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Switzerland

Investment Treaty Arbitration

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This country-specific Q&A provides an overview of investment treaty arbitration laws and regulations applicable in Switzerland.

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Switzerland: Investment Treaty Arbitration

1. Has your home state signed and / or ratified the ICSID Convention? If so, has the state made any notifications and / or designations on signing or ratifying the treaty?

Yes, Switzerland signed the ICSID Convention on 22 September 1967 and deposited its instrument of ratification on 15 May 1968. The Convention entered into force for Switzerland on 14 June 1968. In accordance with Article 69 of the ICSID Convention, Switzerland passed an "*Arrêté fédéral approuvant la Convention pour le règlement des différends relatifs aux investissements entre Etats et ressortissants d'autres Etats*" to make the ICSID Convention effective in its territory. Upon ratifying the ICSID Convention, Switzerland made only one designation of "*Competent Courts or Other Authorities for the Purpose of Recognizing and Enforcing Awards Rendered Pursuant to the Convention*" pursuant to Article 54(2) of the ICSID Convention. Switzerland has made no notifications.

2. Has your home state signed and / or ratified the New York Convention? If so, has it made any declarations and / or reservations on signing or ratifying the treaty?

Yes, Switzerland signed the New York Convention on 29 December 1958 and ratified it on 1 June 1965. On 30 August 1965, the New York Convention entered into force for Switzerland. Switzerland initially made a reciprocity reservation pursuant to Article I(3). However, as pursuant to Article 194 of the Swiss Private International Law Act (PILA), the Convention applies to awards rendered abroad whether or not the country has ratified the New York Convention, the Federal Council withdrew the reservation by Federal Decision dated 17 December 1992 (RO 1993, 2434; RO 1993, 2439). Today, all foreign arbitral awards are recognised and enforced in Switzerland in accordance with the provisions of the New York Convention, regardless of reciprocity.

3. Does your home state have a Model BIT? If yes, does the Model BIT adopt or omit any language which restricts or broadens the investor's rights?

Unlike countries such as the United States or Germany, Switzerland does not have an official Model Bilateral Investment Treaty (BIT). The United Nations Conference on Trade and Development (UNCTAD) has published a form of Swiss Model BIT in its compendium of international investment instruments, but this document does not necessarily correspond to the one internally used by Swiss officials when negotiating BITs. The Swiss State Secretariat for Economic Affairs (SECO), responsible for negotiating international investment agreements, appears to take guidance from a template BIT that is not publicly available. This template is regularly updated to factor in the latest developments in the field of investment protection.

4. Please list all treaties facilitating investments (e.g. BITs, FTAs, MITs) currently in force that your home state has signed and / or ratified. To what extent do such treaties adopt or omit any of the language in your state's Model BIT or otherwise restrict or broaden the investor's rights? In particular: a) Has your state exercised termination rights or indicated any intention to do so? If so, on what basis (e.g. impact of the Achmea decisions, political opposition to the Energy Charter Treaty, or other changes in policy)? b) Do any of the treaties reflect (i) changes in environmental and energy policies, (ii) the advent of emergent technology, (iii) the regulation of investment procured by corruption, and (iv) transparency of investor state proceedings (whether due to the operation of the Mauritius Convention or otherwise). c) Does your jurisdiction publish any official guidelines, notes verbales or diplomatic notes concerning the interpretation of treaty provisions and other issues arising under the treaties?

Switzerland has signed over 120 BITs. According to UNCTAD's website, Switzerland is the second country in the world with the largest network of BITs currently in force, right after Germany. As of February 2025, Switzerland has signed and/or ratified 130 BITs:

