Switzerland

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1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

The most important multilateral treaty in Switzerland dealing with the recognition and enforcement of foreign judgments is the Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("**LC**"). The LC is the "parallel" convention to EC Regulation No. 44/2001, which has been replaced by EU Regulation No. 1215/2012 in 2015. Member states to the LC are all countries of the European Union as well as Switzerland, Norway, Iceland and Denmark. In connection with *Brexit*, the United Kingdom applied to join the LC in April 2020; however, in June 2021 the European Union rejected the application.

Switzerland is also a party to other multilateral treaties and to a number of bilateral treaties dealing with the recognition and enforcement of foreign judgments.

In the absence of a treaty, the recognition and enforcement of foreign judgments in Switzerland is governed by the Federal Private International Law Act ("**PILA**").

The criteria for the recognition of a foreign judgment in Switzerland depend on which of the above-mentioned sets of rules is applicable. Given that the vast majority of cases are governed by either the LC or the PILA, we will focus on the criteria for recognition set forth in Articles 34 and 36 LC on the one hand and Articles 25 and 27 PILA on the other, which read as follows:

Article 34 LC (official English language version):
"*A judgment shall not be recognized:*
1. if such recognition is manifestly contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defense, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. if it is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if it is irreconcilable with an earlier judgment given in another State bound by this Convention or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the State addressed."

Article 36 LC (official English language version):

"*Under no circumstances may a foreign judgment be reviewed as to its substance.*"

Article 25 PILA (inofficial English translation):
"*A foreign decision is recognized in Switzerland:*
a. if the judicial or administrative authorities of the state where the decision was rendered had jurisdiction;
b. if the decision is no longer subject to any ordinary appeal or if it is a final decision; and
c. if there is no ground for denial under Article 27."

Article 27 PILA (inofficial English translation):
"*1. A foreign decision is not recognized in Switzerland if recognition is manifestly incompatible with Swiss public policy.*
2. Recognition of a decision shall also be denied if a party establishes:
a. that it did not receive proper notice under either the law of its domicile or that of its habitual residence, unless the party proceeded on the merits without reservation;
b. that the decision was rendered in violation of fundamental principles of Swiss procedural law, including the fact that the party concerned was denied the right to be heard;
c. that a dispute between the same parties and with respect to the same subject matter has been initiated in Switzerland first or has already been decided there, or that such dispute has previously been decided in a third state, provided the latter decision fulfils the requirements for recognition in Switzerland.
3. Other than that, the foreign decision may not be reviewed on the merits."

Despite some differences (see for more details Section 5 below), the requirements for recognition under the LC and the PILA also bear certain similarities. In general terms, the following criteria apply to the recognition of foreign judgments in Switzerland:

– Neither the LC nor the PILA allow for a review of the merits of the case (Article 36 LC; Article 27(3) PILA).

– One major difference between the PILA and the LC concerns the review of the jurisdiction of the foreign court: Under the PILA, it is examined by Swiss standards (laid down in various provisions of the PILA, in particular in Article 26) whether the judgment has been rendered by a competent court (Article 25[a] PILA; so-called indirect jurisdiction). By contrast, under the LC, the jurisdiction of the foreign court may only be reviewed in limited circumstances, in particular with a view to whether mandatory rules of jurisdiction have been complied with (Article 35 LC);

– It is required that the judgment is *either* final or no longer subject to ordinary appeal (Article 25[b] PILA) *or* at least provisionally enforceable (Article 32 LC);

