You Won! Now What? How to Enforce Awards Against States in Switzerland

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Enforcement of awards – Switzerland – Sovereigns – Privileges and Immunities – New York Convention – ICSID – Intra-EU objection

Summary

In this article, the authors provide practical insights on how to enforce awards against States in Switzerland, highlighting the differences between Swiss, foreign, and ICSID awards. These questions have become particularly relevant in view of the increasing number of States refusing to comply with awards and raising immunity defences to resist enforcement. Furthermore, given the recent rejection by the Swiss Federal Supreme Court of the *Achmea* and *Komstroy* EU case law, Switzerland might offer an alternative to investors wishing to enforce intra-EU awards.

This article offers a step-by-step guide to navigating these complex processes, from the pre-award stage to the attachment of the State's assets, the defences it might raise, and the debt collection proceedings leading to the seizure of the assets.

Introduction

Sovereign actors have become an increasingly established feature of international commerce, and so have disputes involving them. According to the 2024 statistics from the ICC, 19% of new cases involved a State or

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State-owned entity, amounting to 159 cases per year[1] – a 63% increase over the last decade.[2] ICSID arbitrations have also steadily increased over the years.[3]

Yet, there is also a growing trend of States refusing to comply with awards, notably in intra-EU disputes as recently exemplified by the many Spanish Energy Charter Treaty ("**ECT**") arbitrations and their aftermath. A 2024 ICSID report shows that award debtors voluntarily complied with or reached a post-award settlement in only 66% of cases, implying that over one-third of States refused to pay.[4] These statistics warrant further scrutiny, as they include post-award settlements in which a State may have only agreed to honour a fraction of the award.[5] The actual number of cases where States refused to fully pay their award debts is likely much higher. The question then becomes: Where to enforce arbitral awards against States?

Switzerland is a prime candidate, as one of the world's major financial, banking and trading centres, and host to many of the most important international organisations. This status is reinforced by its pro-arbitration approach, making it a preferred jurisdiction for arbitration worldwide, accounting for 10% of all new ICC arbitrations in 2024.[6] In view of the 2024 rejection by the Swiss Federal Supreme Court ("**SFSC**") of the Court of Justice of the EU ("**CJEU**")'s *Komstroy* and *Achmea* case law, Switzerland might even offer a viable alternative to investors wishing to enforce intra-EU awards.[7]

Enforcing an award against States however presents unique challenges, notably due to the *immunity* that protects them and their assets. That said, it is not impossible. Earlier this year, Swiss courts ordered the attachment of the *Casa d'Italia*, a historic building in Zurich owned by Italy, as well as the overflight charges collected by the International Air Transport Association ("**IATA**") for that same State, following a request from German and Austrian investment funds to enforce a 2020 ICSID award (*ESPF v. Italy*).[8] We will use

1 ICC, Unveiled: 2024 ICC Arbitration and ADR preliminary statistics, 12 February 2025.

2 ICC, 2014 ICC Dispute Resolution Statistics, ICC Bulletin 2015, p. 9.

3 See not. ICSID, The ICSID Caseload Statistics, Issue 2025 – 1, p. 3.

4 These statistics pertain to "*Damages Awards*", defined by ICSID as awards imposing pecuniary obligations on a party to compensate the other party for its losses, see ICSID, Compliance with and Enforcement of ICSID Awards, June 2024, p. 7.

5 *Ibid*.

6 ICC, Unveiled: 2024 statistics, *op. cit.* note 1.

7 See Sect. 2.6.2.3.

8 *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic* (ICSID Case No. ARB/16/5). See not.

this case as an illustration, as we answer the central question of this article – *how to enforce an award against a State in Switzerland*[9] – in three steps:

Step 1: Strategic planning (Sect. 1)

Step 2: Attachment (Sect. 2); and

Step 3: Debt collection (Sect. 3).

At each stage, we address the main questions faced by award creditors: What are the applicable requirements and procedural rules? What documents should be submitted? What defences should you be prepared to face? And how much will it cost? As enforcement proceedings alone may not be sufficient to ensure successful enforcement, we conclude with some advice on strategies creditors may implement alongside the proceedings (Sect. 4).

1. Step 1: Plan Strategically

Early strategic planning will go a long way to enhance the likelihood of successful enforcement. It should ideally begin before the award is rendered. When entering into a contract with a sovereign, or at the time of investment, parties should not only consider potential disputes, but also enforcement practicalities should an award be granted in their favour.

The gold standard is to negotiate contractual protections to facilitate enforcement. This may involve requiring the State to post a letter of credit or performance bond, as well as designating an arbitration-friendly jurisdiction as seat of arbitration or, in the absence of contract with the State, structuring the investment to ensure there is an applicable BIT.[10] Political risk and sovereign default insurance may similarly be contemplated,[11] as should contractual

HUBER/GARNE, Casa d'Italia droht Pfändung: Rechtsstreit mit italienischem Staat eskaliert bis nach Zürich, Tages-Anzeiger, 14 February 2025. See also IA REPORTER, Swiss court reportedly orders seizures to enforce intra-EU ICSID/ECT award against Italy, 6 March 2025; GAR NEWS, ICSID creditors target Italian building in Zurich, 6 March 2025.

9 Different procedures apply to the enforcement of awards in Switzerland depending on whether they concern monetary or non-monetary claims. Whilst enforcement of non-monetary claims is governed by the Swiss Code of Civil Procedure ("**SCCP**"), and in particular Art. 335-352 SCCP, enforcement of monetary claims is regulated by the Swiss Debt Enforcement and Bankruptcy Act ("**DEBA**"; Art. 335(1) and (2) SCCP). In this article, we focus on monetary claims granted in Swiss international or foreign awards, but do not address the enforcement of Swiss domestic awards governed by the SCCP.

10 See YANOS/BROMBEREK, Enforcement Strategies where the Opponent is a Sovereign, in Rowley/Siino (eds.), The Guide to Challenging and Enforcing Arbitration Awards, 3rd ed., 2023, p. 202 *et seq.*, p. 205 *et seq.*

11 *Ibid.*

waivers from enforcement (tailored to the specific local legal requirements; more on this in Sect. 2.6.2.2).

Early identification of the State's assets is also essential. This could potentially allow for pre-award attachments, but also enable a creditor to develop an efficient post-award strategy.[12] Once assets are identified, it is crucial to assess their availability if a dispute arises, and in so doing, to determine the applicable enforcement regime, including the immunity defences the State could raise. We will revert to asset tracing below (Sect 2.1.2.2), after answering one of the first questions award creditors face: Should I start with an attachment?

2. Step 2: Attach the State's Assets

If the State does not voluntarily comply with the award, the risk that it will attempt to move and conceal assets cannot be underestimated. Filing a request for *ex parte* attachment is therefore usually recommended.

There are additional advantages for creditors to resort to attachment. Most importantly, **obtaining the attachment of a State's Swiss assets might be the only way to have an enforcement forum in Switzerland**.[13] The ordinary enforcement forum provided by Swiss law, *i.e.* the debtor's domicile or seat in Switzerland, indeed does not apply to a foreign State, and Swiss enforcement courts do not have a general competence to enforce any and all claims. Hence, in the absence of a special forum (notably in case of pledges, mortgages or real estate),[14] filing and obtaining the attachment of a State's assets in Switzerland may be the only way to provide the award creditor a forum for enforcement in Switzerland (see Sect. 3.1).

Moreover, practice shows that an attachment – and the negative effects resulting from the immobilisation of assets and related bad publicity – can sometimes be enough of an incentive for the State to comply with an award, or at least a reason to start negotiations (see also Sect. 4).

The question in turn becomes: What must an award creditor demonstrate to obtain the attachment of a State's assets in Switzerland?

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12 *Ibid.*, p. 209 *et seq.*

13 Art. 52 and 271(1)(6) DEBA.

14 Art. 46(4), 50(1) and 51 DEBA. For the effects of attachments, see Art. 275 *cum* Art. 91-109 DEBA.

2.1 What are the conditions for attachment?

To obtain an attachment, the creditor must demonstrate by documentary evidence that (Art. 272 DEBA):[15]

1. it has a claim against the debtor which is due and not already secured by a mortgage or pledge (personal guarantees being excluded);
2. there is a ground for attachment under Art. 271(1) DEBA; and
3. there are assets belonging to the debtor in Switzerland that can be attached.

The creditor is not required to provide strict proof of the facts alleged in support of the above requirements. The standard of proof is *prima facie*, or as the SFSC puts it: "[i]*t is sufficient if, on the basis of objective elements, the authority has the impression that the relevant facts occurred, without having to exclude the possibility that they might have occurred otherwise.*"[16]

2.1.1 The existence of an enforceable award

When the attachment request is based on an award, the latter serves as evidence for the first two requirements listed above: the existence of (i) a claim that is due; and (ii) a ground for attachment under Art. 271(1)(6) DEBA, as it constitutes a "*definitive title*"[17] to set aside an objection in debt enforcement proceedings (see Sect. 3).[18] In other words, in view of the standard of proof applicable, the creditor need only establish on a *prima facie* basis that the award is enforceable to satisfy the first two requirements of Art. 272 DEBA, which will be subject to different conditions depending on whether it is a Swiss, foreign or ICSID award.

2.1.1.1 Attachment based on a Swiss international award

Swiss law provides for the *ex lege* enforceability of Swiss international arbitral awards, *i.e.* awards rendered by arbitral tribunals seated in Switzerland.

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15 On attachments in general, see not. BRUNSCHWEILER/MAURON/RAETZO/SGIER, Switzerland, in Newman (ed.), Attachment of assets, 2024.

16 SFSC decision 5A_877/2011 of 5 March 2012, par. 2.1 (free translation). See also SFSC decisions 107 III 33, par. 2; 5A_836/2010 of 2 February 2011, par. 4.1.1.

