 December 1987 (Private International Law Act or PILA) is decisive for the recognition of foreign decisions in Switzerland. Foreign decisions are also equated in the PILA with cases of voluntary jurisdiction and court settlements (Article 30 PILA). Switzerland has a liberal regime of recognition that, in particular, contains no reciprocity requirement.

4. What basic criteria does a foreign judgment have to satisfy before it can be

enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

According to Article 25 PILA, the following three requirements must be fulfilled (cumulatively) in order for the foreign judgment to be recognised and, if necessary, enforced in Switzerland:

- International jurisdiction of the state of origin from a Swiss law perspective (Article 25(a) PILA).
- The foreign judgment is final and binding under the law of the issuing state (Article 25(b) PILA).
- Absence of formal and substantive grounds for refusal (Article 25(c) PILA).

A judgment from a court of a Lugano Convention state is automatically recognised if the requirements of Article 32 et seqq. are fulfilled. As a general rule, a judgment rendered in a Lugano Convention state is automatically recognised provided that there are no grounds for refusal under Articles 34 or 35 Lugano Convention.

By virtue of Article 194 PILA, the recognition and enforcement of foreign arbitral awards is governed by the New York Convention, whether or not the state of origin is a contracting state to the New York Convention. Accordingly, foreign arbitral awards are enforced if they are based on a valid arbitration agreement and there are no grounds for refusal.

Recognition and enforcement of foreign judgments in Switzerland is not limited to monetary claims.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

In Switzerland, a distinction must be made between recognition and enforcement: While recognition extends the legal effects of a foreign judgment to domestic territory, enforcement combines recognition with domestic steps of legal enforcement. Recognition is, therefore, an indispensable precondition for enforcement.

Applications for recognition of a foreign judgment are consequently often accompanied by a concrete request for enforcement. However, where the applicant shows a legitimate interest in obtaining a declaration of recognition independently from the enforcement of a foreign judgment or where the foreign judgment does

not contain any enforceable content, Swiss courts can also merely decide on the recognition of the judgment.

Under the Lugano Convention, a foreign judgment is recognised automatically without any special procedure required (Article 33(1) Lugano Convention).

Nevertheless, a Swiss authority must always determine the recognition of a foreign judgment, at least as a preliminary question. If the party seeking recognition opts for separate recognition proceedings, Article 33(2) Lugano Convention applies. The proceeding is initiated by a request to declare the recognition of the foreign judgment. Any party who can show a legitimate interest may commence recognition proceedings. In addition, a general need for legal protection with respect to the declaration needs to be demonstrated. An action that a foreign judgment should not be recognised is, by contrast, excluded.

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

Under the PILA, independent recognition proceedings are governed by Article 29 PILA. The application for recognition must be filed as an action for a declaratory judgment. A sufficient interest in the declaration must be shown. The form of the proceedings is specified by the Swiss Code of Civil Procedure (CPC). The proceedings are summary in nature (Article 339(2) CPC). Other than under the Lugano Convention, the proceedings are of adversarial nature from the beginning. Hence, the defendant must be heard on the merits and can assert its evidence, and the court of first instance does examine the prerequisites for recognition under the PILA.

With regard to the actual enforcement of the foreign judgment, the rules and procedures are different for monetary as opposed to non-monetary claims. In Switzerland, the procedure for the enforcement of monetary claims is formally segregated from court proceedings and is governed by the Swiss Federal Debt Enforcement and Bankruptcy Act (DEBA). As a general rule, judgment creditors can choose between ordinary debt enforcement proceedings and a freeze of assets as its first step, it being understood that the freeze is not available in all circumstances. Non-monetary claims are, by contrast, enforced according to the CPC.

The described procedure for the recognition and enforcement of foreign judgments also applies with regard to foreign arbitral awards.

7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

According to the Lugano Convention, the party applying for the recognition of a foreign judgment must submit a copy of the judgment. The copy of the judgment must meet the criterion of authenticity, i.e., original of the judgment or official copy issued by the court of origin. Where there is doubt about the authenticity, the recognition court may request an authentication. The judgment may be submitted in the original language. A translation only needs to be submitted upon request by the court.

The applicant also needs to submit the certificate from the court of origin using the standard form in Annex V to the Lugano Convention.

Under the PILA, the party applying for recognition must submit a complete and authenticated copy of the foreign judgment (including the dispositive part and the grounds). An official body must certify the authenticity. Furthermore, a confirmation that the judgment is final and binding is required, i.e., a confirmation that no ordinary appeal can be lodged. An authority of the state of origin, usually the court that rendered the judgment, must issue the confirmation of legal force.

