Switzerland

Sandrine Giroud, Veijo Heiskanen and Anton Vallélian
LALIVE

BACKGROUND

Concept of sovereign immunity

1 What is the general approach to the concept of sovereign immunity in your state?

Switzerland has adopted a restrictive concept of state immunity. Accordingly, it distinguishes between matters involving foreign states acting in a sovereign capacity, acta jure imperii, and matters involving foreign states acting in a private capacity, acta jure gestionis. In the case of acta jure imperii, state immunity applies, and the state cannot be a party to proceedings before Swiss courts, nor can its assets be subject to measures of constraint. In the case of acta jure gestionis, legal actions may be brought against a foreign state before a Swiss court, provided that the transaction out of which the claim against the foreign state arises has a connection to Switzerland.

Legal basis

2 What is the legal basis for the doctrine of sovereign immunity in your state?

There is no specific legislation concerning sovereign immunity in Switzerland. The issue is mainly governed by case law, in particular that of the Swiss Federal Supreme Court and international treaties to which Switzerland is a party.

Multilateral treaties

3 Is your state a party to any multilateral treaties on sovereign immunity? Has the state made any reservations or declarations regarding the treaties?

Switzerland is a party to several relevant international treaties, such as:

- the 1972 European Convention on State Immunity (the European Immunity Convention);
- the Additional Protocol to the Convention for the Establishment of a European Court for State Immunity of 1972; and
- the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property (the UN Immunity Convention), which was ratified by Switzerland on 16 April 2010 and will enter into force once ratified by 30 states, Switzerland being the ninth contracting party.

To date, the UN Immunity Convention has 28 signatories and 22 parties.

Switzerland made the following declaration regarding the European Immunity Convention:

> *with article 24 of the Convention, that in cases not falling within articles 1 to 13, the Swiss courts shall be entitled to entertain proceedings against another contracting state to the extent that its courts are entitled to entertain proceedings against states not a party to the present Convention.*

Switzerland also made the following interpretative declarations concerning the UN Immunity Convention:

- the UN Immunity Convention does not cover criminal proceedings;
- article 12 does not govern the question of pecuniary compensation for serious human rights violations that are alleged to be attributable to a state and are committed outside the state of the forum; consequently, the UN Immunity Convention is without prejudice to developments in international law in this regard; and
- service of process to a Swiss canton shall be made in the official language or one of the official languages of the canton in which process is to be served.

Although the UN Immunity Convention is not yet in force, it has already been considered in certain cases by the Swiss courts as a codification of customary international law regarding immunity from jurisdiction (see, however, Swiss Federal Supreme Court Decision 2C_820/2014, dated 16 June 2017, where the Swiss Federal Supreme Court left open the question of whether generally the provisions of the UN Immunity Convention could be invoked as customary international law). The UN Immunity Convention will not affect the rights and obligations of states under other international agreements relating to state immunity (eg, the European Immunity Convention). Given the limited scope of the European Immunity Convention, Switzerland has announced its intention to denounce it once the UN Immunity Convention enters into force.

Switzerland is also party to multilateral instruments that have a bearing on the regime of immunity from jurisdiction, such as:

- the 1961 Vienna Convention on Diplomatic Relations;
- the 1963 Vienna Convention on Consular Relations;
- the 1969 Convention on Special Missions; and
- the 1958 Convention on the High Seas.

Further, Switzerland is home to many international organisations with which it has entered into host state agreements. Most of these agreements contain provisions relating to the immunity of the organisation. The 2007 Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State, as well as the corresponding Ordinance, set out, among others, the possible beneficiaries of privileges, immunities and facilities in accordance with international law.

JURISDICTIONAL IMMUNITY

Domestic law

4 Describe domestic law governing the scope of jurisdictional immunity.

Switzerland has adopted a restrictive concept of jurisdictional immunity.

Exceptions to immunity from jurisdiction are essentially based on the case law of the Swiss Federal Supreme Court, which consistently applied the concept of sovereign immunity restrictively. A distinction is made between cases in which the foreign state acts in its sovereign capacity, acta jure imperii, where immunity from jurisdiction is applicable, and cases in which the foreign state acts in a private capacity, acta jure gestionis. The principal criterion to distinguish between acta jure imperii and acta jure gestionis is the nature of the transaction rather than its purpose. In respect of acta jure gestionis, cases may be brought before a Swiss court if the transaction out of which the claim against the foreign state arises has a sufficient connection to Switzerland.