17 In German "*definitiver Rechtsöffnungstitel*"; in French: *"titre de mainlevée definitive.*"

18 SFSC decision 139 III 135, par. 4.5.1 *et seq.*; BSK SchKG-STOFFEL (2021), Art. 272, par. 106 *et seq*.

"Final" upon notification,[19] they are afforded the same legal effects as the final and enforceable judgments of Swiss State courts.[20]

Accordingly, a Swiss international award constitutes an enforcement title as soon as it is notified to the parties. It is immediately enforceable without the need for any exequatur by a court; as a rule, Swiss enforcement courts have no secondary review powers.[21] Consequently, upon notification, **a Swiss international award immediately entitles the creditor to obtain an attachment order against the debtor**,[22] provided the creditor can identify the debtor's assets in Switzerland with reasonable certainty.[23]

Challenging the award before the SFSC does not bar its enforcement. However, the SFSC may exceptionally stay the enforcement upon request.[24]

2.1.1.2 Attachment based on a foreign award

As a rule, foreign awards (*i.e.* awards rendered by an arbitral tribunal seated outside of Switzerland) do not share the same privilege as Swiss international awards, but are subject to a last review before Swiss enforcement courts.[25] The scope of such a review is defined by international treaties, in particular the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**NYC**"),[26] regardless of whether the State in which the award was rendered is a party to the NYC (Art. 194 PILA).[27]

If the NYC requirements for the recognition of an award are met, it is considered equivalent to a court judgment in Switzerland, and accordingly sufficient to justify an attachment.[28] When a foreign award is relied on by a party to obtain an attachment order, the Swiss enforcement courts will **only examine on a *prima facie* basis** whether the award satisfies these

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19 Art. 190(1) of the Swiss Federal Act on Private International Law ("**PILA**").

20 BÜHLER/CARTIER, Recognition and Enforcement of Awards, in Arroyo (ed), Arbitration in Switzerland: The Practitioner's Guide, 2nd ed., 2018, p. 1369 *et seq.*, par. 2; BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 4th ed., 2021, par. 1988.

21 See also Sect. 2.6.1.1.

22 Art. 271(1)(6) DEBA.

23 BÜHLER/CARTIER, *op. cit.* note 20, par. 91; BERGER/KELLERHALS, *op. cit.* note 20, par. 2016.

24 See Art. 103(3) of the Swiss Federal Supreme Court Act (**"FSCA"**).

25 BÜHLER/CARTIER, *op. cit.* note 20, par. 133.

26 See Art. VII(1) NYC (principle of favourability). For an overview of other relevant treaties, see not. BERGER/KELLERHALS, *op. cit.* note 20, par. 131 *et seq.*; ZK IPRG-OETIKER (2018), Art. 194, par. 6 *et seq*. The NYC is however usually more favourable than bilateral treaties.

27 CR LDIP/CL-BUCHER (2025), Art. 194, par. 1.

28 See not. BÜHLER/CARTIER, *op. cit.* note 20, par. 113.

requirements.[29] **If the Swiss courts are satisfied, the creditor is entitled to obtain an attachment order**,[30] provided it can identify the debtor's assets in Switzerland with reasonable certainty. The judge will in this context rule incidentally on the enforceability of the award; the full examination will take place during the debt collection proceedings (see Sect. 3.2).[31]

Under Art. VI NYC, the enforcement court has discretion to adjourn the enforcement proceedings pending the outcome of setting aside proceedings at the seat of arbitration. According to the SFSC, the decision whether to stay the enforcement proceedings should be made on a case-by-case basis, taking notably into account the chances of successfully setting aside the award.[32]

2.1.1.3 Attachment based on an ICSID award

Recognition and enforcement of ICSID awards are not governed by the NYC, but by Art. 53-55 of the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("**ICSID Convention**"), to which Switzerland is a party.[33]

The ICSID Convention provides for a self-contained, quasi-automatic recognition and enforcement regime of ICSID awards. They are, in principle, not subject to any review by national courts.[34]

Under Art. 54 ICSID Convention, all contracting States shall recognize ICSID awards and enforce the pecuniary obligations imposed by them as if they were final judgments from their own courts. The **enforcement of ICSID awards thus follows the same regime as Swiss international awards**.[35] This was notably confirmed in the *OperaFund and Schwab Holding v. Spain* SFSC decision related to the enforcement of one of the many awards holding Spain liable under the ECT for reforms to its subsidy scheme for renewable energy installations. The SFSC held that while Swiss courts may verify its

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29 SFSC decisions 144 III 411 (*Oxus Gold v. Republic of Uzbekistan*), par. 6.3.1; 139 III 135, par. 4.

30 Art. 271(1)(6) DEBA.

31 SFSC decisions 139 III 135, par. 4.5.2; 144 III 411, par. 6.3.1.

32 SFSC decision 5A_165/2014 of 25 September 2014, par. 7.1 *et seq.*; GIRSBERGER/VOSER, International Arbitration: Comparative and Swiss Perspectives, 5th ed. 2024, par. 2154.

33 Art. 1(2) PILA provides that treaties to which Switzerland is a party take precedence over the provisions of the PILA; BERGER/KELLERHALS, *op. cit.* note 20, par. 2028.

34 See Art. 53(1) ICSID Convention. Although Member States must recognize and enforce ICSID awards, each State's laws relating to sovereign immunity from execution continue to apply (Art. 55 ICSID Convention).

35 See also Art. 53(1) ICSID Convention and GIRSBERGER/VOSER, *op. cit.* note 32, par. 2308.

authenticity, they may not review an ICSID award with regard to general recognition requirements pursuant to Art. 54(1) ICSID Convention.[36]

Where the State requests the annulment of the award, the ICSID annulment committee may, if it considers the circumstances so require, stay the enforcement.[37] Otherwise, ICSID awards are enforceable notwithstanding pending annulment proceedings.[38]

2.1.2 Assets belonging to the debtor in Switzerland

As third and last condition for an attachment, the creditor must credibly show that assets (i) belonging to the debtor (ii) are located in Switzerland.

2.1.2.1 Assets belonging to the debtor

As a rule, only assets belonging to the debtor may be attached. The prime suspects are bank accounts, oil, gas and mining concessions or royalty fees, bond interest payments, IP royalties, and other debts owed by third-parties, overseas investments held through sovereign wealth funds, real estate, shareholdings, artwork, aircrafts, ships and other expensive vehicles.[39]

Future claims, such as future income and dividends, or rent on real estate, can be attached if sufficiently identified at the time of the request.[40] Specific and detailed information on the claim are required, such as the amount, date it will be credited, origin, transferor, etc. An attachment request referring to "*any potential future funds and/or claims*" is insufficient.

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36 SFSC decision 5A_406/2022 of 17 March 2023, par. 3.3.1. For a summary of this decision, see not. MAURON/VALLÉLIAN, Tension between pro-arbitration culture and respect of sovereign immunity in Switzerland, Thought Leaders 4 Disputes Magazine, Special Edition, States of Conflict: Navigating Sovereign & States Disputes and Enforcement, November 2023, p. 36 *et seq.*, p. 36 *et seq.* See also, CR LDIP/CL-BUCHER (2025), Art. 194, par. 55.

37 Art. 52(5) ICSID Convention. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the committee rules on such request (*ibid.*). See also Art. 50 and 51 ICSID Convention for stays during interpretation and revision proceedings.

38 MOORE/ACHTOUK-SPIVAK/BOURAOUI, ICSID Awards, in Rowley/Siino (eds.), The Guide to Challenging and Enforcing Arbitration Awards, 3rd ed., 2023, p. 187 *et seq.*, p. 199 *et seq*.

39 Note that some assets which appear to belong to high-ranking officers of a State may actually be property of the State.

40 SFSC decisions 116 III 16, par. 1 *et seq.*; 94 III 8, par. 2; 79 III 3, par. 1; 71 III 60, par. 4; 5A_328/2013 of 4 November 2013, par. 5.4 *et seq.*; 5A_16/2011 of 2 May 2011, par. 2.2 *et seq.*

For bank accounts, it is sufficient to provide evidence that the debtor has a banking relationship with a specific bank; the account number is not required.[41]

Under certain circumstances, it is also possible to attach assets formally belonging to a third party. This generally requires the creditor to show an abuse of rights or that the assets, from an economic perspective, belong to the debtor.[42] In the recent attachment in Switzerland of Italy's assets (*ESPF v. Italy*) for instance, the debtor obtained the attachment of Italy's overflight charges collected by IATA.[43]

State-owned entities may be protected from enforcement of a claim against the State if the entity is legally independent from the State.[44] This question is governed by its laws of incorporation,[45] which also govern the potential piercing of the corporate veil.[46] From a Swiss perspective, piercing the corporate veil remains the exception and as a rule, requires evidence of an abuse of right (notably, if the economic identity between the entity and the State who controls it is manifest, and if the entity's independence is invoked to abusively evade enforcement).[47]

2.1.2.2 Identifying assets located in Switzerland

Identifying assets in Switzerland can be challenging, as Swiss law does not require debtors to disclose them. However, there are ways to track and identify the location of current and future State assets, if necessary with the

41 BSK SchKG-STOFFEL (2021), Art. 272, par. 29; SFSC decisions 129 III 239, par. 1; 5A_730/2016 of 20 December 2016, par. 3.2.1.

42 BSK SchKG-STOFFEL (2021), Art. 272, par. 32 *et seq.*

43 See also Sect. 2.6.2.1.3 and decisions by the Geneva Court of Justice C/4067/2008 of 16 October 2008; ACJC/1342/2007 of 8 November 2007; decision by the Geneva First Instance Tribunal OSQ/15/2007 of 13 July 2007.

44 SFSC decisions 5C.255/1990 of 23 April 1992, par. 5d, published in ZR 91/1992, No 27, p. 88 *et seq.*; HOFFMANN-NOWOTNY/PETER, Switzerland, in Bonde/Hansebout/Roe (eds.), Cross-border enforcement of judgments against States – jurisdiction-by-jurisdiction guide, 2024, p. 10.