Short Title	Date of signature	Date of entry into force	Status
1.	Indonesia – Switzerland BIT (2022)	24/05/2022	01/08/2024	In force
2.	Georgia – Switzerland BIT (2014)	03/06/2014	17/04/2015	In force
3.	Switzerland – Tunisia BIT (2012)	06/10/2012	08/07/2014	In force
4.	Switzerland – Kosovo BIT (2010)	27/10/2010	13/06/2012	In force
5.	Switzerland – Trinidad and Tobago BIT (2010)	26/10/2010	04/07/2012	In force
6.	Egypt – Switzerland BIT (2010)	07/06/2010	15/05/2012	In force
7.	Switzerland – Tajikistan BIT (2009)	11/06/2009	26/10/2011	In force
8.	Switzerland – Japan BIT (2009)	19/02/2009	01/09/2009	In force
9.	China – Switzerland BIT (2009)	27/01/2009	13/04/2010	In force
10.	Madagascar – Switzerland BIT (2008)	19/11/2008	07/05/2015	In force
11.	Switzerland – Turkmenistan BIT (2008)	15/05/2008	02/04/2009	In force
12.	Switzerland – Syrian Arab Republic BIT (2007)	09/05/2007	01/07/2008	In force
13.	Kenya – Switzerland BIT (2006)	14/11/2006	10/07/2009	In force
14.	Colombia – Switzerland BIT (2006)	17/05/2006	06/10/2009	In force
15.	Saudi Arabia – Switzerland BIT (2006)	01/04/2006	09/08/2008	In force
16.	Azerbaijan – Switzerland BIT (2006)	23/02/2006	25/06/2007	In force
17.	Guyana – Switzerland BIT (2005)	13/12/2005	02/05/2018	In force
18.	Montenegro – Switzerland BIT (2005)	07/12/2005	11/07/2007	In force
19.	Serbia – Switzerland BIT (2005)	07/12/2005	20/07/2007	In force
20	Algeria – Switzerland BIT (2004)	30/11/2004	15/08/2005	In force
21.	Dominican Republic – Switzerland BIT (2004)	27/08/2004	30/05/2006	In force
22.	Oman – Switzerland BIT (2004)	17/08/2004	18/01/2005	In force
23.	Lesotho – Switzerland BIT (2004)	16/06/2004	07/05/2010	In force
24.	Switzerland – United Republic of Tanzania BIT (2004)	08/04/2004	06/04/2006	In force
25.	Libya – Switzerland BIT (2003)	08/12/2003	28/05/2004	In force
26.	Bosnia and Herzegovina – Switzerland BIT (2003)	05/09/2003	21/05/2005	In force
27.	Mozambique – Switzerland BIT (2002)	29/11/2002	29/07/2004	In force
28.	Sudan – Switzerland BIT (2002)	24/10/2002	-	Not in force
29.	Guatemala – Switzerland BIT (2002)	09/09/2002	03/05/2005	In force
30.	Qatar – Switzerland BIT (2001)	12/11/2001	15/07/2004	In force
31.	Jordan – Switzerland BIT (2001)	25/02/2001	11/12/2001	In force
32.	Djibouti – Switzerland BIT (2001)	04/02/2001	10/06/2001	In force
33.	Nigeria – Switzerland BIT (2000)	30/11/2000	01/04/2003	In force
34.	Bangladesh – Switzerland BIT (2000)	14/10/2000	03/09/2001	In force
35.	Costa Rica – Switzerland BIT (2000)	01/08/2000	19/11/2002	In force
36.	Lebanon – Switzerland BIT (2000)	03/03/2000	20/04/2001	In force
37.	Chile – Switzerland BIT (1999)	24/09/1999	02/05/2002	In force
38.	Kyrgyzstan – Switzerland BIT (1999)	29/01/1999	17/04/2003	In force
39.	Korea, Dem. People's Rep. of – Switzerland BIT (1998)	14/12/1998	15/11/2000	In force
40.	Nicaragua – Switzerland BIT (1998)	30/11/1998	02/05/2000	In force
41.	Mauritius – Switzerland BIT (1998)	26/11/1998	21/04/2000	In force
42.	Armenia – Switzerland BIT (1998)	19/11/1998	04/11/2002	In force
43.	Switzerland – United Arab Emirates BIT (1998)	03/11/1998	16/08/1999	In force