The requirement of a connection to Switzerland arises exclusively under Swiss law and is not a matter of customary international law; as such, it has been criticised by some scholars as preventing access to justice. It was, however, clearly confirmed by the Swiss Federal Supreme Court in a recent decision (ATF 144 III 411). The requirement is met and the required connection is established, for instance, when the claim originated or had to be performed in Switzerland, or when the debtor performed certain acts in Switzerland. Conversely, the mere location of assets in Switzerland or the existence of a claim based on an award rendered by an arbitral tribunal seated in Switzerland does not create such a connection.

Absence of immunity relates to the competence ratione materiae of the court and is, therefore, under Swiss law a requirement for the admissibility of the claim (article 59 of the Swiss Code of Civil Procedure). In principle, this requirement must be examined ex officio by the judge before turning to the merits of the case (article 60 of the Swiss Code of Civil Procedure), and must still exist at the time the judgment is rendered. If the plea of immunity succeeds, the court seized must declare the claim inadmissible.

As to the scope of the concept of state and its instrumentalities, Switzerland has adopted the common definition of state under international law. Accordingly, a state will be recognised as such when the following three elements exist: a population, a delimited territory, and a public authority capable of effectively exercising sovereign power internally and externally. The Swiss practice is generally to recognise the existence of a state (but not of a government) when these elements are objectively met; however, Switzerland reserves the right to consider other elements, such as general recognition by the international community.

According to the relevant case law and legal doctrine, agencies and instrumentalities of the state or other entities also fall under the concept of 'state' to the extent that they are entitled to perform and are actually performing acts involving the exercise of sovereign authority.

State waiver of immunity or consent

5 How can the state, or its various organs and instrumentalities, waive immunity or consent to the exercise of jurisdiction?

A state may choose to waive its immunity from jurisdiction. For the waiver of immunity from jurisdiction to be valid, the state must consent to the exercise by the Swiss courts of jurisdiction over the dispute explicitly or implicitly. There is little case law on the issue, but generally, the state's consent may be considered given by entering into an arbitration agreement or by agreeing to a jurisdictional clause referring a dispute to Swiss courts, or if the state proceeds to the merits of a case without contesting the court's jurisdiction or raises a counterclaim. Such waivers should nevertheless be unambiguous, failing which Swiss courts will not consider them as valid. As an illustration, the Swiss Federal Supreme Court has considered that a contractual clause stating that disputes had to be resolved by local courts 'in so far as diplomatic customs allow' did not amount to a waiver of immunity (Swiss Federal Supreme Court Decision 4A_386/2011, dated 4 August 2011). The approach was upheld by European Court of Human Rights (see *Ndayegamiye-Mporamazina v Switzerland*, No. 16874/12, 5 February 2019).

As to the particular case of arbitration proceedings, by entering into an arbitration agreement, a state waives in principle the right to invoke its immunity from jurisdiction with regard to both the arbitral tribunal and the local courts that are competent to exercise judicial review and supervisory powers over the arbitral proceedings. The question has, however, not been addressed by the Swiss Federal Supreme Court (*MINE v Guinea*, 4 December 1985). Finding of waiver would be in line with article 17 of the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, which provides that:

> *a state that agrees in writing to submit to arbitration disputes related to a commercial transaction, cannot invoke immunity from jurisdiction in court proceedings regarding the validity, interpretation or application of the arbitration agreement, the arbitration procedure or the confirmation or setting aside of the award.*

Moreover, article 177(2) of the Private International Law Act provides that:

> *if a party to an arbitration agreement is a state or an enterprise, or an entity controlled by a state, it may not invoke its own law to contest the arbitrability of a dispute or its capacity to be a party to arbitration.*

6 In which types of transactions or proceedings do states not enjoy immunity from suit (even without the state's consent or waiver)? How does the law of your country assess whether a transaction falls into one of these categories?