45 SFSC decision 138 III 232, par. 4.2.1.

46 SFSC decision 128 III 346, par. 3.1.

47 See SFSC decisions 5A_871/2009 of 2 June 2010, par. 7.1; 5P.1/2007 of 20 April 2007, par. 3; HAHN, State Immunity and Veil Piercing in the Age of Sovereign Wealth Funds, Swiss Review of Business Law 2012, p. 103 *et seq.*, p. 109 and the references cited.

assistance of intelligence/investigation firms.[48] The volume of publicly available information should not be underestimated:

(i) the following **databases and registers** may for instance be useful for identifying assets in Switzerland:[49]
   - land registers, which provide access to ownership details for real estate. Each canton maintains its own land register;
   - the Swiss Aircraft Register, Ship Registration Office, and Maritime Navigation Register Office, which provide ownership and other information regarding motor vehicles as well as vessels sailing under Swiss flag;
   - the Swiss Federal Institute of Intellectual Property, where trademarks, patents and designs are registered;
   - the SIX Swiss stock exchange or the BX Berne eXchange, which provide financial and auditing reports of listed companies in Switzerland. The Swiss Official Gazette of Commerce and the Registries of Commerce may also provide information on companies which may be owned, or related to, foreign States;
   - the debt collection and bankruptcy register, which can in certain circumstances provide information on assets and debtor corporations subject to debt enforcement or bankruptcy proceedings;

(ii) as most States are subject to **transparency obligations**, they are required to disclose their assets to the public.[50] Online research, particularly on the State's official websites, may accordingly also prove fruitful. A creditor should similarly contemplate requests for information, such as those based on the Federal Act on Freedom of Information in the Administration at the federal level in Switzerland, or its cantonal equivalent depending on the suspected location of the information sought;

(iii) **research in the international and local press** should not be overlooked. In Switzerland, specialised websites like Gotham City regularly provide useful information on foreign States' dealings. Large

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48 BRAVIN/BEY/BOWMAN/GASANBEKOVA, Enforcement and Recovery: Practical Steps, in Mangan/Rubins (eds.), The Guide to Investment Treaty Protection and Enforcement, 2nd ed, 2022, p. 8 *et seq*.

49 HENZELIN/GIROUD/HONDIUS, Asset Recovery Switzerland 2024, in Baker & Hostetler LLP (ed.), Getting the Deal Through – Asset Recovery 2024, 7 September 2023, p. 8; STIRNIMANN FUENTES/MARGUERAT/REARDON/NAVARRO BLAKEMORE, Switzerland, in Rowley/Siino (eds.), The Guide to Challenging and Enforcing Arbitration Awards, 3rd ed., 2024, p. 753 *et seq.*, p. 774.

50 See not. BRAVIN/BEY/BOWMAN/GASANBEKOVA, *op. cit.* note 48, p. 10.

undertakings, such as construction projects, are often covered in the press, as are important artwork loans; and

(iv) **case law research** in jurisdictions where the State is suspected of having assets can also be useful as disputes involving the State or its high-ranking officials may cast light on its assets.

Other – more belligerent – measures may also be contemplated. For example, Section 1782 requests for pre-trial discovery in the US may be filed to obtain information to assist with award enforcement.[51] If the facts of the case involve a criminal element, criminal proceedings and related mutual legal assistance proceedings, can also serve as a means of obtaining information.

Creativity is key: finding out where a type of aircraft undergoes maintenance may for instance allow a creditor to locate the asset. Even if the aircraft or vessel itself benefits from immunity (see Sect. 2.6.2.1), the gas in its tanks might not.

2.2 What are the formal requirements? And what about the prayers for relief?

A request for attachment must comply with the requirements of submissions in summary proceedings.[52] It must be signed and include a description of the dispute, the name and address of the parties,[53] as well as prayers for relief.

While the official name of a State is easy to determine (available on the UN's website for instance), the same is not true for its address. Indeed, States do not have an address *per se*. In practice, one may however indicate the address of the seat of the State's executive branch, such as the White House for the United States, the Elysée for France or the Palazzo Chigi for Italy.

A few points should be kept in mind for the prayers for relief:

- if the **award debt is in a foreign currency**, the claim must be converted into Swiss francs on the basis of the exchange rate on the date of the request.[54] The SFSC held that exchange rates for regularly traded currencies are notorious facts and, in principle, do

[51] Sect. 1782 of Title 28 of the United States Code. For more foreign discovery tools, see not. BRAVIN/BEY/BOWMAN/GASANBEKOVA, *op. cit.* note 48, p. 11 *et seq.*

[52] Art. 251(1)(a), 252(2) and 130 SCCP. Considering the complexity of attachment requests against States, the option provided by Art. 252(2) SCCP to have the request dictated in the court's minutes cannot be recommended.

[53] CR CPC-BOHNET, Art. 252, par. 7.

[54] SFSC decision 137 III 623, par. 3; BSK SchKG-KOFMEL EHRENZELLER (2021), Art. 67, par. 40c.

not need to be alleged nor proven.[55] It is, however, advisable to enclose a printout of the source of the exchange rate applied;[56]

- the creditor should request to be **exempted from providing securities**. As the creditor is liable for damages caused by an unjustified attachment order, the court may indeed order the creditor to provide security to cover the same, especially if the claim or the reason for the attachment is uncertain (see Sect. 2.7);
- given the uncertainty which may surround States' assets, taking **inclusive prayers for relief to cover all potential assets held by the target** is recommended. The following example may for instance have been followed to attach Italy's assets in *ESPF v. Italy* with respect to the overflight charges collected by IATA:

  "To order for the benefit of [the award creditor] *the immediate attachment of all assets in the hands of International Air Transport Association, in cash and goods, securities, certificates, titles, claims and receivables,* in rem *or personal rights, precious metals, shareholdings and other property rights of any kind whatsoever, whether present or future, in bank accounts, deposit, safe or other, whether in its own name, under a pseudonym or held in trust, custody or fiduciary, or in the name of an entity, body, service or office of the Italian Republic, but actually owned by the Italian Republic, or of which the Italian Republic is the beneficial owner, up to:* [amount of award debt converted in Swiss Francs], i.e. [amount of award debt in original currency], *with* [description of interest mechanism];"
- as is customary, creditors should request that **all party and court costs** be paid by the State and that any and all of the State's **potential counterclaims** be dismissed;
- there is, however, **no need to request a declaration of recognition and enforceability** to obtain the attachment.[57]

[55] SFSC decisions 137 III 623, par. 3; 135 III 88, par. 4.1. See however SFSC decision 5A_1048/2019 of 30 June 2021, par. 3.6.6.

[56] In SFSC decisions 137 III 623, par. 3 and 135 III 88, par. 4.1, the SFSC mentioned the website www.fxtop.com as a source. Another frequently used source is www.oanda.com.

[57] The court will examine the enforceability of the award incidentally; see Sect. 2.1.1.

2.3 What documents must be filed?

The documents to be submitted with the attachment request depend on the type of award on which it is based.

For Swiss international awards, the award creditor just needs to submit a copy of the award.[58] Originals or certified copies are only necessary if there are founded doubts about the authenticity of the award.[59]

The documents must be in the official language(s) of the canton where the case is heard.[60] However, there is usually no need to translate English documents. Nonetheless, it is advisable to submit a free translation in the court's official language(s) of the operative part of the award and the arbitration clause, and to reserve the right to submit further translations if deemed necessary by the court.[61]

A certificate of enforceability, which can be requested before the State courts under Art. 193(2) PILA, is not required to enforce a Swiss international award in Switzerland as the award becomes binding as a matter of law.[62] This certificate is of a purely declaratory nature; it only provides rebuttable proof that the document presented to the court is a genuine award, that it has been rendered in Switzerland and notified to the parties, and that it is final and binding.[63] Furthermore, while other legal systems may require that an award be deposited to become effective, this is not the case in Switzerland. Depositing the award pursuant to Art. 193(1) PILA is not a prerequisite for its enforcement in Switzerland.[64]

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58 Art. 180(1) SCCP.

59 BÜHLER/CARTIER, *op. cit.* note 20, par. 97.

60 Art. 129(1) SCCP; PC CPC-SCHNEUWLY, Art. 129, par. 2.

61 BÜHLER/CARTIER, *op. cit.* note 20, par. 97.

62 Art. 190(1) PILA. See also CARTIER, Chapter 2, Part II: Commentary on Chapter 12 PILA, Art. 193 [Deposit and certificate of enforceability], in Arroyo (ed), Arbitration in Switzerland: The Practitioner's Guide, 2nd ed., 2018, p. 392 *et seq.*, p. 400; BÜHLER/CARTIER, *op. cit.* note 20, par. 19, BERGER/KELLERHALS, *op. cit.* note 20, par. 1989 *et seq*.

63 BERGER/KELLERHALS, *op. cit.* note 20, par. 1989 *et seq*. CARTIER, Art. 193 PILA, *op. cit.* note 62, p. 400; BÜHLER/CARTIER, *op. cit.* note 20, par. 19.

64 See CARTIER, Art. 193 PILA, *op. cit.* note 62, par. 2; BÜHLER/CARTIER, *op. cit.* note 20, par. 42.

For foreign awards, Art. IV NYC requires the party seeking the recognition and enforcement of an award to provide the following documents in support of its request:[65]

- the award: the duly authenticated original or a duly certified copy;66
- the arbitration agreement: the original or a duly certified copy; and
- a translation of such documents if those are not in one of the official Swiss languages, certified by an official or sworn translator or by a diplomatic or consular agent.

In line with the SFSC's view that the purpose and aim of the NYC is to facilitate the recognition and enforcement of awards, Swiss courts have generally adopted a non-formalistic approach to the formal requirements of Art. IV NYC.[67] In particular, a translation of the award and/or the arbitration agreement is not mandatory if they are in English.[68] Furthermore, authentication of the award is not required if the debtor does not dispute its authenticity.[69] In such a case, a simple copy of the arbitration agreement may be sufficient.[70] In attachment proceedings, where the enforceability of the award only needs to be credibly shown, courts seem to adopt an even more lenient approach.[71] Nevertheless, to avoid any issues, it may be advisable to provide the documents in the forms set forth in Art. IV NYC.

The enforcement court cannot require the applicant to submit a certificate of enforceability issued by the court of the jurisdiction where the award was rendered (or proof that the award has been notified), as it is for the party resisting the request to rebut the presumption that the award is binding

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65 For more details, see not. BSK IPRG-PATOCCHI/JERMINI (2021), Art. 194, par. 108 *et seq.*; BERGER/KELLERHALS, *op. cit.* note 20, par. 2044 *et seq.*; BSK SchKG-STAEHELIN (2021), Art. 80, par. 95; ZK IPRG-OETIKER (2018), Art. 194, par. 28 *et seq.*; MEYER, Debt Collection of Arbitral Awards in Switzerland, ASA Bulletin 2/2024, p. 325 *et seq.*, p. 325 *et seq.*

66 An award is duly authenticated if at least the president's signature has been legalized (SFSC decision 4A_124/2010 of 4 October 2010, par. 4.2).