44.	Kuwait – Switzerland BIT (1998)	31/10/1998	17/12/2000	In force
45.	Botswana – Switzerland BIT (1998)	26/06/1998	13/04/2000	In force
46.	Ethiopia – Switzerland BIT (1998)	26/06/1998	07/12/1998	In force
47.	Iran, Islamic Republic of – Switzerland BIT (1998)	08/03/1998	01/11/2001	In force
48.	Switzerland – Thailand BIT (1997)	17/11/1997	21/07/1999	In force
49.	India – Switzerland BIT (1997)	04/04/1997	16/02/2000	Terminated
50.	Philippines – Switzerland BIT (1997)	31/03/1997	23/04/1999	In force
51.	Mongolia – Switzerland BIT (1997)	29/01/1997	09/09/1999	In force
52.	Lao People's Democratic Republic – Switzerland BIT (1996)	04/12/1996	04/12/1996	In force
53.	Croatia – Switzerland BIT (1996)	30/10/1996	17/06/1997	In force
54.	Cambodia – Switzerland BIT (1996)	12/10/1996	28/03/2000	In force
55.	North Macedonia – Switzerland BIT (1996)	26/09/1996	06/05/1997	In force
56.	Switzerland – Zimbabwe BIT (1996)	15/08/1996	09/02/2001	In force
57.	Cuba – Switzerland BIT (1996)	28/06/1996	07/11/1997	In force
58.	Moldova, Republic of – Switzerland BIT (1995)	30/11/1995	29/11/1996	In force
59.	Slovenia – Switzerland BIT (1995)	09/11/1995	20/03/1997	In force
60.	Pakistan – Switzerland BIT (1995)	11/07/1995	06/05/1996	In force
61.	Mexico – Switzerland BIT (1995)	10/07/1995	14/03/1996	In force
62.	South Africa – Switzerland BIT (1995)	27/06/1995	30/11/1997	Terminated
63.	Switzerland – Ukraine BIT (1995)	20/04/1995	21/01/1997	In force
64.	Barbados – Switzerland BIT (1995)	29/03/1995	22/12/1995	In force
65.	El Salvador – Switzerland BIT (1994)	08/12/1994	16/09/1996	In force
66.	Brazil – Switzerland BIT (1994)	11/11/1994	-	Not in force
67.	Hong Kong, China SAR – Switzerland BIT (1994)	22/09/1994	22/10/1994	In force
68.	Switzerland – Zambia BIT (1994)	03/08/1994	07/03/1995	In force
69.	Namibia – Switzerland BIT (1994)	01/08/1994	26/04/2000	In force
70.	Kazakhstan – Switzerland BIT (1994)	12/05/1994	13/05/1998	In force
71.	Gambia – Switzerland BIT (1993)	22/11/1993	30/03/1994	In force
72.	Switzerland – Venezuela BIT (1993)	18/11/1993	30/11/1994	In force
73.	Romania – Switzerland BIT (1993)	25/10/1993	30/07/1994	In force
74.	Honduras – Switzerland BIT (1993)	14/10/1993	31/08/1994	In force
75.	Belarus – Switzerland BIT (1993)	28/05/1993	13/07/1994	In force
76.	Switzerland – Uzbekistan BIT (1993)	16/04/1993	05/11/1993	In force
77.	Lithuania – Switzerland BIT (1992)	23/12/1992	14/05/1993	In force
78.	Latvia – Switzerland BIT (1992)	22/12/1992	16/04/1993	In force
79.	Estonia – Switzerland BIT (1992)	21/12/1992	18/08/1993	In force
80.	Albania – Switzerland BIT (1992)	22/09/1992	30/04/1993	In force
81.	Switzerland – Viet Nam BIT (1992)	03/07/1992	03/12/1992	In force
82.	Paraguay – Switzerland BIT (1992)	31/01/1992	28/09/1992	In force
83.	Peru – Switzerland BIT (1991)	22/11/1991	23/11/1993	In force
84.	Cape Verde – Switzerland BIT (1991)	28/10/1991	06/05/1992	In force
85.	Bulgaria – Switzerland BIT (1991)	28/10/1991	26/10/1993	In force
86.	Ghana – Switzerland BIT (1991)	08/10/1991	16/06/1993	In force
87.	Argentina – Switzerland BIT (1991)	12/04/1991	06/11/1992	In force