Exceptions to immunity from jurisdiction are essentially based on the case law of the Swiss Federal Supreme Court, which has consistently applied the concept of sovereign immunity restrictively. Accordingly, a state cannot invoke immunity from jurisdiction for acts performed in a private capacity, acta jure gestionis, giving rise to a claim having a sufficient connection to Switzerland. The requirement of a sufficient connection to Switzerland arises exclusively under Swiss law and is not a matter of customary international law.

The current Swiss practice does not depart significantly from the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, which provides that a state cannot in principle invoke immunity from jurisdiction in respect of proceedings concerning:

- commercial transactions;
- contracts of employment (with substantial exceptions);
- personal injury and damage to property;
- determination of rights of ownership;
- possession and use of property;
- intellectual and industrial property;
- participation in companies or other collective bodies; and
- ships owned or operated by a state.

7 If one of the exceptions to sovereign immunity set out above applies, is there any related principle that could prevent a court having jurisdiction over the state?

There are no further doctrines or principles in addition to those set out in the preceding sections that would give rise to an exception from jurisdiction in relation to sovereign immunity. Under Swiss law, there are no doctrines such as non-justiciability of certain disputes or act of state.

Proceedings against a state enterprise

8 To what extent do proceedings against a state enterprise or similar entity affect the immunity enjoyed by the state? Is there precedent for piercing the corporate veil to subject the state itself to those proceedings?

The legal doctrine and the limited case law of the Swiss Federal Supreme Court confirm the application (although restrictive) of the theory of piercing of the corporate veil in cases involving foreign states and connected persons. Exceptional circumstances are required. Mere economic identity between the state and the state-owned corporate body is not sufficient; the corporate body must have been manifestly put forward by the state in bad faith.

Standing

9 What is the nexus the plaintiff needs to have standing to bring a claim against a state?

For a plaintiff to have standing to bring a claim against a state, the foreign state must have acted in a private capacity, acta jure gestionis, and the transaction out of which the claim against the foreign state arises must have a sufficient connection to Switzerland. Apart from these rules, ordinary rules on jurisdiction as set out in the Private International Law Act and, as the case may be, the Code of Civil Procedure, will apply to determine whether Swiss courts have jurisdiction.

Nexus of forum court

10 What is the nexus the forum court requires to exercise jurisdiction over a state if the property or conduct that forms the subject of the claim is outside the forum state's territory?

If the property or conduct that forms the subject of the claim is outside Switzerland, the Swiss court seized with the matter will examine its jurisdiction based on the Private International Law Act.

As regards the specific issue of immunity of jurisdiction of a foreign state, a Swiss court will only entertain claims against a foreign state if such state acted in a private capacity, acta jure gestionis, and the transaction out of which the claim against the foreign state arises has a sufficient connection to Switzerland. The requirement is met and the required connection is established, for instance, when the claim originated or had to be performed in Switzerland, or when the debtor performed certain acts in Switzerland. Conversely, the mere location of assets in Switzerland or the existence of a claim based on an award rendered by an arbitral tribunal seated in Switzerland does not create such a connection.

Interim or injunctive relief

11 When a state is subject to proceedings before a court or arbitral tribunal in your jurisdiction, what interim or injunctive relief is available?

A distinction must be made between proceedings before state courts and before an arbitral tribunal.

In arbitration proceedings, by entering into an arbitration agreement, a foreign state waives its right to assert a plea of immunity. Consequently, interim or injunctive relief could be issued by an arbitral tribunal pursuant to the rules applicable to the arbitration proceedings.

Within Swiss court proceedings, ordinary interim or injunctive relief will be available provided there is no immunity from jurisdiction.

As to interim or injunctive relief, Swiss law distinguishes between non-monetary and monetary claims. While enforcement of the former is regulated by the Code of Civil Procedure, enforcement of the latter is regulated by the Debt Enforcement and Bankruptcy Act. Interim relief, both before a claim has been filed or during the proceedings, can be requested by way of interim measures for non-monetary claims and attachment for monetary claims.

Swiss courts can order any interim measure suitable to prevent imminent harm in support of a non-monetary claim (article 262 et seq of the Code of Civil Procedure). In particular, interim relief can take the form of:

- an injunction;
- an order to remedy an unlawful situation;
- an order to a registry or third party;
- performance in kind; or
- the remittance of a sum of money (if provided by law).