– No grounds for refusal of recognition may exist. According to both, Article 34 LC and Article 27 PILA, the judgment must not manifestly violate Swiss public policy. The judgment must furthermore emanate from proceedings that guaranteed the defendant due process and a right to be heard. Also, the defendant must have been duly served with the document instituting the proceeding (or an equivalent document) in sufficient time and in such way as to enable him to

	arrange for his defense, especially where the judgment was given in default. Finally, the recognition of a foreign judgment is denied if the same dispute was first filed in Switzerland or if an earlier judgment on the same claim has been rendered in Switzerland. The same applies to earlier foreign judgments if they meet the requirements of recognition under the LC or the PILA.
2.	**What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?**
	The enforcement of judgments against a state is an ordinary court process. No consent of a political body is necessary. However, as a general principle of Swiss law, service on foreign states must be conducted via diplomatic channels, irrespective of whether proceedings on the merits are initiated against a foreign state in Switzerland or whether a foreign judgment against a state is to be enforced in Switzerland (see also Article 16 of the European Convention on State Immunity of 1972 ["**European Immunity Convention**"], which may apply with respect to non-contracting states by analogy, see decision BGE 136 III 575 of the Swiss Federal Supreme Court dated 7 October 2010, consid. 4.3.3).
3.	**What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?**
	In Switzerland, the doctrine of sovereign immunity (for both jurisdictional aspects and enforcement) is governed by international treaties, customary international law, fragmentary rules in statutory law and, most importantly, case law. The most relevant treaties are the European Immunity Convention and its Additional Protocol of 1972 and the United Nations Convention on Jurisdictional Immunities of States and Their Properties of 2004 ("**UN Immunities Convention**"). Although the UN Immunities Convention has not yet entered into force, it is regularly referred to in Swiss case law as a codification of the principles of immunity in customary international law (see, for example, decision of the Swiss Federal Supreme Court 4A_544/2011 of 30 November 2011, consid. 2). Furthermore, the issue of sovereign immunity may also arise when determining the scope of application of the LC (see, e.g., decision of European Court of Justice ["**ECJ**"] C-186/19 [Supreme Site Services] of 3 September 2020, consid. 46 et seqq. with further references; decision C-641/18 [Rina Spa] of the ECJ of 7 May 2020, consid. 27 et seqq., with further references). At the level of Swiss statutory law, sovereign immunity is only addressed in the rules governing enforcement of monetary judgments in the Federal Debt Enforcement and Bankruptcy Act ("**DEBA**") and in the Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State ("**Host State Act**"), which contains the legal framework for the hosting of the numerous international organizations that operate out of Switzerland. The enforcement of court judgments against a foreign state in Switzerland will only be granted under three cumulative conditions (see e.g. decision BGE 134 III 122 of

the Swiss Federal Supreme Court of 15 August 2007, consid. 5.2 = Pra 97 [2008] Nr. 105):

- The claim for which enforcement in Switzerland is sought must originate from acts which a foreign state performed in a private capacity (*acta iure gestionis*), but not from acts it performed while exercising sovereign authority (*acta iure imperii*);
- The relevant claim must furthermore originate from a legal relationship that has a sufficiently close connection to Switzerland (so-called Swiss nexus);
- Finally, the state's assets in Switzerland into which enforcement is sought must not serve sovereign purposes. For the enforcement of monetary judgments, this requirement is codified in Article 92 (1)(11) DEBA, which reads as follows (inofficial English translation): "*Assets of a foreign state or a foreign central bank that serve sovereign purposes shall be exempt from seizure*".

With a view to the first requirement, the relevant criterion according to Swiss Federal Supreme Court to distinguish between *acta iure imperii* and *acta iure gestionis* is the nature of the act, not its purpose. It must be examined whether the act on which the claim is based relates to the exercise of sovereign powers or whether it could have been carried out by any private individual. For example, acts of the military or police as well as the seizure or nationalization of assets are considered *acta iure imperii*, while the issuance of sovereign bonds or the lease or acquisition of property are considered *acta iure gestionis* (see decision BGE 124 III 382 of the Swiss Federal Supreme Court of 20 August 1998, consid. 4a).