88.	Jamaica – Switzerland BIT (1990)	11/12/1990	21/11/1991	In force
89.	Russian Federation – Switzerland BIT (1990)	01/12/1990	26/08/1991	In force
90.	Czech Republic – Switzerland BIT (1990)	05/10/1990	07/08/1991	In force
91.	Slovakia – Switzerland BIT (1990)	05/10/1990	07/08/1991	In force
92.	Poland – Switzerland BIT (1989)	08/11/1989	18/04/1990	In force
93.	Switzerland – Uruguay BIT (1988)	07/10/1988	22/04/1991	In force
94.	Hungary – Switzerland BIT (1988)	05/10/1988	16/05/1989	In force
95.	Switzerland – Turkey BIT (1988)	03/03/1988	21/02/1990	In force
96.	Bolivia, Plurinational State of – Switzerland BIT (1987)	06/11/1987	17/05/1991	Terminated
97.	China – Switzerland BIT (1986)	12/11/1986	18/03/1987	Terminated
98.	Morocco – Switzerland BIT (1985)	17/12/1985	12/04/1991	In force
99.	Panama – Switzerland BIT (1983)	19/10/1983	22/08/1985	In force
100.	Sri Lanka – Switzerland BIT (1981)	23/09/1981	12/02/1982	In force
101.	Mali – Switzerland BIT (1978)	08/03/1978	08/12/1978	In force
102.	Singapore – Switzerland BIT (1978)	06/03/1978	03/05/1978	In force
103.	Malaysia – Switzerland BIT (1978)	01/03/1978	14/06/1978	In force
104.	Switzerland – Syrian Arab Republic BIT (1977)	22/06/1977	10/08/1978	Terminated
105.	Jordan – Switzerland BIT (1976)	11/11/1976	02/03/1977	Terminated
106.	Mauritania – Switzerland BIT (1976)	09/09/1976	30/05/1978	In force
107.	Indonesia – Switzerland BIT (1974)	06/06/1974	09/04/1976	Terminated
108.	Sudan – Switzerland BIT (1974)	17/02/1974	14/12/1974	In force
109.	Egypt – Switzerland BIT (1973)	25/07/1973	04/06/1974	Terminated
110.	Central African Republic – Switzerland BIT (1973)	28/02/1973	04/07/1973	In force
111.	Congo, Democratic Republic of the – Switzerland BIT (1972)	10/03/1972	10/05/1973	In force
112.	Switzerland – Uganda BIT (1971)	23/08/1971	08/05/1972	In force
113.	Korea – Switzerland BIT (1971)	07/04/1971	07/04/1971	Terminated
114.	Burkina Faso – Switzerland BIT (1969)	06/05/1969	15/09/1969	In force
115.	Ecuador – Switzerland BIT (1968)	02/05/1968	11/09/1969	Terminated
116.	Chad – Switzerland BIT (1967)	21/02/1967	31/10/1967	In force
117.	Benin – Switzerland BIT (1966)	20/04/1966	06/10/1973	In force
118.	Costa Rica – Switzerland BIT (1965)	01/09/1965	18/08/1966	Terminated
119.	Switzerland – United Republic of Tanzania BIT (1965)	03/05/1965	16/09/1965	Terminated
120.	Malta – Switzerland BIT (1965)	20/01/1965	23/02/1965	Terminated
121.	Madagascar – Switzerland BIT (1964)	17/03/1964	31/03/1966	Terminated
122.	Switzerland – Togo BIT (1964)	17/01/1964	09/08/1966	In force
123.	Liberia – Switzerland BIT (1963)	23/07/1963	22/09/1964	In force
124.	Cameroon – Switzerland BIT (1963)	28/01/1963	06/04/1964	In force
125.	Congo – Switzerland BIT (1962)	18/10/1962	11/07/1964	In force
126.	Senegal – Switzerland BIT (1962)	16/08/1962	13/08/1964	In force
127.	Côte d'Ivoire – Switzerland BIT (1962)	26/06/1962	18/11/1962	In force
128.	Guinea – Switzerland BIT (1962)	26/04/1962	29/07/1963	In force
129.	Niger – Switzerland BIT (1962)	28/03/1962	17/11/1962	In force
130.	Switzerland – Tunisia BIT (1961)	02/12/1961	19/01/1964	Terminated