Unlike the PILA, the Lugano Convention provides that a foreign judgment is recognised and can be enforced even if it is not yet final and binding. The decision only needs to be (provisionally) enforceable in the state of origin, it being understood that the counterparty's right to be heard must have been granted.

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

The recognition and enforcement procedure takes place in summary proceedings. The timeline to enforce a judgment highly depends on the conduct of the defendant and the concrete enforcement measures that are requested. The decision by the first instance court can be appealed to the higher cantonal court and ultimately to the Federal Supreme Court. Whereas a first instance decision on the enforceability of the judgment can sometimes be expected within days of the application, it can take several years until a final decision by the Federal Supreme Court is obtained.

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Yes. In support of the enforcement of monetary claims, the claimant can submit an attachment (freezing) request together with the request for recognition of the foreign judgment. The attachment ensures the enforcement by limiting the debtor's rights of disposal of the attached assets during the course of the debt enforcement proceedings. Only specifically designated assets of the debtor are affected by an attachment. The court issues the attachment order – if the prerequisites are given – ex parte. The debt enforcement office executes the attachment by an order to a bank freezing the debtor's bank accounts or by seizing vehicles or real estate.

Other forms of interim relief are also available for non-monetary claims based on Swiss procedural law.

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

There is no limitation period as such for the recognition and enforcement of a foreign judgment in Switzerland. However, the Swiss Code of Obligations (SCO) provides that a claim that was recognised by a judgment is statute-barred after 10 years from the date of the judgment (Article 137(2) SCO).

11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

Provided that the foreign judgment meets the criteria for recognition and enforcement under Article 25 PILA, the recognition can be challenged based on the grounds listed in Article 27 PILA. The same grounds for refusal can also be found in Article 34 of the Lugano Convention:

- violation of Swiss public policy (examined ex officio by the court);
- no appropriate summons (formal public policy);
- infringement of fundamental procedural principles;
- priority of other decisions and proceedings (lis pendens and res judicata).

The recognition and enforcement of foreign arbitral awards can be challenged based on the grounds laid

down in Article V New York Convention:

- incapacity of the parties to the arbitration agreement;
- violation of due process (right to be heard);
- extra potestatem and ultra petita judgments;
- violation of the applicable procedural law;
- award is not yet binding;
- lack of arbitrability;
- violation of public policy.

In terms of enforcement, the defendant may raise certain substantive objections:

- the debt or specific performance is statute-barred;
- the debt has been entirely or partially paid or judgment performed;
- the parties agreed on instalment payments or a stay of the enforcement.

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

No. As a rule under the Lugano Convention, the Swiss court dealing with the recognition of the foreign judgment may under no circumstances review the substance of the foreign judgment (Article 36 Lugano Convention).

A review of the merits of non-Lugano Convention judgments is also expressly excluded by Article 27(3) PILA. Review can only concern service, jurisdiction, public policy, or *lis pendens* (Article 27(2) PILA).

With regard to the enforcement of arbitral awards, courts have consistently held that Article V (1)(c) of the New York Convention (grounds for refusal of recognition) must be construed narrowly, and as such does not permit under any circumstances a review of the merits of a dispute by an enforcing court.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

A review of the jurisdiction of the foreign court is inadmissible pursuant to Article 35(3) Lugano Convention.

Applications for recognition and enforcement based on the Swiss PILA have to show that the state of origin had jurisdiction from a Swiss law perspective (Article 25(a)

PILA). The court will examine whether the jurisdiction of the issuing state is in line with the principles applying under Swiss law (Article 26 PILA):

- seat or domicile of the defendant;
- acceptable international jurisdiction for the particular field of law according to PILA;
- valid agreement of jurisdiction according to Swiss law;
- acceptance of jurisdiction by appearance;
- in the case of a counterclaim, whether the court was competent to rule on the principal claim.

14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

Under the Lugano Convention, the second ground for refusal of the recognition of a foreign judgment is the lack of proper summoning of the defendant (Article 34(2) Lugano Convention). A judgment in default can consequently be refused recognition if the defendant was not served with the document instituting the proceedings, or with an equivalent document, in sufficient time and in such a way as to enable them to arrange for a defence.

However, recognition of such a default judgment is nevertheless possible if the defendant failed to commence proceedings to challenge the judgment even if it had been possible for it to do so.

Under the PILA, in the case of a judgment rendered by default, an official document establishing that the defaulting party was duly summoned and had the opportunity to defend itself must be submitted with the application for recognition and enforcement.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

No. Insofar as the applicable requirements are met and there are no grounds for refusal, the court must recognise foreign judgments.