The second requirement – a sufficiently close connection to Switzerland (Swiss nexus; "*Binnenbeziehung*"; "*rattachement suffisant*") – is a particularity of the Swiss concept of sovereign immunity. It was developed by the Swiss Federal Supreme Court in 1918 in a decision concerning the attachment of assets a foreign state held at a Swiss bank. The requirement of Swiss nexus applies to both jurisdictional and enforcement immunity (see, e.g., decision BGE 106 Ia 142 of 19 June 1980, consid. 3b with further references). According to case law, a sufficiently close connection is assumed if the claim originated or had to be performed in Switzerland or if the foreign state performed certain acts in Switzerland that give rise to a place of performance. By contrast, the mere fact that assets are located in Switzerland is not sufficient. Hence, even if a claim against a foreign state originates from an act *iure gestionis*, the foreign state may invoke immunity before a Swiss court if the claim has no sufficiently close connection to Switzerland (see decision BGE 134 III 122 of the Swiss Federal Supreme Court of 15 August 2007, consid. 5.2.2 = Pra 97 [2008] Nr. 105). Despite the fact that the requirement of Swiss nexus has been widely criticized by scholars, the Swiss Federal Supreme Court has also upheld it in recent cases concerning the enforcement of arbitral awards under the New York Convention (decision BGE 144 III 411 of the Swiss Federal Supreme Court of 7 September 2018, consid. 6; for an English summary of the case, cf. <http://www.swlegal.com/en/insights/blog-detail/enforcement-of-award-against-state-not-possible-wh/>) as well as under the ICSID Convention (decision 5A_406/2022 of the Swiss Federal Supreme Court of 17 March 2023, consid. 3.2 et seq.; for an English summary of the case, cf. <http://www.swlegal.com/de/insights/blog-detail/nexus-to-switzerland-required-for-enforcement-of-i/>).

	By contrast, the third requirement – that the assets into which enforcement is sought must not serve sovereign purposes – is an internationally accepted element of the concept of enforcement immunity. According to case law relating to Article 92 (1)(11) DEBA (cited above), the provision is to be interpreted broadly (BGE 134 III 122 of the Swiss Federal Supreme Court of 15 August 2007, consid. 5.2.3 = Pra 97 [2008] Nr. 105). However, assets are only exempted from seizure if it is recognizable that they serve sovereign purposes. For example, enforcement immunity will only be granted if funds that serve sovereign purposes and are held at bank are segregated from other assets (see decision BGE 111 Ia 62 of the Swiss Federal Supreme Court of 24 April 1985, consid. 7b). Swiss courts will generally consider immunity while examining the admissibility of a claim or request for enforcement, i.e. usually at the outset of the proceedings (Articles 59 and 60 of the Swiss Code of Civil Procedure ["**CPC**"]; see decision BGE 124 III 382 of the Swiss Federal Supreme Court of 20 August 1998, consid. 3b). However, the Swiss case law on whether immunity must be examined *ex officio* or only if invoked by the defendant state does not appear to be settled (for an examination *ex officio*: decision BGE 144 III 411 of the Swiss Federal Supreme Court of 7 September 2018, consid. 6.3.3; decision BGE 133 III 539 of the Swiss Federal Supreme Court of 22 June 2007, consid. 4.2; *contra*: decision BGE 130 III 136 of the Swiss Federal Supreme Court of 21 November 2003, consid. 2.1). Furthermore, if sovereign immunity is not invoked in the initial pleadings, but only at a later stage of the proceedings, courts may consider that the defense of immunity has been waived (see decision 4A_541/2009 of the Swiss Federal Supreme Court of 8 June 2010, consid. 5.2 et seq.).
4.	**What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?**
	In contrast to its neighboring countries (Germany and Italy, cf. the cases *Distomo* and *Ferrini*, both subject to the ICJ's judgment of 3 February 2012, *Jurisdictional Immunities of the State [Germany v. Italy: Greece intervening]*, I.C.J. Reports 2012, p. 99; see on a related note also the ECJ's decision C-292/05 [Lechouritou] of 14 February 2007, consid. 27 et seqq.), the question whether an exception to sovereign immunity may apply where the claim results from improper actions of the defendant state, namely a war of aggression or serious violations of human rights, has not yet arisen in Swiss case law. However, the issue is discussed among Swiss scholars, some of which express sympathy for an exception (see, e.g., ANNYSSA BELLAL, Immunités et violations graves des droits humains: vers une évolution structurelle de l'ordre juridique international?, Geneva 2008; MIRJAM BALDEGGER, Das Spannungsverhältnis zwischen Staatenimmunität, diplomatischer Immunität und Menschenrechten: Eine Analyse am Beispiel des Rechtsschutzes für ausgebeutetes Hauspersonal von Diplomaten, Botschaften und ständigen Missionen im Gaststaat Schweiz, Basel 2015 [with focus on the exploitation of domestic staff of diplomats, embassies, and permanent missions in Switzerland]; ANDREAS R. ZIEGLER, State Immunity – Trends and Problems Encountered in Recent Swiss Practice, Swiss Review of International and European Law 2022, pp. 169 et seqq., 185; MARKUS MÜLLER-CHEN,

