

Enforcement of Arbitral Awards in Switzerland: Overview

by Yves Klein and Antonia Mottironi, Monfrini Bitton Klein and Ardenter

Country Q&A | Law stated as at 01-Mar-2022 | Switzerland

A Q&A guide to enforcement of arbitral awards in Switzerland. The Q&A gives a structured overview of key practical issues concerning enforcement of arbitral awards in this jurisdiction, including the legal framework; international conventions/agreements; enforceable/excluded types of arbitral award; enforcement proceedings; challenging enforcement; appeal or challenge at the seat of arbitration; actual enforcement; interim remedies and interest; and any reform proposals.

Arbitral Awards: Legal Framework

Definitions

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

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

Domestic

Domestic arbitration can either be national or international. Two laws can apply to arbitration proceedings: the Code of Civil Procedure (CCP) and the Private International Law Act (PILA).

Articles 353 to 399 of the CCP apply to Swiss national arbitration proceedings, where the arbitration tribunal is in Switzerland, unless the parties opt out in favour of Article 176ff of the PILA.

Foreign

Articles 176 to 194 of the PILA apply to Swiss international arbitration proceedings, where 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 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

International Conventions/Agreements

2. 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, PILA*).

Domestic Framework

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

Domestic

Swiss law makes a distinction between the enforcement of money and non-money awards. Money awards are enforced under the Debt Collection and Bankruptcy Act (DCBA), with assistance from local debt collection offices. Non-money awards are enforced under the CCP, with assistance from the civil courts.

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 CCP applies, unless the parties opt out in favour of Article 176ff of the PILA.

If one or more parties is 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 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.

4. Is there a distinction between the recognition and enforcement of an award in your jurisdiction?

In principle, domestic and foreign awards can only be enforced in Switzerland, without prior or subsequent decision of recognition or declaration of enforceability. A decision of recognition may be issued in exceptional cases, where there is a legitimate interest in the issuance of a declaratory judgment in lieu of or concurrently to actual enforcement proceedings.

5. Can a party to an arbitration award disclose that award in third party court proceedings in your jurisdiction?

Domestic

Subject to contrary agreement, there are no Swiss law provisions prohibiting the production of an arbitral award in third party proceedings in Switzerland.

Foreign

See above, Domestic.

Enforceable/Excluded Types of Arbitral Award

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

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 in *Question 1*. 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, 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 11](#)). Swiss law must be applied, namely Article 261ff of the CCP.

7. Can an award creditor assign an award to a third party in your jurisdiction?

Domestic

Subject to contrary agreement, there are no Swiss law provisions prohibiting the assignment of an arbitral award to a third party.

Foreign

See above, *Domestic*.

8. Is a third-party assignee of an award entitled to enforce it in your jurisdiction? If so, are there any restrictions on that right?

Domestic

Subject to contrary agreement a third-party assignee of an award is entitled to enforce it in Switzerland. There are no restrictions on that right.

Foreign

See above, Domestic.

Enforcement Proceedings

Procedure

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

Domestic Awards

The only condition for a domestic award to be enforceable is that the decision be in force. Domestic national awards are enforceable throughout the country without any requirement for domestication or recognition proceedings. Domestic international awards are declared enforceable by the arbitral tribunal on request from one of the parties.

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

The enforcement procedure for money awards is governed by the DCBA. Debt collection proceedings start with a request to issue an order to pay the competent debt collection office. The conditions of enforceability of the award 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 realising the assets of the debtor.

Non-money awards are enforced under Articles 387 and 335ff of the CCP before the civil enforcement court. Proceedings on enforcement must be instituted by the creditor after the award comes into force.

Where both parties are domiciled abroad and have excluded the possibility of challenging the award before the Swiss Federal Court, the provisions of the New York Convention apply.

Foreign Awards

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

Swiss courts issue decisions merely recognising foreign awards in exceptional cases (because they are declaratory judgments, see [Question 4](#)), where the claimant shows a legitimate interest in obtaining recognition independently from actual enforcement of the award.

Enforcement proceedings for foreign awards can last between six months and three years, including appeals.

Money awards. The enforceability of a foreign money award 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 12](#)).

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 12](#)).

The creditor must request an order to pay from the debt collection office, which is a form stating the amount of the claim and its basis ([Article 67, DCBA](#)). The order to pay can be preceded by an attachment request (see [Question 25](#)). The debt collection office serves the order to pay on the alleged debtor, without verifying the merits of the claim ([Article 69ff, DCBA](#)). The debtor then has ten days to state, in principle on the order to pay itself, whether it objects to the order ([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 award 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 awards, the debtor can raise grounds to refuse to recognise or enforce provided in Article 27 of the Private International Law Act (PILA) (see [Question 12](#)). 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 CCP).