67 SFSC decision 138 III 520, par. 5.4.3 *et seq*. For an overview of the respective case law, see BSK IPRG-PATOCCHI/JERMINI (2021), Art. 194 par. 122 *et seq.*

68 SFSC decisions 138 III 520, par. 5.5; 5A_441/2015 of 4 February 2016, par. 3.2; BSK IPRG-PATOCCHI/JERMINI (2021), Art. 194 par. 126; VOSER/NINKOVIĆ-JAKOB, Switzerland, in Liebscher (ed.), The Healthy Award in International Commercial Arbitration, 2nd ed, 2023, par. 328.

69 GIRSBERGER/VOSER, *op. cit.* note 32, par. 2164.

70 GIRSBERGER/VOSER, *op. cit.* note 32, par. 2166; SFSC decision 5A_427/2011 of 5 October 2011, par. 5.

71 See not. decision of the Zurich District Court PS140031 of 14 March 2014, par. II.5.b.

and enforceable under the law of its origin.[72] Again, the same may be provided to avoid related disputes.

For ICSID awards, as notably confirmed by the SFSC in the *OperaFund and Schwab Holding v. Spain*, the award creditor only needs to submit a copy of the ICSID award certified by the Secretary General of ICSID[73] to execute it in Switzerland as per Art. 54(2) ICSID Convention.[74] As to the language of the documents, the rules set out above for Swiss international awards apply.

2.4 Where to file?

Attachment proceedings can be initiated wherever the State's assets are located in Switzerland.[75] If there are assets in different cantons, only *one* attachment request is necessary. **Any competent court can order the attachment of assets located** not only within its local jurisdiction but **anywhere in Switzerland**.[76] For instance, for the recent attachment of Italy's assets in Switzerland (*ESPF v. Italy*), the Geneva courts had jurisdiction to order the attachment of the *Casa d'Italia* in Zurich and the overflight charges collected by IATA in Geneva.

Once ordered, the attachment is executed by the local debt collection offices where assets are to be attached.[77] For the execution of an attachment order involving assets in multiple cantons, the attachment judge should designate a lead office to coordinate the execution.[78] This significantly facilitates the process. It is recommended that the creditor designates the lead office in its attachment request, as well as the offices that should be instructed by the lead office to execute the attachment order.[79]

Note that if a claim is the target of the attachment, such as bank accounts, the general rule is that they are located at the domicile of their creditor (*i.e.* the

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72 CARTIER, Art. 193 PILA, *op. cit.* note 62, p. 400; BÜHLER/CARTIER, *op. cit.* note 20, par. 19.

73 The ICSID Secretary-General dispatches certified copies of the award to the parties (Art. 49(1) ICSID Convention).

74 SFSC decision 5A_406/2022 of 17 March 2023, par. 3.2.2. See also GIROUD/VALLÉLIAN, Quick Answers on State Immunity – Switzerland, in Kluwer Law International (ed.), Quick Answers on State immunity, 2024, p. 17.

75 Art. 272(1) DEBA. The award creditor may also file for attachment with the court where debt collection proceedings can be initiated against the debtor as per Art. 46 *et seq.* DEBA.

76 BSK SchKG-STOFFEL (2021), Art. 272, par. 44.

77 Art. 274(1) DEBA.

78 SFSC decision 148 III 138, par. 3.4.3.

79 MILANI, Der schweizweite Arrestbefehl und sein Vollzug durch das Lead-Betreibungsamt, AJP 2022, p. 591 *et seq.*, p. 597, note 63.

debtor in the attachment proceedings) if the creditor is a Swiss resident. If the creditor is domiciled abroad, claims are however considered to be located at the seat of the third-party debtor, *i.e.* the bank.[80]

2.5 You obtained an attachment order, what's next?

Attachment requests are decided on an *ex parte* basis.[81] The court usually issues its decision within a few days after filing. If the request is granted, the court issues an attachment order to the competent debt collection office(s) for execution.[82] The debtor is served with the attachment minutes only upon execution of the attachment.[83] Conversely, if the attachment request is denied, the debtor is not informed of the unsuccessful request. For service on foreign States, Art. 16 of the 1972 European Convention on State Immunity applies by analogy, meaning that service must proceed via diplomatic channels.[84] If the foreign State elects domicile with its mission, legal proceedings must be served on the mission. The same holds true if the foreign State elects domicile with a lawyer.[85]

The debtor may object to the attachment order in writing within 10 days.[86] This deadline begins from the formal service of the attachment minutes on the debtor, even if the latter was informed by the bank, or otherwise became aware of the attachment beforehand.[87]

The court decides on the objection in *inter partes* summary proceedings, which are in principle based on documentary evidence only.[88] The standard of proof of the conditions for attachment is the same as at the stage of the attachment order (*i.e. prima facie*, see Sect. 2.1),[89] and the burden of proof

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80 BSK SchKG-STOFFEL (2021), Art. 272, par. 48.

81 Art. 272 *cum* 278 DEBA. Debtors expecting their assets to be targeted may pre-emptively file a protective brief with the enforcement court, setting out the reasons why the attachment is not warranted (Art. 270 SCCP).

82 See Sect. 2.4.

83 BRUNSCHWEILER/MAURON/RAETZO/SGIER, *op. cit.* note 15, p. 9.

84 See the dedicated webpage of the Swiss Federal Office of Justice's Practical Guide for Mutual Legal Assistance, accessible at: https://www.rhf.admin.ch/rhf/fr/home/rechtshilfefuehrer/hilfe/auslandszustellungen.html. On some States' strategies to avoid service, see YANOS/BROMBEREK, *op. cit.* note 10, p. 209 *et seq.*

85 GIROUD/VALLÉLIAN, *op. cit.* note 74, p. 18.

86 Art. 278(1) DEBA.

87 SFSC decision 135 III 232, par. 2.

88 MEYER, *op. cit*. note 65, p. 325 *et seq.*

89 SFSC decisions 139 III 135, par. 4.5.2; 144 III 411, par. 6.3.1.

remains with the creditor.[90] The decision rendered upon objection by the debtor can be appealed to the appellate cantonal court within 10 days[91] and to the SFSC within 30 days.[92]

Besides challenging the merits of the attachment order with an objection, the debtor may also file a complaint with the supervisory authority of the debt collection office against the execution of the attachment under Art. 17 DEBA.[93] States often argue in such complaint proceedings that the targeted assets are immune from enforcement according to Art. 92 DEBA (see Sect. 2.6.2.1).

2.6 What defences should you be ready to face?

Below, we address the defences that may be raised by any award debtor (Sect. 2.6.1), followed by those specifically available to States (Sect. 2.6.2).

2.6.1 General defences

2.6.1.1 Against Swiss international awards and ICSID awards

Swiss international awards are accorded *ex lege* enforceability, meaning that Swiss enforcement courts will, as a rule, exercise no secondary review powers (see Sect. 2.1.1.1). The award debtor cannot, therefore, invoke any defects of the arbitral procedure or relating to the merits of the award. In essence, the party resisting enforcement may only raise that the decision is not enforceable or rely on facts that occurred after the notification of the award:[94]

- **to challenge enforceability**, the debtor may mainly raise that (i) the decision was not rendered by an arbitral tribunal or lacks the character of an award; (ii) it has not been validly notified to the parties; (iii) the SFSC ordered the suspensive effect of the setting aside (or revision) proceedings; (iv) the claim awarded is not

90 CR LP-STOFFEL/CHABLOZ (2005), Art. 278, par. 11.

91 Art. 309(b)(6) *cum* 319(a) and 321(2) SCCP.

92 Art. 72(2)(a) *cum* 74(1)(b) or 74(2)(a) and Art. 100(1), or Art. 113 *et seq.* FSCA.

93 The SFSC case law regarding which grounds should be raised in objection proceedings and which should be invoked in complaint proceedings is not entirely straightforward. In essence, however, grounds concerning the substantive conditions of the attachment must be raised in objection proceedings, whereas those concerning the execution of the attachment are the subject of complaint proceedings (see not. PAHUD, Le séquestre et la protection provisoire des créances pécuniaires, 2018, par. 759 *et seq.*).

94 BÜHLER/CARTIER, *op. cit.* note 20, par. 43 *et seq.*

directed against the party resisting enforcement, or the party seeking enforcement is not the party entitled in the award; and (v) the operative part of the award is so unclear that the award is not capable of enforcement.[95] The enforcement court must verify *ex officio* that the award qualifies as an enforcement title;[96]

- **as to the substance of the obligations**, the party resisting enforcement can only invoke facts which occurred after the notification of the award, such as the debt being discharged, deferred or becoming time-barred subsequent to the award.[97] The enforcement court may not consider defences relating to the substance unless they are expressly invoked and sufficiently pleaded by the party opposing enforcement.[98]

As set out above (Sect. 2.1.1.3), **ICSID awards** follow the same regime as Swiss international awards.

2.6.1.2 Against foreign awards

In addition to the grounds mentioned above,[99] under Art. V NYC and in accordance with Art. 194 PILA,[100] Swiss courts may refuse enforcement on the following grounds:[101]

- **incapacity of parties or invalid arbitration agreement** (Art. V(1)(a)): enforcement can be denied if the arbitration agreement is invalid under the governing law agreed upon by the parties or, in the absence of such an agreement, under the law of the country where the award was made;

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95 BÜHLER/CARTIER, *op. cit.* note 20, par. 47; NESSI/DEMAUREX, Don't stop me now! Enforcing arbitral awards in Switzerland, Thomson Reuters, Practical Law Arbitration Blog, 29 August 2019. See also Sect. 3.2.

96 BÜHLER/CARTIER, *op. cit.* note 20, par. 44 *et seq*.; NESSI/DEMAUREX, *op. cit.* note 95.

97 See Art. 81(1) DEBA and BÜHLER/CARTIER, *op. cit.* note 20, par. 48. See also Sect. 3.2. In case of an award for conditional performance or performance subject to counter-performance, the respondent may also invoke that the condition has not yet been fulfilled.