	International-zivilprozessualer Überblick über die Staatenimmunität im Erkenntnis- und Vollstreckungsverfahren, Swiss Review of International and European Law 2022, pp. 197 et seqq., 208). It is also worth noting that Switzerland has made an interpretative declaration regarding the "tort exception" in Article 12 of the UN Immunities Convention (which, however, has not yet entered into force, see Section 3 above), according to which "*Switzerland considers that article 12 does not govern the question of pecuniary compensation for serious human rights violations which are alleged to be attributable to a State and are committed outside the State of the forum. Consequently, this Convention is without prejudice to developments in international law in this regard*". Against this backdrop, the application of an exception to immunity in Switzerland does not seem out of question and would likely depend on the future developments in international law (see ANDREAS R. ZIEGLER, State Immunity – Trends and Problems Encountered in Recent Swiss Practice, Swiss Review of International and European Law 2022, pp. 169 et seqq., 192 et seq.). Furthermore, it is worth noting that international sanctions – namely the freezing of assets – may apply in Switzerland irrespective of the principles of enforcement immunity because such sanctions are imposed directly by the Swiss government and thus not enforced in court proceedings in Switzerland (see decision 2C_820/2014 of the Swiss Federal Supreme Court of 16 June 2017, consid. 4; see also decision BGE 139 II 384 of the Swiss Federal Supreme Court of 27 May 2013 = Pra 102 [2013] Nr. 103).
5.	**What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?**
	As already set out above (see Section 1), any judgment – whether it was issued against a state or any other party – which is sought to be enforced in Switzerland i) must not manifestly violate Swiss public policy and ii) must emanate from proceedings that guaranteed the defendant due process and a right to be heard. Under the LC, Swiss courts will review the compliance of foreign judgments with due process standards either as part of Swiss public policy under Article 34(1) LC, or under Article 34(2) LC, which specifically addresses judgments given in default. According to the case law of the Swiss Federal Supreme Court, a violation of public policy is, *inter alia*, assumed if the proceedings before the foreign court deviated from the fundamental principles of Swiss procedural law to such an extent that the judgment cannot be regarded as having been rendered in an orderly procedure governed by the rule of law (decision 5P.304/2002 of the Swiss Federal Supreme Court of 20 November 2002, consid. 3.3). The fundamental principles of fair proceedings include, in particular, the right to be heard, access to an independent and impartial court, the equal treatment of the parties and the right to evidence as well as the right of defense in court proceedings as recognized in Article 6(1) of the European Convention on Human Rights and in Article 29(2) of the Swiss Federal Constitution, where it is considered to form part of the right to be heard (see decision 4A_398/2012 of the Swiss Federal Supreme Court of 26 November 2012, consid. 3; see also decision BGE 119 Ia 260 of the Swiss Federal Supreme Court of 7 October 1993, consid. 6a).