In the case of a Lugano judgment that has not yet become final and binding at the time enforcement is requested, the Swiss court may stay the enforcement proceedings if an ordinary appeal against the judgment has been lodged in the Lugano Convention state of origin

(Article 37 Lugano Convention).

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

Whereas foreign judgments on interim measures are enforceable under the Lugano Convention as long as the defendant was summoned to a hearing and was served the judgment, the same is disputed under the PILA. It is further generally accepted in Switzerland that the New York Convention does not provide for the recognition and enforcement of interim measures ordered by foreign arbitral tribunals.

In addition, the Lugano Convention explicitly excludes judgments on tax, customs, and administrative matters from its application. The Lugano Convention further does not apply to:

- the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
- bankruptcy; and
- social security.

Foreign enforcement judgments cannot be enforced in Switzerland. There is, in other words, no enforcement of enforcement.

Swiss courts have in the past refused to enforce punitive damages awarded by foreign judgments, based on the argument that such damages would be contrary to Swiss public policy. The same accounts to the multiplication of awarded damages (e.g., treble damages) that would be qualified as excessive under Swiss law. However, a shift to a more favourable recognition approach has been noticeable in the past decade in practice and amongst scholars, particularly in international arbitration.

In any case, a Swiss court may decide to declare only a part of a foreign judgment enforceable. In addition, an applicant may request to only enforce parts of a foreign judgment (Article 48 Lugano Convention). The same applies under the PILA. Accordingly, a foreign judgment awarding punitive damages can be enforced in part insofar as damages would also be compensated under Swiss law.

17. Can enforcement procedures be started in your jurisdiction if there is a pending

appeal in the foreign jurisdiction?

According to Article 25(b) PILA, a foreign judgment must be final and binding under the law of the issuing state. This condition is fulfilled if no ordinary appeal is possible anymore. The PILA does, however, not require that the foreign decision is enforceable in the state of origin.

In contrast, a foreign judgment can be declared enforceable according to the Lugano Convention before it becomes final and binding. However, the Swiss court may stay the proceedings if an ordinary appeal against the judgment has been lodged in the Lugano Convention state (Article 37 Lugano Convention).

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

Yes. Decisions by the first instance court can be appealed to the cantonal court and ultimately the Federal Supreme Court.

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

Whether interest can be claimed on the judgment sum 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 provided that the actual amount of the computed interest rate does not breach Swiss public policy.

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

Yes, any money judgment expressed in a foreign currency must be converted into Swiss francs for enforcement purposes.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

Yes. The court costs will be imposed on the losing party. The court will also order the losing party to pay a party compensation to the succeeding party. However, depending on the complexity of the case, the party compensation (that is determined by a tariff) may not cover the totality of the parties' legal expenses.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Yes, third parties are allowed to fund enforcement actions. They cannot be made liable for the costs of the opposing party.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

The UK's exit from the EU has led to its exclusion from the Lugano Convention. New decisions from the UK will now have to be enforced based on the PILA and no longer based on the Lugano Convention. The Swiss Federal Supreme Court has, however, decided that judgments rendered by the English Courts before 31 December 2020 (provided they were not subsequently set aside) shall be enforced under the Lugano Convention even where the application for enforcement is only made after that date (BGer, 5A_720/2022 of 31 March 2023; see also <https://www.arrestpraxis.ch/updates/update-letter-nr-144/>).

On 17 March 2023, the Swiss parliament approved revisions to the CPC. The revised provisions are

expected to enter into force on 1 January 2025. The revision has streamlined some of the procedures and strengthened the protection of professional secrecy (legal privilege, including for in-house counsel, etc.). In addition, Switzerland has introduced various new provisions that will reduce cost barriers for litigants. As an example, the courts will only be able to request claimants to advance half of the expected court costs, instead of the full amount.

One of the major features that the revised CPC brings is that the Cantons will be enabled to establish international commercial courts before which the parties can choose to litigate in English.

24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

No, Switzerland has not ratified the Hague Choice of Courts Convention 2005. As Switzerland has two proven instruments for the recognition and enforcement of foreign judgments, namely the Lugano Convention and its PILA, it is not expected that Switzerland will join the Hague Choice of Courts Convention in the future.

25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?

No, Switzerland has not ratified the Hague Judgments Convention 2019. As Switzerland has two proven instruments for the recognition and enforcement of foreign judgments, namely the Lugano Convention and its PILA, and the Hague Judgments Convention 2019 does not bring any noticeable improvement to these instruments, it is not expected that Switzerland will join the Hague Choice of Courts Convention in the future.

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