98 BÜHLER/CARTIER, *op. cit.* note 20, par. 48; NESSI/DEMAUREX, *op. cit.* note 95.

99 Applicable *mutatis mutandis* to foreign awards.

100 SFSC decisions 144 III 411, par. 6.3.1; 139 III 135, par. 4.5.2.

101 On the enforcement under the NYC in Switzerland, see KUNZ, Annulment and enforcement of arbitral awards in Switzerland, in Goldman/van Rompaey (eds.), Annulment and Enforcement of Arbitral Awards from a Comparative Law Perspective, 2018, p. 63 *et seq*.; PATOCCHI/DURANTE, National Report for Switzerland (2018 through 2023), in Bosman (ed.), October 2023, p. 78 *et seq*.; CR LDIP/CL-BUCHER (2025), Art. 194, par. 27 *et seq.*

- **violation of due process** (Art. V(1)(b)): a party was not given proper notice of the arbitration proceedings or was otherwise unable to present its case;
- **excess of authority** (Art. V(1)(c)): the award addresses matters not contemplated by or beyond the scope of the arbitration agreement;
- **irregularities in arbitral procedure** (Art. V(1)(d)): the arbitration procedure was not conducted in accordance with the parties' agreement or the rules of the arbitral institution;
- **award not binding or annulled** (Art. V(1)(e)): the award is not yet binding or has been set aside by the competent authority in the country where the award was issued;
- **lack of arbitrability** (Art. V(2)(a): the dispute was not capable of settlement by arbitration; and
- **public policy** (Art. V(2)(b)): Swiss courts may finally refuse enforcement of an award if it is contrary to Swiss public policy.

The NYC puts the onus of allegation and proof regarding any of the refusal grounds listed in Art. V(1) on the party resisting recognition and enforcement. By contrast, enforcement courts will examine *ex officio* the grounds set out in Art. V(2) NYC.

Swiss courts interpret the grounds of Art. V NYC restrictively. Moreover, even if one of them is established, Swiss courts have discretion to grant enforcement and recognition.[102] In the past, enforcement has been denied in a very limited number of cases, evidencing Switzerland's stance as an arbitration-friendly jurisdiction.

2.6.2 State specific defences

2.6.2.1 Immunity defence

States' first line of defence is typically to rely on immunity. There is no specific legislation concerning sovereign immunity in Switzerland. The issue is primarily governed by case law and international treaties, in particular the 1972 European Convention on State Immunity and its Additional Protocol, as well as the 2004 UN Convention on Jurisdictional Immunities of States and

[102] SFSC decision 5A_1046/2019 of 27 May 2020, par. 5.

Their Property ("**UN Immunity Convention**").[103] Although the UN Immunity Convention has not yet entered into force, it has been ratified by Switzerland and is regularly referred to in Swiss case law as a codification of the principles of immunity in customary international law.[104]

The SFSC has consistently applied the concept of State immunity[105] restrictively, conditioning enforcement measures against foreign States to the three following cumulative requirements:[106]

1. the claim of which enforcement is sought must be linked to the State's *de iure gestionis* activities (Sect. 2.6.2.1.1);
2. it must have a sufficient connection to Switzerland ("*Binnenbeziehung*" in German, or "*rattachement suffisant*" in French) (Sect. 2.6.2.1.2); and
3. the assets targeted must not be earmarked for tasks which are part of the State's duty as a public authority (Sect. 2.6.2.1.3).

2.6.2.1.1 A claim linked to *de iure gestionis* activities

To overcome a State's immunity defence, as a first requirement, the creditor must demonstrate that the claim of which enforcement is sought is linked to the State's *de iure gestionis* activities. Immunity from enforcement indeed applies when the foreign State acted in the exercise of its sovereign capacity – *acta de iure imperii*, but not when it acted in a private capacity – *acta de iure gestionis*.[107]

The main criteria to distinguish between acts *de iure imperii* and acts *de iure gestionis* are the nature of the transaction (as opposed to its purpose), and whether the act falls within the competence of a public entity or is an act that any individual may perform.[108]

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[103] For more on the Swiss State immunity regime, see not. BESSON, Droit international public, 2024, par. 412 *et seq.*, ZIEGLER, Swiss Immunity, Trends and Problems Encountered in Recent Swiss Practice, SRIEL 2022, p. 169 *et seq.*; GIROUD/VALLÉLIAN, *op. cit.* note 74 and HOFFMANN-NOWOTNY/PETER, *op. cit.* note 44.

[104] See not. SFSC decisions 4A_481/2021 of 4 July 2022, par. 3; 4A_544/2011 of 30 November 2011, par. 2. See however also SFSC decision 2C_820/2014 of 16 June 2017, par. 4.

[105] The SFSC treats immunity as a single concept and, as a rule, makes no distinction between immunity from jurisdiction and immunity from enforcement (see not. SFSC decision 124 III 382, par. 4).

[106] See not. SFSC decisions 5A_550/2023 of 11 December 2023, par. 4.1.2 *et seq.*; 149 III 318, par. 3.3.2 *et seq.*; 134 III 122 (*Russia v. Compagnie Noga d'Importation et d'Exportation*), par. 5.2 *et seq.*

[107] See not. SFSC decisions 134 III 122, par. 5.2.1; 110 II 255, par. 3 *et seq*.

[108] SFSC decisions 134 III 122, par. 5.2.1; 110 II 255, par. 3 *et seq.*; 86 I 23, par. 2.

2.6.2.1.2 A sufficient connection to Switzerland

The second requirement – a sufficient connection to Switzerland – is a distinctive trait of Swiss immunity law. Developed by the SFSC more than a century ago,[109] it is criticized today by scholars as antiquated, in breach of the rights to equal treatment and access to justice, and running contrary to the UN Immunity Convention.[110] The requirement was nevertheless recently reaffirmed by the SFSC.[111]

This requirement is, for instance, met when the claim originated or had to be performed in Switzerland, when the debtor performed certain acts in Switzerland which justify enforcement in Switzerland, or when the State guaranteed payment with explicit references to Swiss legal remedies and the State's assets in Switzerland.[112] The latter follows from the SFSC's 2023 decision *Uzbekistan v. A. SA*,[113] in which the State had signed a document guaranteeing payment with explicit references to Swiss legal remedies and its assets in Switzerland. This document was signed on Uzbekistan's behalf by a representative located in Switzerland and expressly provided that the creditor was entitled to attach the assets of Uzbekistan located in Switzerland. For the SFSC, a sufficient connection to Switzerland existed, even if only in the form of textual references (as opposed to a physical connection).[114]

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109 SFSC decision 44 I 49. For a brief history of this requirement, see KREN KOSTKIEWICZ, Schiedsklausel und ihre Bedeutung für den Immunitätsverzicht sowie für die Voraussetzung der Binnenbeziehung im Erkenntnis- und Vollstreckungsverfahren, in Grolimund et al. (ed.), Festschrift für Anton K. Schnyder zum 65. Geburtstag, Zurich 2018, p. 209 *et seq.*, p. 215 *et seq.*; MAURON/VALLÉLIAN, *op. cit.* note 36, p. 36 *et seq.*

110 See not. GIROUD/VALLÉLIAN, *op. cit.* note 74, p. 3 and 10; MAURON/VALLÉLIAN, *op. cit.* note 36, p. 36 *et seq.*; KREN KOSTKIEWICZ, *op. cit.* note 109, p. 215 *et seq.*; STAEHELIN/BOPP, Wider das Erfordernis der Binnenbeziehung beim Staatenarrest, in Breitschmid *et al.* (ed.), Tatsachen, Verfahren, Vollstreckung, Festschrift für Isaak Meier, 2015, p. 723 *et seq.*; VOSER/GOTTLIEB, Enforcement of award against State not possible where no sufficient link to Switzerland existed (Swiss Supreme Court), Thomson Reuters' Practical Law, 21 November 2018, p. 3 *et seq.*; HOFFMANN-NOWOTNY/PETER, *op. cit.* note 44, p. 4; ZIEGLER/LAUTE, Vereinbarkeit des Merkmals der "hinreichenden Binnenbeziehung" mit dem New Yorker Übereinkommen zur Anerkennung und Vollstreckung von ausländischen Schiedssprüchen, German Arbitration Journal 2020, p. 286 *et seq.*

111 SFSC decisions 144 III 411, par. 6.3 *et seq.*; 5A_469/2022 of 21 March 2023, par. 3.

112 SFSC decisions 149 III 318, par. 3.3 *et seq.*; 144 III 411, par. 6.3 *et seq.*; 135 III 608, par. 4; 134 III 122, par. 5.2.2; 5A_550/2023 of 11 December 2023, par. 4.2; 5A_469/2022 of 21 March 2023, par. 3.

113 SFSC decision 5A_469/2022 of 21 March 2023, par. 3.

114 *Ibid.*, par. 3.

Conversely, the mere existence of assets in Switzerland has not been considered sufficient to establish the required connection,[115] even though some scholars consider that this should suffice.[116] In this same vein, it can be argued that the requirement of a sufficient connection to Switzerland should also be met where the parties have freely elected that the seat of the arbitration be in Switzerland. While older case law did not seem receptive to this argument, the SFSC recently nuanced its position, stating that the circumstances leading to the arbitral tribunal having its seat in Switzerland had to be taken into account in this context.[117]

The SFSC confirmed that the Swiss connection requirement also applies to the enforcement of awards under the NYC in its decision *Oxus Gold v. Uzbekistan*.[118] In this case, an English company, Oxus Gold, obtained an award in France based on the Uzbekistan-UK BIT and assigned the rights under the award to the third-party funder that financed the arbitration. The third-party funder succeeded in attaching a property belonging to Uzbekistan located in Switzerland. However, the SFSC found that immunity prevented the enforcement of the award as there was no sufficient connection between the claim and Switzerland, which requirement did not conflict with Switzerland's obligations under the NYC.[119]

In *OperaFund and Schwab Holding v. Spain*, the SFSC confirmed for the first time that the Swiss connection requirement also applies to the enforcement of ICSID award.[120] The Court considered that this requirement did not lead to a review of the content of the award in the context of attachment proceedings, which would violate Art. 54(1) ICSID Convention. It was deemed a procedural requirement of the law governing the execution of judgments in Switzerland, as permitted under Art. 54(3) ICISD Convention.[121]

In view of the above, the SFSC case law on the Swiss connection requirement seems to promote a somewhat form-over-substance approach, which appears at odds with the balance to be struck between granting States a degree of immunity to guarantee the fulfilment of sovereign tasks (and the ensuing promotion of Switzerland's international relations) and preserving the integrity of international trade (given the increasing involvement of States as

115 SFSC decisions 149 III 318, par. 3.4.2; 144 III 411, par. 6.3.2; 135 III 608, par. 4.5.

116 See not. STAEHELIN/BOPP, *op. cit.* note 110, p. 734 *et seq.*; KREN KOSTKIEWICZ, *op. cit.* note 109, p. 218 *et seq.* See also the references in note 110.