With regard to judgments given in default, Article 34(2) LC requires that the defendant must have been served either with the document instituting the proceeding or an equivalent document in sufficient time and in such way as to enable him to arrange for his defense. It is therefore not in all circumstances necessary that the defendant was properly served in accordance with the laws of the state in which the judgment was issued. Rather, a factual assessment whether the defendant has been enabled to arrange for his defense will be made (see decision BGE 142 III 180 of the Swiss Federal Supreme Court of 19 February 2016, consid. 3.3.1 = Pra 106 [2017] Nr. 53; for an extensive discussion of the different views in legal writing, see decision PS120140 of the Superior Court of Zurich of 5 April 2013, consid. 6; for more detail in this respect, see Section 5.a. below). Whether the defendant had sufficient time to arrange for his defense is examined by Swiss standards (decision 5A_560/2007 of the Swiss Federal Supreme Court of 7 January 2008, consid. 3.3.2). For example, the Swiss Federal Supreme Court found that a deadline of 28 days is sufficient to make relevant arrangements (see decision 5A_560/2007 of the Swiss Federal Supreme Court of 7 January 2008, consid. 3.3.1 et seqq.).

Under the PILA, violations of Swiss public policy with regard of due process standards are addressed in Article 27(2)(a) and (b) PILA. While the concept of Swiss public policy in general does not differ from the one applied under Article 34(1) LC, Article 27(2)(a) PILA specifies explicitly that the question whether a party has been duly notified of the proceedings must be assessed according to the laws of the place of residence or domicile of the party concerned, including international treaties such as the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965 (see decision BGE 143 III 225 of the Swiss Federal Supreme Court of 30 March 2017, consid. 5.1 et seqq.). Article 27(2)(a) PILA therefore in principle calls for a stricter, more formalistic assessment of whether the requirements of proper service are met than Article 34(2) LC (decision BGE 142 III 180 of the Swiss Federal Supreme Court of 19 February 2016, consid. 3.3.1 et seq. = Pra 106 [2017] Nr. 53; potentially more lenient, however BGE 143 III 225 of the Swiss Federal Supreme Court of 30 March 2017, consid. 5.2; see also MARKUS MÜLLER-CHEN, in: Müller-Chen/Widmer Lüchinger (eds.), Zürcher Kommentar zum IPRG, Vol. 1, 3rd ed., Zurich 2018, commentary on Article 27 N 69 et seq). With respect to the timeliness of service, the Swiss Federal Supreme Court found that, under Swiss law – the law of the place of residence of the party concerned in the case at hand – service of the summons would not be timely if it is only effected five days before the hearing (decision 5P.382/2006 of the Swiss Federal Supreme Court of 12 April 2007, consid. 5.2).

Swiss courts will generally only refuse the recognition of a foreign judgment if relevant grounds are invoked by the parties. The party opposing recognition and enforcement must therefore assert and prove that the proceedings conducted abroad have disregarded the basic principles set out in Article 34 LC or Article 27 PILA (decision BGE 143 III 404 of the Swiss Federal Supreme Court of 6 June 2017, consid. 5.2.3 = Pra 107 [2018] Nr. 86; decision BGE 116 II 625 of the Swiss Federal Supreme Court of 19 December 1990, consid. 4b = Pra 81 [1992] Nr. 63). However, an exception applies under the PILA with regard to judgments given in default: In such a case, the burden of proof is reversed and it is upon the party seeking recognition to prove that the document instituting the proceedings was duly and timely served on