Switzerland is also a party to several Free Trade Agreements (FTAs). As part of the European Free Trade Association (EFTA), Switzerland typically concludes its FTAs in collaboration with its partners Norway, Iceland, and Liechtenstein. Switzerland also has the option to negotiate FTAs independently of the EFTA framework. With the EU, Switzerland does not have a comprehensive agreement. Rather, it has a series of smaller agreements that have been built up over the years. The EU-Switzerland Free Trade Agreement of 1972 is the cornerstone of EU-Swiss trade relations. It concerns goods only and is one of the oldest trade agreements signed. It does not contain provisions on services, investment, intellectual property rights, government procurement or social and environmental values. This agreement has been supplemented by a series of bilateral

agreements, known as Bilaterals I and II, signed in 1999 and 2004, respectively, covering various sectors, including free movement of persons, technical barriers to trade, and public procurement. Overall, there are more than 100 bilateral agreements between Switzerland and the EU that facilitate trade and cooperation in different areas. Switzerland is also a party to the Energy Charter Treaty (signed on 17 December 1994 and entered into force on 16 April 1998). Below is an overview of all treaties facilitating investments to which Switzerland is a party as of February 2025:

Short Title	Signature	Entry Into Force	Status
EFTA – Thailand FTA (2025)	23 January 2025		Signed, not in force
EFTA – Kosovo FTA (2025)	22 January 2025		Signed, not in force
EFTA – India TEPA (2024)	10 March 2024		Signed, not in force
EFTA – Moldova FTA (2023)	27 June 2023		Signed, not in force
United Kingdom	11 February 2019	Continuity agreement based on the EU Trade Agreements; enhanced bilateral CH-UK negotiations currently ongoing	In force; enhanced agreement in negotiations
EFTA – Indonesia EPA (2018)	16 December 2018	1 November 2021	In force
EFTA – Turkey FTA (2018)	10 December 1991; modernised 25 June 2018	1 April 1992; modernised agreement 1 October 2021	In force
Ecuador – EFTA FTA (2018)	25 June 2018	1 November 2020	In force
EFTA – Georgia FTA (2016)	27 June 2016	1 May 2018	In force
EFTA – Philippines FTA (2016)	28 April 2016	1 June 2018	In force
China – Switzerland FTA (2013)	6 July 2013	1 July 2014, bilateral Switzerland – China	In force
Bosnia Herzegovina – EFTA FTA (2013)	24 June 2013	1 January 2015	In force
EFTA – Central American States FTA (2013)	24 June 2013	19 August 2014 (Panama and Costa Rica); 29 August 2014 (Liechtenstein and Switzerland)	In force
EFTA – Montenegro FTA (2011)	14 November 2011	1 September 2012	In force
EFTA – Hong Kong FTA (2011)	21 June 2011	1 October 2012	In force
EFTA – Ukraine FTA (2010)	24 June 2010	1 June 2012	In force
EFTA – Peru FTA (2010)	24 June 2010	1 July 2011	In force
EFTA – Albania FTA (2009)	17 December 2009	1 November 2010	In force
EFTA – Serbia FTA (2009)	17 December 2009	1 October 2010	In force
Cooperation Council for the Arab States of the Gulf (GCC) – EFTA FTA (2009)	22 June 2009	1 July 2014	In force
Japan – Switzerland FTEPA (2009)	19 February 2009	1 September 2009; bilateral CH-Japan	In force
Colombia – EFTA FTA (2008)	25 November 2008	1 July 2011	In force
Canada – EFTA FTA (2008)	26 January 2008	1 July 2009	In force
EFTA – Egypt FTA (2007)	27 January 2007	1 August 2007	In force
EFTA – SACU (South African Customs Union) FTA (2006)	26 June 2006	1 May 2008	In force
EFTA – Republic of Korea FTA (2005)	15 December 2005	1 September 2006	In force
EFTA – Tunisia FTA (2004)	17 December 2004	1 June 2005	In force
EFTA – Lebanon FTA (2004)	24 June 2004	1 January 2007	In force
Chile – EFTA FTA (2003)	26 June 2003	1 December 2004	In force
Algeria	12 December 2002 (Joint Declaration of Cooperation)		FTA negotiations on hold
EFTA – Singapore FTA (2002)	26 June 2002	1 January 2003	In force
EFTA – Vaduz Convention (revised)	21 June 2001	1 June 2002	In force
EFTA – Jordan FTA (2001)	21 June 2001	1 September 2002	In force
EFTA – Mexico FTA (2000)	27 November 2000	1 July 2001	In force
EFTA – North Macedonia FTA (2000)	19 June 2000	1 May 2002	In force
EFTA – Palestinian Authority Interim Agreement (1998)	30 November 1998	1 July 1999	In force
Canada Switzerland Cooperation Agreement	9 December 1997	9 December 1997; bilateral CH-Canada	In force
EFTA – Morocco FTA (1997)	19 June 1997	1 December 1999	In force
The Energy Charter Treaty (1994)	14 December 1994	16 April 1998	In force
Faroe Islands – Switzerland	17 September 1993	1 March 1995	In force
EFTA – Israel FTA (1992)	17 September 1992	1 January 1993	In force
European Community (EC)	22 July 1972	1 January 1973; bilateral CH-EC	In force
Rwanda – Switzerland TIA (1963)	15 October 1963	15 October 1963	In force
Customs union Russia-Belarus-Kazakhstan			Negotiation suspended
Vietnam			In negotiations
Malaysia			In negotiations
MERCOSUR (Argentina, Brazil, Paraguay, Uruguay)			In negotiations
The EFTA States have signed **Declarations on cooperation** with the following partners: Mongolia, Mauritius, Pakistan, Myanmar and Nigeria.			

a. Has your state exercised termination rights or indicated any intention to do so? If so, on what basis (e.g. impact of the *Achmea* decisions, political opposition to the Energy Charter Treaty, or other changes in policy)?

Switzerland has not exercised termination rights nor indicated any intention to do so regarding its BITs or FTAs. It has merely replaced some older BITs with updated agreements, often reflecting modern standards of investment protection and sustainable development goals. Some countries, such as South Africa, terminated

their BITs with Switzerland as part of broader shifts in their foreign investment policies. In addition, Swiss BITs with Bolivia, Ecuador, India and Malta were unilaterally denounced by those states in 2019, 2018, 2017, and 2005, respectively. The *Achmea* decision has had significant implications for BITs among EU member states but had no direct impact on Switzerland's BITs, as Switzerland is not an EU member (*see* Question 17).

b. Do any of the treaties reflect (i) changes in environmental and energy policies, (ii) the advent of emergent technology, (iii) the regulation of investment procured by corruption, and (iv) transparency of investor state proceedings (whether due to the operation of the Mauritius Convention or otherwise).

Switzerland is continuously developing its treaty practice. In doing so, it takes into account the treaty practice of other states and the jurisprudence of arbitral tribunals in the application of IIAs.

