

Sovereign Immunity

Contributing editors

Tai-Heng Cheng and Odysseas G Repousis



2018

GETTING THE
DEAL THROUGH

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Sovereign Immunity 2018

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Tai-Heng Cheng and Odysseas G Repousis
Quinn Emanuel Urquhart & Sullivan LLP

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For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

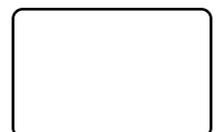


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Preface

Sovereign Immunity 2018

First edition

Getting the Deal Through is delighted to publish the first edition of *Sovereign Immunity*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Tai-Heng Cheng and Odysseas G Repousis of Quinn Emanuel Urquhart & Sullivan LLP, the contributing editors, for their assistance in devising and editing this volume.

GETTING THE 
DEAL THROUGH 

London
July 2018

Switzerland

Sandrine Giroud and Veijo Heiskanen

LALIVE

Background

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. By contrast, in the case of *acta jure gestionis*, sovereign immunity may be lifted, provided the matter has a 'sufficient' connection with Switzerland.

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

There is no legislation concerning sovereign immunity in Switzerland. The issue is mainly governed by case law, in particular that of the Swiss Federal Supreme Court.

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 a number of international treaties that apply directly, such as the European Convention on State Immunity of 1972 (the European Immunity Convention); the Additional Protocol to the Convention for the Establishment of a European Court for State Immunity of 1972; and the UN Convention on Jurisdictional Immunities of States and Their Property of 2004 (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.

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 Party to the present Convention'.

Switzerland also made the following interpretative declarations in relation to the UN Immunity Convention:

- the 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 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, Federal Supreme Court Decision 2C_820/2014, where the 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 and 1963 Vienna Conventions on Diplomatic and Consular Relations, respectively, and the 1958 Convention on High Seas.

Further, Switzerland is the home of many international organisations with which it has entered into headquarters 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 (the Host State Act), 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

4 Describe domestic law governing the scope of jurisdictional immunity.

As stated under question 1, 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 has consistently applied the concept of sovereign immunity restrictively. A distinction is made between cases in which the foreign state acts in its sovereign capacity, where immunity from jurisdiction is applicable, and cases in which the foreign state acts in a private capacity. In respect of the latter, 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, and has been criticised by some scholars as preventing access to justice. 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. The principal criterion to distinguish between *acta jure imperii* and *acta jure gestionis* is the nature of the transaction rather than its purpose.

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 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 Swiss Code of Civil Procedure; see, however, the Geneva Court's decision of 29 January 2013 cited in Federal Supreme Court Decision 5A_200/2013) and must still exist at the time the judgment is rendered. If the plea of immunity succeeds, the court seized must decline jurisdiction to hear the case.

As to the scope of the concept of state and its instrumentalities, Switzerland adopts the common definition of state under international

law and, 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.

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.

As to the particular case of arbitration proceedings, by entering into an arbitration agreement, a state waives 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 resolved by the Swiss Federal Supreme Court (*MINE v Guinea*, 4 December 1985). This is in line with the UN Immunity Convention, whereby 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 (article 17). 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 organisation 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 (see question 4). The requirement of a 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 UN Immunity Convention, which provides that a state cannot invoke immunity from jurisdiction in respect of proceedings concerning:

- commercial transactions;
- contracts of employment;
- 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 question 6 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.

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.

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

As mentioned under question 4, for a plaintiff to have standing to bring a claim against a state, the foreign state must have acted in a private capacity, and the transaction out of which the claim against the foreign state arises must have a sufficient connection to Switzerland (see question 4). Apart from these rules, ordinary rules on jurisdiction as set out in the Private International Law Act and, as the case may be, the Swiss Code of Civil Procedure, will apply to determine whether Swiss courts have jurisdiction.

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?

The conditions set out under question 9 will apply.

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.

As to arbitration proceedings, as stated under question 5, 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.