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 the 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 25](#)). 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 enforcement of the foreign award before civil courts.

Non-money awards. When enforcing non-money awards, the application for enforcement must be filed with the civil enforcement court under Article 335ff of the CCP (*see Question 12*).

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 12*).

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 award 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. The debtor can also raise grounds to refuse to recognise or enforce provided under Article 27 of the PILA (*see Question 12*). The court decides in summary proceedings.

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

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

11. Can parties seek to obtain a domestic judgment in the terms of the award as part of the enforcement process?

No, the decisions that can be obtained are enforcement orders that have no binding effect outside of the debt collection proceedings. The award cannot become a domestic judgment in the process.

Form of Application

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

Domestic

In principle, a domestic arbitral award (whether Swiss or international) is enforceable from the moment it is served on the parties. The applicant must make factual allegations about the conditions of enforceability of the 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.

A certified copy of the arbitration agreement, the award and a power of attorney must be provided. Switzerland is a State party to the HCCH Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961 (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.

For money awards, 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 awards, both of these issues are decided by the enforcement court under Articles 387 and 335ff of the CCP. 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.

The allegations of fact can be limited to the existence, nature and enforceability of the domestic award. 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. A factual summary of the proceedings that led to the award being enforced is usually provided, particularly when it is expected that enforcement will be challenged.

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.

The information to be provided with an application to enforce a foreign award is the same as for a domestic award.

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

For money awards, enforceability is decided in the proceedings to set aside the objection to the order to pay (*see Question 9*). For non-money judgments, it is decided in the proceedings for enforcement. A request for enforcement of a non-money award 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 allegations of fact can be limited to the existence, nature and enforceability of the domestic award. 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. A factual summary of the proceedings that led to the award being enforced is usually provided, particularly when it is expected that enforcement will be challenged.

Factual statements must be made about the conditions for enforceability of the award 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:

- 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 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.

(*Article 26, PILA*.)

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

The defendant can challenge the enforceability of the award. 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. The findings on enforceability of the foreign judgment are not binding except for the particular measures for enforcement in those specific proceedings.

Challenging Enforcement

Service

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

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

14. What is the effect of pending challenge proceedings to the award at the seat?

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.

15. Can the enforcing court review an award if all formalities were complied with and if the award appears to be valid?

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*.

16. What are the grounds for refusing enforcement?

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, CCP*). With regard to Swiss international awards, any dispute involving an economic interest can be subject to arbitration (*Article 177(1), PILA*).

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.

17. What procedure must an award debtor follow if it wishes to oppose enforcement proceedings?

Domestic

See [Question 9](#).

Foreign

See [Question 9](#).

Public Policy

18. How important a consideration is public policy in your jurisdiction? Which country's public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or foreign award?

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, CCP and Article 177, PILA*).

Foreign

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.

Under PILA rules and with reference to Article V (2)(b) of the New York Convention, 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*).

19. In what circumstances and against which types of awards has the principle of public policy generally been applied to determine whether an award should be enforced?

Swiss courts only refuse to enforce foreign awards breach of public policy grounds in very few circumstances.

The Swiss Federal Court ruled that Article 6(1) of the European Convention on Human Rights (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).

Other 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.

Appeal or Challenge at the Seat of Arbitration

20. Where your jurisdiction is the seat of the arbitration, will your courts entertain an appeal or set-aside proceeding that considers the merits of the decision in the award?

There is no ground of appeal on the merits of the award against domestic awards.

21. Where your jurisdiction is the seat of the arbitration, will your courts entertain a challenge to the award based on a procedural irregularity?

The grounds for appeal against domestic national awards include the following (*Article 393, CCP*):

- The single arbitrator was appointed or the arbitral tribunal composed in an irregular manner.
- The arbitral tribunal wrongly declared itself to have or not to have jurisdiction.
- The arbitral tribunal decided issues that were not submitted to it or failed to decide on a prayer for relief.
- The principles of equal treatment of the parties or the right to be heard were violated.
- The award is arbitrary in its result because it is based on findings that are obviously contrary to the facts as stated in the case files or because it constitutes an obvious violation of law or equity.
- The costs and compensation fixed by the arbitral tribunal are obviously excessive.

Parties can also request review of the award where (*Article 396 (1), CCP*):

- The party subsequently discovers significant facts or decisive evidence that could not have been submitted in the earlier proceedings, excluding facts and evidence that arose after the arbitral award was made.
- Criminal proceedings have established that the arbitral award was influenced to the detriment of the party concerned by a felony or misdemeanour, even if no one is convicted by a criminal court. If criminal proceedings are not possible, proof may be provided in some other way.
- It is claimed that the acceptance, withdrawal or settlement of the claim is invalid.
- A ground for challenge under Article 367(1)(c) (reasonable doubt about independence and impartiality of an arbitrator) only came to light after conclusion of the arbitration proceedings despite exercising due diligence and no other legal remedy is available.