In 2012, a Federal Administration working group drafted new contractual provisions to reinforce the coherence between BITs and the objective of sustainable development. As a result, references to sustainable development, anti-corruption, human rights and corporate social responsibility standards have been added in the preamble of the BITs. A new BIT provision stipulates that international health, safety and environment (HSE) protection standards provided must not be lowered in order to create an incentive for investment. A further new BIT provision expressly confirms the right of contracting states to issue regulations in the public interest (e.g., HSE safeguards) while remaining bound to the general principles of the treaty, namely, non-discrimination and proportionality. The Georgia-Switzerland BIT, signed on 3 June 2014, was the first Swiss BIT to include these new provisions.

Switzerland's existing treaties and agreements do not fully reflect the advent of emergent technologies, but there are ongoing efforts to address this gap. Switzerland and the UK are negotiating a new Free Trade Agreement that is expected to cover digital trade and services. The agreement is significant for the financial sector, as both the UK and Switzerland are key financial centres in Europe. Improving services trade between the two countries will enhance mobility, data flows, and digital trade. Switzerland has also signed a Memorandum of Understanding with the UK on cooperation in research and innovation, which aims to focus on "*deep science*" and "*deep tech*", as well as commercialisation through innovation and policy and diplomacy in science and innovation.

In 2015, another working group within the Federal Administration was set up to address the revision of BITs. The Report of the Working Group, dated 7 March 2016, introduces new approaches to multiple substantive treaty standards. The most recent Indonesia-Switzerland BIT, signed on 24 May 2022, reflects the new negotiation approach. It provides specific provisions on the regulatory rights of states, corporate social responsibility and anti-corruption. The preamble contains references to sustainable development as well as health, safety, labour and the environment. It also provides for the right of the contracting parties to regulate in their respective territories in order to achieve legitimate public policy objectives, such as, among others, relating to the environment.

The BITs concluded by Switzerland only provide protection for investments that were lawfully made, i.e., they satisfy the legal requirements of the host state. Accordingly, investors who fail to comply with the law (e.g., in the case of corruption) cannot invoke investment protection. In all activities conducted at home and abroad, investors are also expected not only to fulfil their legal obligations but also to uphold internationally recognised standards of responsible corporate governance. Switzerland actively champions the drafting and promotion of such standards and cites these in its more recent BITs.

Switzerland was involved in the drafting and has ratified the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, also known as the "Mauritius Convention" or "UNCITRAL Rules on Transparency". Since 2014, Switzerland has been using a contractual provision for all BITs that stipulates the application of the UNCITRAL Rules on Transparency to all arbitration proceedings. The Georgia-Switzerland BIT is the first BIT (and the first BIT worldwide) to contain such a clause (Article 10(3)). The Indonesia-Switzerland BIT contains a provision regarding the transparency of arbitral proceedings without expressly providing for the application of the UNCITRAL Rules on Transparency (Article 16).

c. Does your jurisdiction publish any official guidelines, *notes verbales* or diplomatic notes concerning the interpretation of treaty provisions and other issues arising under the treaties?

The Swiss government does not publish official guidelines or *notes verbales* concerning the interpretation of investment treaties. However, as explained above, SECO actively engages in the negotiation and updating of BITs to reflect contemporary developments in investment protection and international law. To this end, the Swiss

government publishes reports of its working groups. In addition, as investment treaties must be submitted to the Swiss Parliament for approval and in the context of the approval process, the Swiss Federal Council provides explanatory notes to the Swiss Parliament, which are public. Such notes provide guidance as to the intended meaning of certain treaty provisions. From 1963 to 2004, the Swiss Federal Council could conclude BITs without Parliament's approval, so no public explanatory notes exist for prior BITs.

5. Does your home state have any legislation / instrument facilitating direct foreign investment. If so: a) Please list out any formal criteria imposed by such legislation / instrument (if any) concerning the admission and divestment of foreign investment; b) Please list out what substantive right(s) and protection(s) foreign investors enjoy under such legislation / instrument; c) Please list out what recourse (if any) a foreign investor has against the home state in respect of its rights under such legislation / instrument; and d) Does this legislation regulate the use of third-party funding and other non-conventional means of financing.

Switzerland does not have a specific law directly labelled as a "*foreign investment law*". However, several key instruments and frameworks support and encourage foreign investment. The current regime on foreign direct investment controls in Switzerland is liberal, with no general notification duty or approval requirement for foreign investments except in regulated sectors (e.g., banking, aviation, telecommunications). Foreign investors are treated the same as domestic investors under the principle of national treatment. Compared to other countries, Switzerland maintains relatively high levels of foreign direct investment. This can be seen in the ratio between the level of Swiss foreign direct investment and gross domestic product (GDP).

Recently, there has been some increased political pressure to establish a more structured legal framework for foreign investments. On 18 May 2022, the Federal Council began consulting on a bill to screen foreign direct investment in Switzerland. The draft bill has faced significant criticism, as the Swiss Federal Council acknowledged. Despite criticism, on 15 December 2023, the Federal Council adopted a draft Investment Screening Act. The proposed bill aims to prevent public order and security threats from foreign investors acquiring domestic companies.