In practice, interim measures that are frequently requested are the registration of property rights in a public register, such as the land register. Interim measures can also be requested to prevent a party from disposing of assets such as company shares or movable property.

In cases of special urgency, and in particular, where there is a risk that the enforcement of the measure will be frustrated, the court may order the interim measure immediately and without hearing the opposing party, ex parte.

In the context of a monetary claim, assets may be frozen by way of attachment proceedings (article 272 et seq of the Debt Enforcement and Bankruptcy Act). An attachment is granted ex parte and must subsequently be validated. In support of its application, the applicant must, prima facie:

- show a claim against the debtor;
- identify assets of the debtor that can be attached; and
- show that one of the specific grounds for attachment, as set out by law, exists (eg, if the debtor does not live in Switzerland and the claim has sufficient connection with Switzerland or is based on a recognition of debt; or if the creditor holds an enforceable title, such as judgment or award, against the debtor).

Final relief

12 When a state is subject to proceedings before a court or arbitral tribunal in your jurisdiction, what type of final relief is available?

The relief available will depend on the applicable law. Under Swiss law, when issuing judgments on the merits, a court is not limited to monetary relief. It can also issue judgments for:

- specific performance;
- declaratory judgments;
- cease-and-desist orders;
- judgments changing a legal right or status; and
- partial judgments.

Final relief granted in foreign judgments is generally recognised under Swiss domestic law unless they violate Swiss public order.

Service of process

13 | Identify the court or other entity that must be served with process before any proceeding against a state (or its organs and instrumentalities) may be issued.

Under Swiss law, service is handled by courts directly after the claimant has filed a claim with them. According to the legal doctrine and the Guidelines of the Swiss Federal Office of Justice, the same procedural requirements apply to court proceedings resulting from an application to secure the enforcement of an arbitral award against a foreign state and to proceedings for enforcement of a court judgment involving a foreign state.

14 | How is process served on a state?

Article 16 of the 1972 European Convention on State Immunity applies by analogy; that is, service must proceed via diplomatic channels. The Swiss Federal Supreme Court does not yet recognise the time limits foreseen in the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property for service as amounting to customary international law, and if the foreign state elects domicile with its mission, legal proceedings shall be served on the mission. The same holds true if the foreign state elects domicile with a lawyer. Reasonable time limits must also lapse before the court can enter a judgment by default against the foreign state and before the judgment becomes final (exhaustion of the right of appeal).

According to the legal doctrine, state entities with a separate legal personality can be served in the same way as private entities.

Judgment in absence of state participation

15 | Under what conditions will a judgment be made against a state that does not participate in proceedings?

Provided Swiss courts have jurisdiction, a judgment may be rendered against a state that does not participate in the proceedings if the foreign state has been duly served with the proceedings. This assumes that the claim and the service of process are made in an internationally admissible manner to the competent organ of the foreign state and that the state was granted a reasonable period of time to respond. Since absence of immunity is a condition of admissibility, the court seized with a claim against a foreign state that does not participate in the proceedings must examine this issue ex officio (ie, without the argument having been raised by the foreign state).

ENFORCEMENT IMMUNITY

Domestic law

16 | Describe domestic law governing the scope of enforcement immunity.

The Swiss Federal Supreme Court treats immunity as a single concept and makes no distinction between immunity from jurisdiction and immunity from enforcement. The requirements set out in relation to jurisdictional immunity apply mutatis mutandis to immunity from execution and the determination of the nature of the assets against which enforcement is sought (by contrast to the nature of the matter in the context of immunity from jurisdiction). Accordingly, assets that are linked to the acts of a state in the exercise of its functions as a public authority, acta jure imperii, benefit from immunity, while assets that are linked to the private or commercial activities, acta jure gestionis, of a state do not. This assessment is made pursuant to Swiss law as the lex fori.