117 SFSC decision 5A_550/2023 of 11 December 2023, par. 4.2. See also notes 110 and 116.

118 SFSC decision 144 III 411, par. 6.3 *et seq*.

119 *Ibid.*

120 SFSC decision 5A_406/2022 of 17 March 2023, par. 3.1.2.

121 SFSC decision 149 III 318, par. 3.3 *et seq*. For a summary of this decision, see not. MAURON/VALLÉLIAN, *op. cit.* note 36, p. 36 *et seq.*

economic or commercial actors).[122] Parties must therefore anticipate such potential immunity defence. To this end – and in view of the SFSC's rather formalistic approach – we recommend including detailed waivers in contracts with sovereigns, ideally complying with the requirements of foreseeable enforcement jurisdictions (see Sect. 2.6.2.2).

2.6.2.1.3 Assets not earmarked for tasks which are part of the foreign State's duty as a public authority

The last requirement – that the assets targeted must not be earmarked for tasks which are part of the foreign State's duty as a public authority – is an internationally accepted element of the concept of enforcement immunity. It is codified in Art. 92 (1)(11) DEBA providing that "[a]*ssets of a foreign State or a foreign central bank that serve sovereign purposes shall be exempt from seizure*".[123]

The SFSC interprets the concept of tasks falling within the public authority of the State broadly.[124] Moreover, State's assets are presumed to be used for sovereign tasks and, as such, protected by immunity. A creditor intending to attach such assets therefore bears the burden of proof that they are not used for sovereign tasks.[125]

The assets of diplomatic missions and important cultural goods are in principle considered as assigned to sovereign tasks and thus subject to immunity.[126] The SFSC, however, held that a dispute relating to an embassy's lease agreement entered into by the State was not covered by immunity from enforcement.[127]

Money, whether in cash or on bank accounts, is exempt from enforcement only if clearly earmarked for specific public purposes, which implies a separation from other assets. For such assets, the burden of proof is accordingly reversed; they are presumed to be used for commercial tasks.[128]

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122 MAURON/VALLÉLIAN, *op. cit.* note 36, p. 36 *et seq.*

123 Additional exceptions are set out in various international instruments as well as host State agreements which provide for certain immunities and privileges with respect to enforcement measures, as well as exceptions relating to certain types of assets (not. aircrafts, vessels, etc.) (SFSC decisions 137 I 371, par. 1.2 *et seq.*; 136 III 379, par. 3 *et seq*.)

124 SFSC decisions 5A_550/2023 of 11 December 2023, par. 6.1; 134 III 122, par. 5.2.3; 5A_681/2011 of 23 November 2011, par. 4 *et seq*.

125 SFSC decision 5A_550/2023 of 11 December 2023, par. 6.1.

126 See not. SFSC decision 134 III 122, par. 5.2.3 *et seq*.

127 SFSC decision 136 III 575, par. 4.

128 SFSC decisions 5A_550/2023 of 11 December 2023, par. 6.1 *et seq.*; 5A_92/2008 of 26 June 2008, par. 3.1 *et seq.*; 134 III 122, par. 5.2.3 *et seq.*; 111 Ia 62, par. 7; 86 I 23, par. 5.

Since only the State against which enforcement is sought is in a position to provide information about the sovereign purpose to which an asset is purportedly assigned, general assertions by the State will not suffice. The State must provide concrete information and substantiate it, for instance, by means of officially certified extracts of its accounting books.[129] In contrast, bank accounts and other assets belonging to an embassy are presumed to be for public purpose and thus immune from enforcement.[130]

Proof of the use of assets for sovereign tasks must meet a higher standard when the entity raising immunity also pursues commercial activities. As the SFSC points out, it would be unfair if a company with close financial ties to a State could compete freely with private companies, while simultaneously avoiding liability by invoking immunity.[131]

Applying these principles, the SFSC considered immune from enforcement funds specifically allocated to the:

- purchase of arms;[132]
- rolling stock of a State railway company;[133]
- shares of an international corporation created by an international agreement but performing public functions;[134] and
- cultural centres/buildings for foreign citizens run by a foreign consulate in Switzerland.[135]

Although case law is in part nebulous, the same rules apply to overflight charges collected on behalf of States by an external entity, such as IATA in *ESPF v. Italy*. As per Art. 92(1) DEBA, they are immune from enforcement only if they are assigned to sovereign tasks.[136] In a recent decision, the SFSC held that this is the case if the overflight charges are assigned to the operation of airports and international air navigation services.[137]

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129 SFSC decisions 5A_550/2023 of 11 December 2023, par. 6.1 *et seq.*; 5A_92/2008 of 26 June 2008, par. 3.1 *et seq.*; 111 Ia 62, par. 7.

130 SFSC decision 112 Ia 148, par. 5.

131 SFSC decisions 5A_550/2023 of 11 December 2023, par. 6.1; 5A_92/2008 of 26 June 2008, par. 3.2 *et seq*.

132 SFSC decision 86 I 23, par. 5.

133 SFSC decision 112 Ia 148, par. 5.

134 SFSC decision published in Annuaire suisse de droit international 1975, 219.

135 SFSC decision 112 Ia 148, par. 4 *et seq*.

136 SFSC decisions 5A_550/2023 of 11 December 2023, par. 6.1 *et seq*; 5A_681/2011 of 23 November 2011, par. 4 *et seq.*; 5A_483/2008 of 29 August 2008, par. 6; 5A_156/2007 of 29 August 2007, par. 2; Geneva Court of Justice Decisions DCSO/690/2006 dated 30 November 2006 and DCSO/318/2011 dated 15 September 2011.

137 SFSC decision 5A_550/2023 of 11 December 2023, par. 6.1 *et seq*.

2.6.2.2 Immunity waivers

Given the potential hurdles creditors may face if a State invokes its immunity, obtaining a waiver can be crucial. Waivers from enforcement must be tailored to the specific legal requirements of the jurisdictions where enforcement is likely to occur.

In Switzerland, a State can waive its immunity from enforcement by a clear, unequivocal statement,[138] either explicitly or by conclusive acts. An explicit waiver may be contained in a treaty, contract or another written statement; it 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.[139] It may also be implied where the State initiates court proceedings to defend a lawsuit without raising a plea of immunity.[140]

Whether entering into an arbitration agreement alone implies a waiver of immunity from enforcement remains undecided. The better view seems to be that a State's agreement to arbitrate does not imply a waiver of its immunity from enforcement, absent other conclusive acts. In this spirit, Art. 32 of the Vienna Convention on Diplomatic Relations and Art. 45 of the Vienna Convention on Consular Relations provide that a waiver must be express. These conventions moreover confirm that a waiver of immunity from jurisdiction does not imply a waiver of immunity from enforcement; separate waivers are required. This also applies under Art. 20 of the UN Immunity Convention.[141]

Insofar as possible, we recommend that a waiver (or any other agreement with the State if a waiver is not possible) make explicit references to Swiss legal remedies and the State's assets in Switzerland, so as to provide a connection to Switzerland in line with the SFSC *Uzbekistan v. A. SA* ruling (see Sect. 2.6.2.1.2).[142]

2.6.2.3 Intra-EU objection

The CJEU's decisions in *Achmea* and *Komstroy* – which denied the jurisdiction of intra-EU investments arbitral tribunals – have rendered

138 SFSC decision 134 III 122, par. 5.3; see also Art. 18 *et seq*. UN Immunity Convention.

139 *Ibid.*; GIROUD/VALLÉLIAN, *op. cit.* note 74, p. 12 *et seq*.

140 *Ibid.*; see also SFSC decision 4A_541/2009 of 8 June 2010, par. 5.2 *et seq*.

141 See also in this respect International Court of Justice, Jurisdictional Immunities of the State (*Germany v. Italy: Greece* intervening), Judgment, I.C.J. Reports 2012, p. 99, par. 113.

142 SFSC decision 5A_469/2022 of 21 March 2023, par. 3.

intra-EU awards virtually unenforceable in the EU. Investors have accordingly turned to non-EU States, with Australia and the UK emerging as preferred jurisdictions for the enforcement of intra-EU awards, along with the US.[143] The landmark decisions rendered by the SFSC *Spain v. EDF* on 3 April 2024[144] should position Switzerland as an additional option.[145]

While the SFSC has not yet ruled on the intra-EU objection at the enforcement stage, it addressed this issue in *Spain v. EDF*. In these setting aside proceedings against an intra-EU award, the SFSC upheld the validity of an award issued under the ECT by an arbitral tribunal seated in Geneva, explicitly rejecting the *Achmea* and *Komstroy* decisions. The SFSC found that, unlike the national courts of EU States, it was not bound by the CJEU's decisions, adding that it was "*not convinced*" by the CJEU's reasoning in *Komstroy*.[146]

In line with this decision, an intra-EU objection raised against the enforcement of a Swiss international award or foreign award issued outside the EU will most likely be dismissed by Swiss courts. The same should apply to ICSID awards, notably given the international law obligation under Art. 54(1) ICSID Convention which unequivocally requires the contracting States to recognize an ICSID award as binding and enforce its pecuniary obligations as if it were a final judgment of a court in that State.[147]

The more delicate question is whether Swiss courts would enforce an intra-EU award rendered outside of Switzerland which has been annulled by the courts of its seat, and more particularly in an EU State.[148] Unlike enforcement courts in other jurisdictions, the SFSC still has to decide whether Swiss courts should, in certain circumstances, enforce an award notwithstanding its annulment in the country of origin.[149]

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143 SAN MARTIN, Enforcement of Intra-EU ECT Awards: Comparing the US, UK and Australian Approaches, Journal of International Arbitration 1/2024, p. 59 *et seq*., p. 60 *et seq*.

144 SFSC decision 150 III 280.

145 LAVRANOS, Report on Compliance with Investment Treaty Arbitration Awards 2024 (3rd ed.), International Law Compliance 3/2024, p. 1 *et seq*., p. 7 *et seq.*

146 For a summary of this decision, see SCHERER/KUNZ/AZARIA, Challenging Investment Treaty Awards in Switzerland: Mission (Almost) Impossible? A review of the Swiss Supreme Court decisions rendered over the period 2019-2024, ASA Bulletin 4/2024, p. 731 *et seq*., p. 760.