The Federal Council assumes that the main threats to public order and security originate from investors under the direct or indirect control of a foreign state. The draft Investment Screening Act aims to regulate foreign state-controlled takeovers of Swiss companies in critical sectors to safeguard public order and security. Such investments must be reported and approved by the Federal Administration or the Federal Council. The Economic Affairs and Taxation Committee of the National Council supports the draft bill but suggests extending its application to include both state and non-state foreign investors. The Swiss Council of States rejected the adoption of the draft bill in November 2024, unlike the National Council, which had largely supported the project. The Council of States will probably decide during the spring session of 2025.

Switzerland also has a wide network of double taxation agreements with over 100 countries, which help avoid double taxation on income and capital for foreign investors. In the financial sector, foreign investors benefit from a transparent regulatory environment overseen by the Swiss Financial Market Supervision Authority (FINMA), which facilitates the entry and operation of banks, insurance companies, and financial intermediaries. This regulatory clarity, combined with Switzerland's strategic trade and investment agreements, positions the country as an attractive destination for foreign investors seeking stable and predictable investment conditions.

If so:

a. Please list out any formal criteria imposed by such legislation / instrument (if any) concerning the admission and divestment of foreign investment;

There is currently no general foreign investment control regime in Switzerland. Foreign investment control currently only applies to certain industries/sectors, particularly real estate, telecommunications, nuclear energy, aviation and banking/securities. In these sectors, prior government approval may be required.

Foreign investors must comply with Swiss corporate laws, such as the Swiss Code of Obligations (CO), when setting up businesses. Requirements include business registration, compliance with tax obligations, and adherence to labour laws. Switzerland offers one of the most business-friendly environments globally, including quick company registration processes and liberal labour laws, with flexible hiring and employment practices.

There are certain restrictions in specific sectors:

- Real Estate: foreign investment in residential real estate is regulated by the Federal Law on the Acquisition of Real Estate by Persons Abroad (Lex Koller). Investors must obtain authorisation to acquire certain types of real estate.
- Defence and Security: investments in sensitive industries like defence or critical infrastructure may be subject to additional scrutiny.
- Banking & Finance: restrictions imposed by the Federal Banking Act (Swiss Banking Act) and Federal Act on Financial Institutions.
- Residence and Work Permits: foreign investors establishing a business and residing in Switzerland may need permits under the Federal Act on Foreign Nationals and Integration.

Switzerland imposes no specific requirements or restrictions on divestment for most sectors, allowing investors to freely repatriate capital and profits. Divestment transactions must comply with Swiss tax laws. Capital gains and other revenues are subject to the applicable tax regime, depending on the investor's structure. In regulated sectors (e.g., banking, insurance, telecommunications), divestments may require notification or approval from the relevant regulatory authority.

b. Please list out what substantive right(s) and protection(s) foreign investors enjoy under such legislation / instrument;

Even though Switzerland does not have a foreign investment law, foreign investors enjoy broad substantive rights and protections that make the country an attractive destination for investment, in addition to the rights enshrined in BITs and other international treaties.

c. Please list out what recourse (if any) a foreign investor has against the home state in respect of its rights under such legislation / instrument; and

Switzerland does not have an investment law. In the absence of BITs or other investment treaties, foreign investors may pursue domestic legal remedies before highly trusted Swiss courts. Investors can challenge administrative decisions through Swiss courts; for disputes arising from contractual relationships or other civil matters, investors may initiate proceedings in Swiss civil courts. The Swiss Federal Constitution provides legal remedies to all individuals and businesses (including foreign investors) whose rights are violated (*see* Articles 9 and 29).

d. Does this legislation regulate the use of third-party funding and other non-conventional means of financing.

Switzerland does not have specific legislation regulating third-party funding (TPF) in litigation or arbitration. However, the Swiss Supreme Court (SFSC) has affirmed the permissibility of TPF in a landmark decision issued in 2004, provided that the funder acts independently of the client's lawyer (BGE 131 I 223). In 2015, the court expressly confirmed this decision, noting that TPF has become common practice in Switzerland (2C_814/2014, para. 4.3.1). Despite the lack of specific regulation, TPF has become an accepted practice in Switzerland, with a growing number of funders operating in the market. The Swiss legal community recognises the role of TPF in facilitating access to justice, particularly in complex or costly cases.

6. Has your home state appeared as a respondent in any investment treaty arbitrations? If so, please outline any notable practices adopted by your state in such proceedings (e.g. participation in proceedings, jurisdictional challenges, preliminary applications / objections, approach to awards rendered against it, etc.)