Hence, Swiss practice conditions enforcement measures against foreign sovereign states and related persons on three cumulative requirements:

- the foreign state must have acted in its private capacity and not in its sovereign capacity;
- the transaction out of which the claim against the foreign state arises must have a sufficient connection to Switzerland. The requirement is met and the required connection is established, for instance, when the claim originated or had to be performed in Switzerland, or when the debtor performed certain acts in Switzerland. Conversely, the mere location of assets in Switzerland or the existence of a claim based on an award rendered by an arbitral tribunal seated in Switzerland does not create such a connection; and
- the assets targeted by the enforcement measures must not be earmarked for tasks that are part of the foreign state's duty as a public authority, which are excluded from enforcement proceedings pursuant to article 92(1) of the Federal Debt Collection and Bankruptcy Act (Swiss Federal Supreme Court Decision 5A_681/2011, dated 23 October 2011).

Application of civil procedure codes

17 | When enforcing against a state, would debt collection statutes and the enforcement sections of civil procedure codes or similar codes also apply?

General debt collection statutes and enforcement provisions do apply, subject to the reservation set out under the preceding section and specific provisions excluding enforcement on the ground of immunity, such as article 92(1) of the Federal Debt Collection and Bankruptcy Act, which provides that enforcement is excluded concerning assets belonging to a foreign state or a central bank and earmarked for tasks that are part of their duty as public authorities.

Switzerland is also a party to several international treaties that apply directly in this context, including the conventions mentioned in 'Multilateral treaties'. Finally, Switzerland is a party to special multilateral instruments that have a bearing on the regime of immunity from enforcement:

- the 1961 and 1963 Vienna Conventions on Diplomatic Relations (articles 22, 30 and 31) and Consular Relations (article 31);
- the 1969 Convention on Special Missions;
- the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft;
- the 1944 Convention on International Civil Aviation;
- the 1948 Convention on the International Recognition of Rights in Aircraft;
- the 1926 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages;
- the 1952 International Convention relating to the Arrest of Seagoing Ships; and
- the 1958 Convention on the High Seas.

Further, Switzerland is home to many international organisations with which it has entered into host state agreements. Most of these agreements include provisions relating to the immunity of enforcement against the assets they hold or against their employees. The 2007 Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State, as well as the corresponding Ordinance, set out, inter alia, the possible beneficiaries of privileges, immunities and facilities in accordance with international law.

Consent for further enforcement proceedings

18 Does a prior submission to the jurisdiction of a court or tribunal constitute consent for any further enforcement proceedings against the property of the state?

A state can waive its immunity from enforcement by a clear and unequivocal statement, either explicitly or by conclusive acts. There can only be a waiver of immunity insofar as an immunity exists (ie, in respect of acta jure imperii).

According to legal doctrine, an explicit waiver may be contained in a treaty, an agreement or a binding contract or any other statement made in writing. A waiver may be implied where the state has earmarked funds or other assets specifically to settle disputes or make payments for the debts incurred in relation to the transaction in dispute. A waiver may also be implied where the state, or the 'appearance' of a state, initiates court proceedings to defend a lawsuit before a court without raising a plea of immunity (Swiss Federal Supreme Court Decision 4A_541/2009, dated 8 June 2010). Legal doctrine is divided on whether entering into an arbitration agreement can alone imply a waiver of any immunity from enforcement. The most likely position is that the state's agreement to arbitrate will not imply a waiver of its immunity from enforcement, absent other conclusive acts.

Article 32 of the Vienna Convention on Diplomatic Relations and article 45 of the Vienna Convention on Consular Relations provide that a waiver must be express. Moreover, these conventions specifically provide that a waiver of immunity from jurisdiction does not imply a waiver of immunity from enforcement; separate waivers are required. This is also the case of article 20 of the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property.

Property or assets subject to enforcement or execution

19 Describe the property or assets that would typically be subject to enforcement or execution.

Any property located in Switzerland belonging to the state or its instrumentalities may be subject to enforcement. In general, such assets include all assets used or intended to be used for commercial purposes.

Assets covered by enforcement immunity

20 Describe the assets that would normally be covered by enforcement immunity and give examples of any restrictive or broader interpretations adopted by the courts.

Pursuant to article 92(1) of the Federal Debt Collection and Bankruptcy Act, enforcement is excluded with respect to 'assets belonging to a foreign state or a central bank and assigned to tasks which are part of their duty as public authorities'.