	the defendant who remained absent; the proof must be furnished by documentary evidence (Article 29[1][c] PILA; decision BGE 142 III 180 of the Swiss Federal Supreme Court of 19 February 2016, consid. 3.4 = Pra 106 [2017] Nr. 53).
a.	***What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?***
	As explained above (see Section 5), the test under Article 34 LC does not necessarily require that the defendant was properly served, but is rather a factual assessment whether the defendant has been enabled to arrange for his defense. However, the extent to which formal requirements of the laws of the state in which the judgment was issued still need to be considered under this test is controversially discussed in scholarly writing (see TANJA DOMEJ/PAUL OBERHAMMER, in: Anton K. Schnyer/Miguel Sogo [eds.], Kommentar Lugano-Übereinkommen zum internationalen Zivilverfahrensrecht, 2nd ed., Zurich/St. Gallen 2023, commentary on Article 34 N 36; FRIDOLIN WALTHER, in: Dasser/Oberhammer (eds.), Kommentar Lugano-Übereinkommen, 3rd ed. Bern 2021, commentary on Article 34 N 51; decision PS120140 of the Superior Court of Zurich of 5 April 2013, consid. 6, with further references). There seems to be a consensus that service must at least be recognizable to the defendant as a notification issued within the framework of a court procedure. Furthermore, serious violations of formal requirements generally are considered to be a strong indication that the defendant has *not* been enabled to arrange for his defense. Under the PILA, Swiss courts will examine if the defendant has been served properly according to the laws of the place of residence or domicile of the party, including international treaties such as the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965. In principle, all means of services *which the applicable rules provide for* are accepted. Since – as already set out above (see Section 5) – the assessment under Article 27 PILA is more formalistic, less conventional means of service are only accepted if there is no doubt that they are accepted under the laws of the place of residence or domicile of the party. In this context it is worth noting, however, that the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965 does *not* provide for service effected by email (FRIDOLIN WALTHER, in: Dasser/Oberhammer (eds.), Kommentar Lugano-Übereinkommen, 3rd ed. Bern 2021, commentary on Article 34 N 56).
b.	***What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?***
	Neither the LC nor the PILA nor Swiss case law provide for specific exceptions for cases where conventional forms of service against a state are impossible. However, if the applicable laws (under the PILA: the laws of the place of residence or domicile of the party; see Section 5 above) provide for rules which allow, as a matter of last resort, means of "substituted service" – for example by public notice in an official gazette –,

	such rules might apply (possibly by analogy) in a case where conventional forms of service against a state were impossible. In principle, substituted service is considered a valid form of service under both the LC and the PILA (TANJA DOMEJ/PAUL OBERHAMMER, in: Anton K. Schnyer/Miguel Sogo [eds.], Kommentar Lugano-Übereinkommen zum internationalen Zivilverfahrensrecht, 2nd ed., Zurich/St. Gallen 2023, commentary on Article 34 N 38; MARKUS MÜLLER-CHEN, in: Müller-Chen/Widmer Lüchinger (eds.), Zürcher Kommentar zum IPRG, Vol. 1, 3rd ed., Zurich 2018, commentary on Article 27 N 96). However, in cases where substituted service has been effected, depending on the circumstances, it might be doubtful whether the defendant has been enabled in time to arrange for his defense (TANJA DOMEJ/PAUL OBERHAMMER, in: Anton K. Schnyer/Miguel Sogo [eds.], Kommentar Lugano-Übereinkommen zum internationalen Zivilverfahrensrecht, 2nd ed., Zurich/St. Gallen 2023, commentary on Article 34 N 38, 40; decision of the Superior Court of Luzern of 11 February 1992, published in: Schweizerische Juristen-Zeitung 89/1993, p. 401). Against this backdrop, it is hardly predictable whether a foreign judgment against a state, which is based on substituted service due to the absence of diplomatic relations, would be recognized in Switzerland.
c.	***What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?***
	As explained above (see Section 5), the right of defense – i.e. the right to consult a legal representative or counsel – in court proceedings as recognized in both Article 6(1) of the European Convention on Human Rights and in Article 29(2) of the Swiss Constitution is considered a fundamental principle of Swiss procedural law (decision BGE 119 Ia 260 of the Swiss Federal Supreme Court of 7 October 1993, consid. 6a; MARKUS MÜLLER-CHEN, in: Müller-Chen/Widmer Lüchinger (eds.), Zürcher Kommentar zum IPRG, Vol. 1, 3rd ed., Zurich 2018, commentary on Article 27 N 80). A foreign judgement that was rendered in disregard of the right of defense would therefore be considered as a violation of Swiss public policy, irrespective of whether the defendant is a private actor or a state. However, the right to be represented by counsel is not guaranteed in all circumstances, but only where it is actually necessary for the defense of the party's interests. According to the Swiss Federal Supreme Court, "*the right to be represented is [only] justified where, without it, the other procedural guarantees afforded by the protection of the right to be heard could become illusory*" (decision BGE 105 Ia 288 of the Swiss Federal Supreme Court of 14 November 1979, consid. 2b [inofficial English translation]). Furthermore, in a case where no objection as to the lack of representation has been raised in foreign proceedings, Swiss courts may conclude that the defendant voluntarily waived his right of defense (because, from a Swiss perspective, the defendant is free to decide whether or not to exercise his right to consult a legal representative or counsel, see BERNHARD WALDMANN, in: Waldmann/Belser/Epiney [eds.], Basler Kommentar Schweizerische Bundesverfassung, Basel 2015, commentary on Article 29 N 58 et seq.).