147 SCHEU/NIKOLOV, The setting aside and enforcement of intra-EU investment arbitration awards after Achmea, Arbitration International 2/2020, p. 253 *et seq.*, p. 271.

148 LAVRANOS, *op. cit*. note 145, p. 2 *et seq*.

149 KUNZ, *op. cit.* note 101, p. 72.

2.7 How much will it cost?

Court costs for an attachment request are governed by a federal tariff and depend on the amount in dispute.[150] For disputes above CHF 1 million, they range from CHF 500 to 4'000, which the court may order the creditor to advance.[151] The second instance court can charge costs 50% higher.[152]

Attorneys' fees owed by the losing party are governed by the cantonal tariffs where the attachment request is filed.[153] In the Cantons of Geneva and Zurich, for example, the indemnification for attorneys' fees essentially depends on the amount in dispute.[154] Since attachment proceedings are summary proceedings, the fees awarded typically range between two thirds and one fifth of the ordinary fees set forth in the tariff.[155] For an award debt of EUR 17.8 million as in the *ESPF v. Italy* matter,[156] the fees would range between CHF 28'000 and 187'000 in the first instance, depending notably on the importance of the case, its complexity, and the amount of work required.[157] The indemnification is usually lower in second instance proceedings.[158] Attorneys' fees are, however, awarded only in objection and appeal proceedings; none are granted if the request is refused *ex parte*.[159] Neither the creditor nor the debtor can request the other party to provide security for costs.[160]

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150 Art. 48(1) of the Federal Fees Ordinance to the DEBA ("**OELP**").

151 Art. 48(1) OELP and Art. 98(2)(c) SCCP.

152 Art. 61(1) OELP.

153 Art. 105(2) SCCP *cum* Art. 96(1) SCCP.

154 Geneva: Art. 20(1) of the *Loi d'application du code civil suisse et d'autres lois fédérales en matière civile* (**"LaCC"**); Art. 84 of the *Règlement fixant le tarif des frais en matière civile* (**"RTFMC"**); Zurich: § 2(1)(a) of the *Verordnung über die Anwaltsgebühren* (**"AnwGebV"**).

155 Art. 89 RTFMC; § 9 AnwGebV. The ordinary fee can be reduced if particularly little time is needed for the representation, or the difficulty of the case is particularly low (§ 4(2) AnwGebV; see also Art. 85(1) RTFMC). The fee calculated pursuant to the tariff can also be reduced if there is an obvious discrepancy between the amount in dispute and the time necessary for the matter (§ 2(2) AnwGebV; Art. 23(1) LaCC).

156 The amount in dispute is, in principle, defined by the value of the attached assets if it is known, otherwise by the award debt (see KUKO-MEIER-DIETERLE (2025), Art. 272, par. 23a).

157 Art. 85(1) and Art. 89 RTFMC; § 4(1), § 9 and § 11 AnwGebV.

158 Art. 90 RTFMC; § 13 AnwGebV. Court costs and attorneys' fees for an appeal to the SFSC are governed by the FSCA and the respective tariffs of the SFSC (for court costs see Art. 65 FSCA and the Tariff for court fees in proceedings before the SFSC; for attorneys' fees, see Art. 68 FSCA and the Regulations on party compensation and compensation for official representation in proceedings before the SFSC).

159 See KUKO-MEIER-DIETERLE (2025), Art. 272, par. 23.

160 Art. 99(3)(c) SCCP.

The creditor is furthermore liable for damages that an unjustified attachment order may cause to the debtor or third parties.[161] The court may accordingly order the creditor to provide security for such potential damages,[162] notably if the claim or the grounds for the attachment are uncertain.[163] The SFSC held that, as a rule, there is no reason to order security if the creditor's attachment request is based on an enforceable judgment.[164] However, security might still be ordered if it is uncertain whether the assets to be attached belong to the debtor or are exempt from attachment.[165]

3. Step 3: Start debt collection proceedings

If the attachment is granted, the creditor must validate it within the deadlines set by Art. 279 *et seq.* DEBA, as a rule within 10 days of receipt of the attachment's minutes. The creditor may do so by initiating debt collection proceedings.[166]

3.1 How to begin: Debt collection request

In Switzerland, starting debt collection proceedings is straightforward.[167] The creditor is not required to present a title or evidence for the claim,[168] request payment, or threaten debt collection proceedings before starting them.[169] It must only submit a debt collection request to the competent debt collection office.[170]

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161 Art. 273(1) DEBA.

162 Art. 273(1) DEBA.

163 SFSC decisions 5A_807/2016 of 22 March 2017, par. 5.1; 112 III 112, par. 2a.

164 SFSC decision 5A_165/2010 of 10 May 2010, par. 2.3.1. The court is prohibited from ordering a security if the creditor's attachment request is based on a judgment which can be recognised under the Lugano Convention (see BSK SchKG-STOFFEL (2021), Art. 273, par. 18).

165 See not. decision of the Supreme Court of the Canton of Zurich PS160156 of 14 February 2017, par. II.7.1.

166 Art. 279(1) DEBA.

167 See not. BSK SchKG-KOFMEL EHRENZELLER (2021), Art. 67, par. 4a, 9 and 42.

168 SFSC decision 5A_934/2019 of 19 December 2019, par. 4.2.2.

169 SFSC decision 130 II 270, par. 3.2.2. A debt collection request based on an award will usually not qualify as coercion pursuant to Art. 181 of the Swiss Criminal Code (see not. JOSITSCH/CONTE, Nötigung durch Betreibung, BlSchK 2017, p. 63 *et seq.*, p. 66 *et seq.*).

170 Art. 67(1) DEBA.

Though in principle not mandatory,[171] it is highly recommended to use the official form.[172] The debt collection request must mention:[173]

1. the name and address of the creditor and its representative if applicable;
2. the name and address of the debtor;[174]
3. the amount claimed, including interest.[175] If the debt is in a foreign currency, it must be converted into Swiss Francs;[176] and
4. the title for the claim, namely the award, and its date.[177] There is, however, no need to submit the award to the debt collection office.[178]

The ordinary forum for debt collection proceedings is the domicile of the debtor,[179] which will, in the case of a foreign State, not be in Switzerland. Debt collection proceedings can, however, also be started where assets of the debtor have been attached,[180] which is, as mentioned, another reason why a creditor's first step should be to file for attachment.[181]

3.2 How do the debt collection proceedings unfold?

Upon receipt of the debt collection request, the debt collection office draws up and serves a summons to pay on the debtor.[182] The summons to pay informs the debtor that the debt collection proceedings will continue if the debtor neither pays the claim within 20 days nor objects to the same.[183] As set

171 Art. 3(1bis) of the Ordinance on the forms and registers to be used in debt enforcement and bankruptcy proceedings and on the keeping of accounts of 5 June 1996.

172 Accessible at: www.bj.admin.ch/bj/de/home/wirtschaft/schkg/musterformulare.html. A debt collection request can also be generated using the online platform easygov. The platform generates a form that needs to be signed and sent to the address given (www.easygov.swiss/easygov/#/en/landing/request-for-debt-enforcement).

173 Art. 67(1) DEBA. See also BSK SchKG-KOFMEL EHRENZELLER (2021), Art. 67, par. 15 *et seq*.

174 See Sect. 2.2.

175 The interest rate and the starting date must be indicated (Art. 67(1)(3) DEBA).

176 Art. 67(1)(3) DEBA. See also Art. 88(4) DEBA and Sect. 2.2.

177 Art. 67(1)(4) DEBA. See also BSK SchKG-KOFMEL EHRENZELLER (2021), Art. 67, par. 42 *et seq*; SFSC decision 5A_976/2019 of 28 July 2020, par. 4.2.

178 BSK SchKG-KOFMEL EHRENZELLER (2021), Art. 67, par. 45.

179 Art. 46 DEBA. See the following provisions for other fori.

180 Art. 52 DEBA.

181 See Sect. 2.

182 Art. 69 *et seq.* DEBA.

183 Art. 69(2)(2)-(3) DEBA.

out above,[184] service on foreign States must proceed via diplomatic channels; if the foreign State elects domicile with its mission, legal proceedings must be served on the mission. The same holds true if the foreign State elects domicile with a lawyer.

The debtor can bring the debt collection proceedings to a halt by objecting to the summons to pay.[185] It can object orally or in writing, immediately to the person serving the summons to pay or within 10 days of service.[186] It does not need to give a reason for its objection.[187] If the debtor objects to the summons to pay, the creditor can only continue the debt collection proceedings after a court has set aside the objection.[188]

When the claim is based on an award, the creditor may apply for the objection to be set aside definitively by means of summary proceedings.[189] An award is indeed a definitive title within the meaning of Art. 80 DEBA ("*definitiver Rechtsöffnungstitel"* in German / "*titre de mainlevée definitive"* in French).[190] The creditor must file its request to set aside the objection with the competent court at the place where it has started the debt collection proceedings.[191]

In this request, the creditor must demonstrate that the award is enforceable as it did in the attachment proceedings (see Sect. 2.1.1), the difference being that the court will now have full power of review, not limited to the mere *prima facie* analysis that the requirements for enforcement are

184 See Sect. 2.5.

185 "*Rechtsvorschlag"* in German / "*opposition"* in French; Art. 74 and 78(1) DEBA.

186 Art. 74(1) DEBA. If the debtor is domiciled abroad, the debt collection office can, and usually will, grant a longer deadline to declare the objection (see Art. 33(2) DEBA).

187 Art. 75 DEBA. As in attachment proceedings, the objection is the legal remedy to dispute the debt collection proceedings for reasons of substantive law. The debtor who wishes to assert a violation of procedural provisions governing the debt collection proceedings (not. lack of jurisdiction of the debt collection office) must file a complaint with the supervisory authority of the debt collection office (Art. 17 *et seq.* DEBA).

188 Art. 79 *et seq.* DEBA.

189 Art. 251(a) SCCP.

190 Art. 80(1) DEBA. See not. SFSC decisions 4A_646/2023 of 31 January 2024, par. 3.1, 5A_910/2019 of 1 March 2021, par. 3.1, and 130 III 125, par. 2.

191 Art. 84(1) DEBA. See also BSK SchKG-STAEHELIN (2021), Art. 84, par. 18.

met.[192] In response, the State will in turn be able to raise the same defences as in the attachment proceedings.[193]

In principle, there is only one round of written submissions[194] and no hearing.[195] The creditor should not count on a second chance to demonstrate that the award is enforceable and provide supporting evidence.[196] Therefore, it is important that the creditor provides evidence of the enforceability of the award with its initial submission.