The concept of tasks belonging to a public authority is broadly interpreted by the Swiss Federal Supreme Court. It always includes the assets of diplomatic missions and generally includes cultural goods (items of significant cultural importance specific to the country's heritage). However, the Swiss Federal Supreme Court has considered that a dispute relating to a lease agreement entered into by the state was not covered by immunity from enforcement. Further, whether in the form of cash or held on bank accounts, money is exempt from seizure only if clearly earmarked for concrete public purposes, which implies a separation from other assets. However, bank accounts and other assets belonging to an embassy are presumed to be for public purpose and are thus immune from enforcement. The same applies to funds specifically allocated to:

- the purchase of arms;
- the rolling stock of a state railway company;
- the shares of an international corporation created by an international agreement but performing public functions; and
- a cultural centre or buildings for foreign citizens run by a foreign consulate in Switzerland.

Swiss case law has also recognised overflight rights as assets falling under acta jure imperii and thus immune from enforcement.

21 Explain whether the property or bank accounts of a central bank or other monetary authority would be covered by enforcement immunity even when such property is in use or is intended for use for commercial purposes.

Pursuant to article 92(1) of the Federal Debt Collection and Bankruptcy Act, enforcement is excluded with respect to 'assets belonging to a foreign state or a central bank and assigned to tasks which are part of their duty as public authorities'. Accordingly, property intended for performance of acts of public authority will be considered immune from enforcement, while property intended for private acts will be subject to execution.

For the rest, the general rules on enforcement immunity apply.

Test for enforcement

22 Explain whether domestic jurisprudence has developed any further test that must be satisfied before enforcement against a state is permitted.

Swiss law requires a sufficient connection to Switzerland to lift sovereign immunity. The connection to Switzerland arises exclusively under Swiss law and is not a matter of customary international law. The connection is established for instance when the claim originated or had to be performed in Switzerland, or when the debtor performed certain acts in Switzerland. Conversely, the mere location of assets in Switzerland or the existence of a claim based on an award rendered by an arbitral tribunal seated in Switzerland does not create such a connection.

Service of arbitration award or judgment

23 How is a state served with process or otherwise notified before an arbitration award or judgment against it (or its organs and instrumentalities) may be enforced?

Under Swiss law, service is handled by courts directly after the claimant has filed a claim. According to the legal doctrine and the Guidelines of the Swiss Federal Office of Justice, the same procedural requirements apply to court proceedings resulting from an application to secure the enforcement of an arbitral award against a foreign state and to proceedings for enforcement of a court judgment involving a foreign state.

For service on foreign states, article 16 of the 1972 European Convention on State Immunity applies by analogy; that is, service must proceed via diplomatic channels. The Swiss Federal Supreme Court does not yet recognise the time limits foreseen in the UN Immunity Convention for service as amounting to customary international law, and if the foreign state elects domicile with its mission, legal proceedings shall be served on the mission. The same holds true if the foreign state elects domicile with a lawyer. Reasonable time limits must also lapse before the court can enter a judgment by default against the foreign state and before the judgment becomes final (exhaustion of the right of appeal). According to the legal doctrine, state entities with a separate legal personality can be served in the same way as private entities.

History of enforcement proceedings

24 Is there a history of enforcement proceedings against states in your jurisdiction? What part of these proceedings is based on arbitral awards?

One of the leading wealth centres in the world and the host of many international organisations, Switzerland is a popular place for enforcement proceedings, including against states. There are, however, no statistics as to what extent these proceedings are based on arbitral awards. Some information is available in the ASA Bulletin, which is the official journal of the Swiss Arbitration Association (see www.arbitration-ch.org/en/publications/asa-bulletin/index.html), and includes leading decisions of Swiss courts to the extent that they enter the public domain.

Public databases

25 Are there any public databases through which assets held by states may be identified?

There are no public databases identifying assets held by states or their instrumentalities.