As to Swiss court proceedings, ordinary interim or injunctive relief will be available provided there is no immunity from jurisdiction (see questions 4 and 5 regarding the scope or waiver of 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 Swiss Code of Civil Procedure, enforcement of the latter is regulated by the Swiss 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 Swiss Code of Civil Procedure). In particular, such 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. Moreover, while pretrial discovery is alien to Swiss civil procedure, the Swiss Code of Civil Procedure allows the taking of evidence before the initiation of legal proceedings exclusively in cases where evidence is at risk or where the applicant has a justified interest.

In the context of a monetary claim, assets may be frozen by way of attachment proceedings (article 272 et seq Swiss 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).

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 (eg, punitive damages).

13 Identify the court or other entity that must be served with process before any proceeding against a state may be issued.

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 European Immunity Convention 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.

14 How is process served on a state?

See question 13 with regard to service on foreign states.

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.

Enforcement immunity

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 under question 4 applies *mutatis mutandis* to immunity from execution. The only particular feature of immunity in the context of enforcement is that assets that are linked to the acts of a state in the exercise of its functions as a public authority benefit from immunity, while assets that are linked to the private or commercial activities of a state do not.

Accordingly, the 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 (see question 4); 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 (Federal Supreme Court Decision 5A.681/2011).

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

Yes. General debt collection statutes and enforcement provisions apply, subject to the reservation set out under question 16 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 in relation to 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 party to a number of international treaties that apply directly in this context, including the Conventions mentioned under question 3.

Finally, Switzerland is 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) on Consular Relations (article 31);
- 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 High Seas.

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

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*).

The legal doctrine agrees that 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 for the purpose of settling disputes or making 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 (Federal Supreme Court Decision 4A_541/2009). The 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.

Articles 32 of the Vienna Convention on Diplomatic Relations and 45 of the Vienna Convention on Consular Relations provide that a waiver must be express. Moreover, these conventions expressly provide that a waiver of immunity from jurisdiction does not imply a waiver of immunity from enforcement; separate waivers are required.

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 is subject to enforcement, with the exception of assets referred to under question 20. In general, such assets include all assets used or intended to be used for commercial purposes.

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 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 the 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 over-flight 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.

See question 16. Pursuant to article 92(1) of the 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.

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

As mentioned under questions 1 and 16, Swiss law requires a sufficient connection to Switzerland to allow lifting of sovereign immunity. As noted above, 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.

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?

See questions 13 and 14.

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

Yes. 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 (available at: 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.

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

No, 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. In particular:

- 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.
- 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.
- The land register records every single plot 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 a 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.
- The debt enforcement and bankruptcy register includes all debt collection proceedings filed against a debtor, and can be consulted by anyone showing a prima facie legitimate interest, upon request. An unofficial will register that records wills and other testamentary dispositions also exists. This register is, however, not exhaustive and only contains information that has been provided voluntarily;
- In specific cantons (eg, Vaud and Fribourg), it is possible, under certain conditions, to access information contained in a person's tax certificate.
- Judgments rendered by civil courts are, in principle, accessible to the public (article 54 Swiss Code of Civil Procedure); a copy thereof is generally provided in a redacted form upon showing of a legitimate interest.

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

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

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

Yes. Switzerland is the home of many international organisations with which it has entered into headquarters agreements. Most of these agreements contain provisions relating to immunity.

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), as well as the corresponding Ordinance, set out, inter alia, the possible beneficiaries of privileges, immunities and facilities 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 has entered into host state agreements with organisations seated in Switzerland, setting out the status of the organisation as well as the extent of the immunity granted to it.

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?

Switzerland recognises the legal personality of international organisations as provided under international law.

Generally, international organisations headquartered or operating in Switzerland are immune from jurisdiction under their respective

headquarters agreement with Switzerland. In general, these agreements 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.

Subject to this reservation, an international organisation headquartered or operating in Switzerland may be subject to ordinary proceedings in Switzerland.

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?

See question 28.

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

LALIVE

**Sandrine Giroud
Veijo Heiskanen**

**sgiroud@lalive.law
vheiskanen@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

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