If the creditor's request is denied, the debt collection proceedings cannot proceed. The consequences depend on the reason for the denial of the request:

1. if there was a ground for refusal pursuant to Art. V NYC, the creditor will as a rule be unable to seek enforcement of the award in Switzerland again, unless the ground for refusal is not a permanent one. The same applies for the grounds of Art. 81(1) DEBA, such as the debt being discharged or becoming time-barred after the award;
2. if the request was denied because the creditor has not supplied the documentation required pursuant to Art. IV NYC, the creditor can generally submit a new request with the appropriate documentation.[197]

The court's decision can be appealed to the second instance within 10 days.[198] As a rule, the appeal has no suspensive effect.[199] This means that the creditor who has obtained the definitive setting aside of the objection can continue the debt collection proceedings unless the second instance grants suspensive effect.[200] The decision of the second cantonal instance can be appealed to the SFSC within 30 days of service.[201]

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192 See Art. 80 *et seq.* DEBA; SFSC decisions 139 III 135, par. 4.5.2; 144 III 411, par. 6.3.1, 4A_646/2023 of 31 January 2024, par. 3.2. *et seq.*; BSK SchKG-STAEHELIN (2021), Art. 80, par. 16 *et seq.* and 94.

193 Art. 81 DEBA. See also SFSC decision 130 III 125, par. 2; BERGER/KELLERHALS, *op. cit.* note 20, par. 2010 *et seq*. The debtor can raise the grounds for refusal pursuant to the NYC if the parties, pursuant to Art. 192(1) PILA, have waived legal remedies against the arbitral award. As to refusals to enforce an award based on its operative lack of clarity, see not. SFSC decision 5A_335/2021 of 19 July 2022, par. 3 *et seq.* and the references cited.

194 SFSC decision 146 III 237, par. 3.1. See also Art. 84(2) DEBA.

195 BSK SchKG-STAEHELIN (2021), Art. 84, par. 41b.

196 See generally, SFSC decision 5A_84/2021 of 17 February 2022, par. 3.1.

197 SFSC decision 4A_124/2010 of 4 October 2010, par. 3.1.

198 Art. 309(b)(3) *cum* 319(a) and 321(2) SCCP.

199 Art. 325 SCCP.

200 Art. 325(2) SCCP. See also BSK SchKG-STAEHELIN (2021), Art. 84, par. 79 and 88a.

201 Art. 72(2)(a) *cum* 74(1)(b) or 74(2)(a) and Art. 100(1), or Art. 113 *et seq.* FSCA; BSK SchKG-STAEHELIN (2021), Art. 84 par. 96 *et seq*.

3.3 How to get payment once the objection has been set aside?

Once the objection has been set aside, the creditor must file a request to continue the debt collection proceedings with the debt collection office.[202] This right expires, in principle, one year after service of the summons to pay on the debtor.[203] If an objection has been raised, the one-year deadline is, however, suspended during the objection proceedings.[204] That said, to preserve the attachment, the creditor must file the request to continue the debt collection proceedings within 20 days of the objection being set aside.[205]

For foreign States, debt collection proceedings are continued by way of seizure of assets.[206] This means that upon receipt of the creditor's request to continue the debt collection proceedings, the debt collection office must proceed pursuant to Art. 89 *et seq.* DEBA; it must notably inform the debtor about the upcoming seizure of assets[207] and draw up a certificate of seizure.[208]

The creditor can request the debt collection office to realize the seized assets after a waiting period following the seizure (of at least one month but not more than one year in case of movable assets or claims, and at least six months but not more than two years in case of real estate).[209] The debt collection office will proceed with the realization of the seized assets after another waiting period of at least 10 days for movable assets or claims and at least one month for real estate.[210] By default, the realization takes place by way of public auction.[211]

3.4 How much will it cost?

The costs for debt collection proceedings first consist of the fees for the acts performed by the debt collection office. They are governed by federal law, depend on the act performed, and are generally low.[212] For instance, the base fee for issuing a summon to pay and service on the debtor ranges between

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202 Art. 88(1) DEBA.

203 Art. 88(2) DEBA. See also SFSC decision 125 III 45, par. 3b.

204 Art. 88(2) DEBA.

205 See Art. 279(3), second sentence, DEBA and SFSC decision 5A_1067/2020 of 19 April 2021, par. 2.6.2.

206 Art. 89 *et seq.* DEBA; SFSC decision 134 III 122, par. 4 *et seq*.

207 Art. 90 DEBA.

208 Art. 112 DEBA.

209 Art. 116(1) DEBA.

210 Art. 122 and 133 DEBA

211 Art. 125 *et seq.* and 133 *et seq.* DEBA. Or one of the other methods provided in Art. 130 *et seq.* and 143*b* DEBA if the requirements are met.

212 Art. 16 *et seq.* OELP.

CHF 7 and 400.[213] These costs must be advanced by the creditor.[214] If the creditor prevails, it can claim the same from the proceeds of the debt collection proceedings.[215]

Court costs and attorneys' fees in objection proceedings are governed by the same rules and tariffs as in attachment proceedings;[216] accordingly, the same ranges of costs and fees apply.[217]

4. Beyond enforcement proceedings

While attaching a State's assets can be a substantial leverage point, relying solely on this measure may not be sufficient to ensure successful enforcement. Enforcing against a State involves more than just legal considerations.

Understand the other side. Understanding the decision-making process and motivations of the State can be crucial: who has the authority to settle? Who are the key political or bureaucratic actors who may hold sway over the dispute resolution process? Why are they refusing to pay? Is it for personal reasons or to protect the State's interests? Depending on the answers to these questions, the appropriate course of action may differ significantly. For instance, officials may be more willing to settle claims arising from their predecessors' conduct than their own.[218]

Leverage key relationships. The State may have relationships with international financial institutions, multinationals or other States that can serve as powerful negotiation tools. The effect of engaging with international bodies, leveraging public opinion, or coordinating with other States or stakeholders should not be underestimated. Many States prefer compliance over bad press, especially during electoral periods or if they rely heavily on foreign aid and

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213 Art. 16(1) OELP. Note that fees are also charged for acts the debt collection office performs at subsequent stages of the debt collection proceedings, including the seizure of assets (also for assets already attached), their administration and liquidation; see in particular Art. 19, 20, 24, 26, 27, 29 and 30 OELP. The fees for administration and liquidation of assets may be more significant if real estate is seized, though the creditor should usually be able to recover them from the proceeds of the real estate's liquidation.

214 Art. 68(1) DEBA.

215 Art. 68(2) DEBA. See also SFSC decision 147 III 358, par. 3.4.1.

216 Not. for court costs Art. 48(1) OELP; and for attorneys' fees, Art. 105(2) SCCP *cum* Art. 96(1) SCCP, Art. 20(1) LaCC, Art. 85(1) and 89 RTFMC, and § 2(1)(a), § 4(1), § 9 and § 11 AnwGebV. See also Art. 98(2)(c) SCCP regarding advances on court costs and Art. 99(3)(c) SCCP as to security for costs.

217 See Sect. 2.7.

218 YANOS/BROMBEREK, *op. cit.* note 10, p. 211 *et seq.*

investments.[219] Argentina reportedly settled several awards as part of President Macri's goal to improve Argentina's reputation with foreign investors, as did the Czech Republic.[220]

Seeking diplomatic assistance from the client's home State, lobbying, and using public relations specialists can be crucial in this context; intelligence firms can also be extremely creative.[221] In 2008, after more than five years of enforcement efforts by investor AIG, Kazakhstan settled and paid an award reportedly after pressure from the US government.[222]

All measures taken should be vetted by legal counsel to ensure their compliance with all applicable laws.

Address your potential exposure. Going against a State is not without risks. Governments can use various tools to pressure creditors, some legal, such as counterclaims, others less so, such as threats, fabricated charges and misuse of criminal proceedings, red notices and sanctions, in State-backed vendettas led against the creditor, its relatives and representatives. Conduct due diligence regarding your potential exposure and take protective measures if required. Even though the scope and requirements of attorney-client privilege vary, communication with investigators and other experts involved should, as much as possible, include lawyers to provide some protection for the information exchanged.

Define a realistic cost structure. Court proceedings and the measures described above involve costs that the creditor must be prepared to advance. Alternatives like third-party funding and award monetisation can be considered.[223] Define the mechanics of these structures from the outset, including decision-making, settlement conditions and risk allocation, considering the appliable regimes which may differ from jurisdiction to jurisdiction.[224] Collective actions with other creditors might be beneficial,

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219 BRAVIN/BEY/BOWMAN/GASANBEKOVA, *op. cit.* note 48, p. 4 *et seq.*; YANOS/BROMBEREK, *op. cit.* note 10, p. 204 *et seq.*

220 See GAILLARD/PENUSLISKI, State Compliance with Investment Awards, ICSID Review – Foreign Investment Law Journal 2021, p. 1 *et seq*., p. 14 *et seq.* and 24 *et seq*.; BRAVIN/BEY/BOWMAN/GASANBEKOVA, *op. cit.* note 48, p. 5 and the references cited.

221 For examples, see not. BRAVIN/BEY/BOWMAN/GASANBEKOVA, *op. cit.* note 48, p. 5 *et seq.*; YANOS/BROMBEREK, *op. cit.* note 10, p. 214.

222 See GAILLARD/PENUSLISKI, *op. cit.* note 220, p. 6 and 35.

223 There is no one-size-fits-all solution when it comes to funding, and creditors are well-advised to explore creative ways to fund their actions. In this context, the securitization of awards has been gaining traction.

224 GUVEN/JOHNSON, The Policy Implications of Third-Party Funding in Investor-State Dispute Settlement, Columbia Center on Sustainable Investment, A Joint Center of Columbia Law School and the Earth Institute, May 2019, p. 3 *et seq.*

providing a single point of contact for the debtor and potentially facilitating a global settlement.

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Enforcing awards against States presents a unique set of challenges which can be mitigated through careful and forward-thinking planning. By considering enforcement options as early as possible, anticipating immunity defences and identifying potential pressure points, creditors can significantly increase their chances of successful enforcement. Crafting a strategy that includes the negotiation of waivers of immunity, early asset identification, and an understanding of the State's internal power dynamics is undoubtedly a plus.