However, there are several publicly available sources that provide information on assets located in Switzerland, including:

- the commercial register provides information on companies (eg, share capital, legal seat, address and corporate purpose). Each canton maintains its own register, which is freely accessible. A summary version of the commercial register is available online (www.zefix.ch/en/);
- the Swiss Official Gazette of Commerce, in addition to gathering some of the information published in cantonal commercial registers, provides information regarding bankruptcies, composition agreements, debt enforcement, calls to creditors, lost titles, precious metal control, other legal publications, balances and company notices. It is also available online (www.sogc.ch);
- the land register records all plots of land in Switzerland, with the exception of property in the public domain. Each canton maintains its own land register, which can be consulted upon the showing of a legitimate interest (eg, for purposes of contractual negotiations for the purchase of property);
- the Swiss aircraft registry contains the records of all Swiss-registered aircraft and provides detailed information regarding the owner and the holder, the type of aircraft, its year of construction, the serial number, the maximum take-off mass and the fee according to its noise level. It is available online (https://app02.bazl.admin.ch/web/bazl/en/);
- the debt enforcement and bankruptcy register includes all debt collection proceedings filed against a debtor, and can be consulted by showing a prima facie legitimate interest, upon request. An unofficial register recording wills and other testamentary dispositions also exists. This register is, however, not exhaustive and only contains information that has been provided voluntarily;
- in certain cantons (eg, Vaud and Fribourg), it is possible, subject to certain conditions, to access information contained in a person's tax certificate; and
- judgments rendered by cantonal civil courts are, in principle, accessible to the public (article 54 of the Swiss Code of Civil Procedure), although in practice they are not always published; a copy may be provided in a redacted form upon showing of a legitimate interest. Decisions by the Swiss Federal Supreme Court are available on the court's website (www.bger.ch).

There is no register of bank accounts in Switzerland as Swiss banking secrecy protects the privacy of banks' clients.

LALIVE

Sandrine Giroud
sgiroud@lalive.law

Veijo Heiskanen
vheiskanen@lalive.law

Anton Vallélian
avallelian@lalive.law

35, Rue de la Mairie
PO Box 6569
1211 Geneva 6
Switzerland
Tel: +41 58 105 2000
Fax: +41 58 105 2060
www.lalive.law

Court competency

26 Would a court in your state be competent to assist with or otherwise intervene to help identify assets held by states in the territory?

Swiss civil courts are not competent to assist with or otherwise intervene to help identify assets held by a foreign state or its instrumentalities. Moreover, there is no discovery process available under Swiss civil procedural law.

IMMUNITY OF INTERNATIONAL ORGANISATIONS

Specific provisions

27 Does the state's law make specific provision for immunity of international organisations?

The 2007 Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State (the Host State Act) and the corresponding Ordinance set out, inter alia, the possible beneficiaries of privileges, immunities and facilities granted by Switzerland within the framework of international law. The Host State Act provides for different categories of organisations that qualify for privileges, immunities and facilities of varying scope. Switzerland is home to many international organisations with which it has entered into host state agreements, which set out the status of the organisation as well as the extent of the immunity granted to it.

As to the United Nations and other international organisations that form part of the UN system, Switzerland is also a party to the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, which provide for the immunity of the organisations and their personnel.

Domestic legal personality

28 Does the state consider international organisations headquartered or operating in its territory as enjoying domestic legal personality and could such organisations be subjected to proceedings before a court or arbitral tribunal?

International organisations headquartered or operating in Switzerland are generally immune from jurisdiction under their respective host state agreement with Switzerland. These agreements typically provide that the organisation benefits for itself and for its property of immunity from any form of legal action, except to the extent that immunity has been formally waived by the director of the organisation or a duly authorised representative.

If a waiver has been provided, an international organisation headquartered or operating in Switzerland may be subject to ordinary legal proceedings in Switzerland.

Contrary to states' immunity, the scope of international organisations' immunity is not based on the distinction between acta jure imperii and acta jure gestionis. International organisations' immunity is in principle absolute and thus covers all their activities. This broad immunity is explained by the fact that, owing to the functional character of the legal personality of international organisations, all their activities must be closely related to their purposes. Such a wide immunity is however increasingly contested by scholars.

Enforcement immunity

29 Would international organisations in the state enjoy enforcement immunity? Are there any cases where debtors sought to enforce against a state by attaching or executing assets held by international organisations?

The requirements set out in relation to jurisdictional immunity apply mutatis mutandis to immunity from enforcement.

There have been several attempts to attach assets held by the Bank for International Settlements.

Proceedings may have been conducted against other international organisations, but remained confidential.

UPDATES & TRENDS

Key developments of the past year

30 Are there any emerging trends or hot topics in your jurisdiction?

There are no updates at this time.