A review on the grounds of a violation of the ECHR176 can be requested if (*Article 399(2), CCP*) where:

- The European Court of Human Rights has determined in a final judgment that the ECHR or its protocols have been violated.

- Compensation is not an appropriate remedy for the effects of the violation.
- The review is necessary to remedy the violation.

Proceedings to set aside a domestic international award can only be initiated where the:

- Sole arbitrator has been improperly appointed or where the arbitral tribunal has been improperly constituted.
- Arbitral tribunal has wrongly accepted or denied jurisdiction.
- Arbitral tribunal has ruled beyond the claims submitted to it, or failed to decide one of the claims.
- Principle of equal treatment of the parties or their right to be heard in an adversary procedure has not been observed.
- Award is incompatible with public policy.

(Article 190(2), PILA.)

Domestic international awards can be reviewed if:

- It subsequently discovers significant facts or decisive evidence that could not have been submitted in the preceding procedure despite the appropriate due diligence.
- A criminal proceeding has established that the arbitral award has been influenced to the detriment of the requesting party by a crime or an offence, even if no conviction has been ordered. If no criminal proceeding is possible, proof can be provided in another way.
- A ground for challenge in accordance with Article 180(1)(c) is discovered, despite the required due diligence observed by the parties, only after the closure of the arbitration procedure and if no other legal remedy is available.

(Article 190a, PILA.)

Actual Enforcement

22. What is the execution procedure when a declaration of enforceability is granted? What methods of execution are available to an award creditor?

Actual enforcement of foreign awards follows the same rules described in [Question 9](#).

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

23. Can defendants raise a right of set-off in respect of a debt owed by the award creditor?

The debtor can raise a right of set-off during the proceedings on the setting aside to the objection of the order to pay (*see Question 9*) (*Article 81(1), DBA*). The debtor can also request before courts the cancellation of the debt collection proceedings if it can be proven that the right to set-off arose after the decision on the setting aside of the objection to the order to pay (*Articles 85 and 85a, DCBA*).

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

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), DCBA*).

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), CCP*).

In addition, defences opposing recognition of the award can be raised.

Foreign

See above, *Domestic*.

Arbitral Awards: Interim Remedies and Interest

Interim Remedies

25. Is it possible to apply for interim measures in aid of execution from the enforcing court pending the enforcement proceedings?

Domestic

Money judgments. An 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, 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 arbitral award), 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.

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

Foreign

See above, Domestic

Interest

26. Is the creditor entitled to payment of post award and post-judgment interest? If so, on what basis is it calculated?

See [Question 25, Domestic](#).

Currency

27. Is the award creditor required to convert the value of foreign awards into the local currency?

Any money award, 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: Proposals for Reform

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

On 19 June 2020, the Swiss Parliament adopted a revision of the arbitration provisions of Chapter 12 of the PILA, which entered into force on 1 January 2021. The changes did not affect the enforcement of domestic or foreign awards.

At the moment, no new changes to Swiss arbitration law or to the enforcement of awards are contemplated.

Contributor Profiles

Yves Klein, Partner

Monfrini Bitton Klein

T +41 22 310 2266

F +41 22 310 2486

E yklein@mbk.law

W www.mbk.law

Professional qualifications. Admitted to the Geneva and Swiss bar, Switzerland, 1997

Areas of practice. International asset recovery; anti-corruption; complex civil and criminal proceedings; cross-border insolvency; recognition and enforcement of foreign judgments and arbitral awards.

Non-professional qualifications. Law degree, University of Geneva, 1989; Diploma of higher studies in international law, Graduate Institute of International Studies of Geneva, 1993

Recent transactions/activities. Enforcement claims, judgments and arbitral awards above CHF100 million for:

- Banco Turco Romana SA, in liquidation (Romania).
- Bilta (UK) Ltd, in liquidation (England).
- Probank SA, in bankruptcy (Brazil).
- Saad Investments Company Limited, in official liquidation (Cayman Islands).
- Stanford International Bank Ltd, in liquidation (Antigua & Barbuda).
- SIPA Liquidation of Bernard L Madoff Investment Securities and the estate of Bernard L. Madoff (USA)

Languages. French, English, German, Italian, Portuguese, Spanish.

Professional associations/memberships. ICC FraudNet's representative for Switzerland; International Bar Association (Anti-Corruption Committee, Asset Recovery Subcommittee, Litigation Committee, Arbitration Committee, Insolvency Section); INSOL; Swiss and Geneva Bar Associations.