d.	***What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?***
	As explained above (see Section 5c), the right to be represented by counsel is not guaranteed in all circumstances. In case a state has voluntarily chosen not to be represented in foreign proceedings, it would seem rather unlikely that Swiss courts would find that the right of defense can have been violated. By contrast, if the defendant state, without any fault of its own, could not find legal representation, the assessment of Swiss courts would depend on whether the lack of representation rendered the right to be heard illusory, in particular in light of the complexity of the case (see decision BGE 105 Ia 288 of the Swiss Federal Supreme Court of 14 November 1979, consid. 4a). If so, Swiss courts would likely deny recognition and enforcement of the foreign judgment against the foreign state.
6.	**What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities?**
	As explained above (Section 3), enforcement against a state is only possible into assets that do not serve sovereign purposes. As far as assets of state owned entities are concerned, these are in principle are protected from enforcement of a claim against the relevant state due to the independence of the legal entity (see decision 5C.255/1990 of the Swiss Federal Supreme Court of 23 April 1992, consid. 5d, published in: Blätter für Zürcherische Rechtsprechung (ZR) 91/1992, N° 27 pp. 88 et seqq.; ANNE-CATHERINE HAHN, State Immunity and Veil Piercing in the Age of Sovereign Wealth Funds, Swiss Review of Business Law 2012, pp. 103 et seqq., 108). According to Swiss case law, the question whether a state owned entity is legally independent is governed by the laws of its incorporation (see decision BGE 138 III 232 of the Swiss Federal Supreme Court of 5 March 2012, consid. 4.2.1). The same laws govern the question of a potential piercing of the corporate veil (see decision BGE 128 III 346 of the Swiss Federal Supreme Court of 7 May 2002, consid. 3.1). In general, Swiss courts are very reluctant to disregard the independence of legal entities: From a Swiss perspective, piercing of the corporate veil may only be considered if there is evidence of an *abuse of right* (namely, if the economic identity between the legal entity and the subject who controls it is obvious, and if the entity's independence is invoked only for the purpose of abusively evading enforcement, see decision 5A_871/2009 of the Swiss Federal Supreme Court of 2 June 2010, consid. 7.1; decision 5P.1/2007 of the Swiss Federal Supreme Court of 20 April 2007, consid. 3; ANNE-CATHERINE HAHN, State Immunity and Veil Piercing in the Age of Sovereign Wealth Funds, Swiss Review of Business Law 2012, pp. 103 et seqq., 109, with further references). Against this backdrop, assets of state owned entities are only very rarely subject to enforcement against states in Switzerland.