Publications

- *Hand Over the Keys to the Safe! Swiss Banks Obligation to Provide Information in Bankruptcy Proceedings, Including Against Themselves, ThoughtLeaders4 FIRE Magazine 6, 2021 (co-author)*
(www.mondaq.com/trials-appeals-compensation/1109146/privileged-or-not-privileged-privilege-of-communications-with-non-swiss-lawyers-in-criminal-investigations)
- *Switzerland: Post-Brexit Enforcement Of UK Judgments In Switzerland: All Is Not Lost, Mondaq, 2021 (co-author)*
(www.mondaq.com/trials-appeals-compensation/1109144/post-brexit-enforcement-of-uk-judgments-in-switzerland-all-is-not-lost)
- *Enforcement of Judgments 2021, Chambers Global Practice Guides, Chambers & Partners, 2021*

<https://practiceguides.chambers.com/practice-guides/enforcement-of-judgments-2021/switzerland>

- *A Journey Between Distant Places: How Saad Group's Cayman Liquidators Are Seeking Compensation from Foreign Banks*, *INSOL World Q3*, November 2020 (co-author)
[www.mbk.law/useruploads/ordonsfiles/a_journey_between_distant_places - how saad groups cayman liquidators are seeking compensation from foreign banks insol world q3 november 2020.p](http://www.mbk.law/useruploads/ordonsfiles/a_journey_between_distant_places_-_how_saad_groups_cayman_liquidators_are_seeking_compensation_from_foreign_banks_insol_world_q3_november_2020.pdf)
- *Switzerland, The Asset Tracing and Recovery Review*, 7th, 8th, 9th Editions, Law Business Research, London, 2019, 2020, 2021 (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).
- *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).
- *Enforcement of judgments and arbitral awards in Switzerland: overview, Enforcement of Judgments and Arbitral Awards in Commercial Matters Global Guide*, 3rd-7th, Edition, Practical Law, Thomson Reuters, London, 2017, 2018, 2019, 2020 and 2021 (co-author).
- *Switzerland, Anti-Bribery and Anti-Corruption Review*, 5th - 8th Edition, Law Business Research, London, 2016, 2017, 2018, 2019.
- *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.

Antonia Mottironi, Partner

Ardenter Law

T +41 22 722 05 40

F +41 22 722 05 49

E amottironi@ardenterlaw.ch

W www.ardenterlaw.ch

Professional qualifications. Admitted to the Geneva and Swiss bar, Switzerland, 2011

Areas of practice. Civil and criminal litigation, business crime, art law, international judicial assistance, enforcement of foreign judgements & arbitral awards, debt collection & bankruptcy, cross-border insolvency.

Non-professional qualifications. Bachelor in economics, University of Lausanne, 2005; Bachelor in Swiss law, University of Geneva, 2008; Master degree in international and European law, University of Geneva, 2010.

Recent transactions/activities. Enforcement claims, judgments and arbitral awards above CHF100 million for:

- Banco Turco Romana SA, in liquidation (Romania).
- Bilta (UK) Ltd, in liquidation (England).
- Saad Investments Company Limited, in official liquidation (Cayman Islands)
- SIPA Liquidation of Bernard L Madoff Investment Securities and the estate of Bernard L. Madoff (USA)

Languages. French, English, Italian.

Professional associations/memberships. International Women's Insolvency and Restructuring Confederation IWIRC (Member of the Steering committee of IWIRC Europe), International Association of Young Lawyers (Litigation Commission, Insolvency Commission, Commercial Fraud Commission, International Arbitration Commission); INSOL; Women's White Collar Defence Association; Member of the Switzerland Committee of Thought Leaders FIRE Starters, Art Law Foundation; Swiss and Geneva Bar Associations.

Publications

- *A Journey Between Distant Places: How Saad Group's Cayman Liquidators Are Seeking Compensation from Foreign Banks*, *INSOL World Q3*, November 2020 (co-author)
- *New Swiss Cross-Border Insolvency Bill: First Experience One Year On*, *Asset Recovery Magazine, Issue 4 – The Europe Issue*, *KNect365 Law*, London, 2020 (https://informaconnect.com/article/pdfs/593cbd69-f59c-4145-a379-a4ecac6dab62_AssetRecovery_ISSUE_04_BORN_V7_Singl.pdf).
- *Switzerland, The Asset Tracing and Recovery Review*, 7th, 8th, 9th Editions, *Law Business Research*, London, 2019, 2020, 2021 (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).
- *Switzerland: Improving Cooperation To Recover Assets In Cross-Border Insolvency Cases*, April 2018, *Legal Era* (co-author)
- *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).
- *Enforcement of judgments and arbitral awards in Switzerland: overview*, *Enforcement of Judgments and Arbitral Awards in Commercial Matters Global Guide*, 3rd-6th Edition, *Practical Law*, Thomson Reuters, London, 2017, 2018, 2019 and 2020 (co-author).

END OF DOCUMENT