Switzerland has rarely appeared as a respondent in publicly known investment treaty arbitration cases. This minimal exposure to ISDS claims reflects Switzerland's reputation as a stable and investor-friendly jurisdiction. There has been only one publicly known ICSID arbitration against Switzerland, *Human Rights Defenders Inc. v. Swiss Confederation* (ICSID Case No. ARB/20/29), based on the Hungary-Switzerland BIT. The proceedings were initiated by Human Rights Defenders Inc., as assignee of Mr. Natale Palazzo, Mr. Rodolfo Scodeller and Mr. Antonio Basile. The Claimant argued that actions by the Swiss government violated international investment treaties by undermining their ability to protect and advocate for human rights. The investors claimed Switzerland's measures breached protections for their investments in advocacy and awareness activities. The government justified its actions as necessary regulatory measures within its sovereign rights, including concerns about national security, public order, or compliance with international obligations. On 18 January 2022, the tribunal ordered the discontinuance of the proceedings pursuant to ICSID Administrative and Financial Regulation 14(3)(d) due to non-payment of the first advance on costs.

So far, no investment arbitration decision has been rendered against Switzerland. However, to date, more than 50 cases have been initiated by Swiss investors under BITs or other treaties concluded by Switzerland.

7. Has jurisdiction been used to seat non-ICSID investment treaty proceedings? If so, please provide details.

Switzerland is one of the leading seats for non-ICSID investment arbitration due to its neutral stance, well-established legal framework, and supportive arbitration laws. Switzerland is politically neutral and economically stable, which makes it an attractive choice for parties from different jurisdictions. While the precise number of arbitrations seated in Switzerland is unknown due to confidentiality provisions, some notable cases include:

- *Yukos Capital SARL v. The Russian Federation* (PCA Case No. 2013-31)
- *Deutsche Telekom AG v. The Republic of India* (PCA Case No. 2014-10)
- *AES Solar and others (PV Investors) The Kingdom of Spain* (PCA Case No. 2012-14)
- *Clorox Spain S.L. v. Bolivarian Republic of Venezuela* (PCA Case No. 2015-30)
- *MOL Hungarian Oil and Gas PLC. v. the Republic of Croatia* (PCA Case No. 2023-09)
- *PJSC Gazprom v. Ukraine* (PCA Case No. 2019-10)

Other, more recent investment arbitrations seated in Switzerland include the four *Zeph Investments Pte Ltd v. Commonwealth of Australia (I-IV)* cases (PCA Cases Nos. 2023-40; 2023-67; 2024-23, 2024-48), *Vedanta Resources Limited (United Kingdom) v. The Republic of India* (PCA Case No. 2024-43) and *OJSC Belaruskali v. The Republic of Lithuania* (PCA Case No. 2024-03).

8. Please set out (i) the interim and / or preliminary measures available in your jurisdiction in support of investment treaty proceedings, and (ii) the court practice in granting such measures.

In Switzerland, interim or preliminary measures in support of arbitration are available under the PILA and the Swiss Civil Procedure Code (CPC). Swiss courts can grant interim measures in support of arbitration, either before the constitution of the arbitral tribunal or when the tribunal lacks the power to act swiftly. The state courts' power to grant interim measures cannot be limited by the agreement of the parties (contrary to that of arbitral tribunals, although rarely applied in practice). Unlike arbitral tribunals, Swiss state courts can directly enforce their orders (at least within the Swiss territory).

Under Article 262 CPC, Swiss courts can order various types of interim measures to prevent "*imminent harm*", including (a) an injunction; (b) an order to remedy an unlawful situation; (c) an order to a register authority or to a third party; (d) performance in kind; and (e) the payment of a sum of money in the cases provided by the law. The list is non-exhaustive. In addition, Swiss courts can also complete the interim measures with a threat of criminal penalty in accordance with Article 292 of the Swiss Criminal Code (CP).

Article 183 PILA governs interim measures in international arbitrations. Article 183(1) PILA authorises tribunals to grant interim measures unless the parties have agreed otherwise. The Swiss Federal Tribunal has considered that the measures that an arbitral tribunal can order based on Article 183 PILA can be of the same categories as the ones ordered by Swiss judges (ATF 136 III 200). If necessary, a party can request the state court's assistance to enforce such measures (Article 183(2) PILA). Article 183 applies to all international arbitrations seated in Switzerland, regardless of the specific arbitration rules (e.g., UNCITRAL, Swiss Rules) being used, unless the parties have explicitly excluded it. In accordance with the principle of parallel jurisdiction, parties may apply for interim measures either to arbitral tribunals or to Swiss state courts. Swiss state courts can order interim measures before the constitution of arbitral tribunals, but they remain empowered to order such measures once the arbitration has started and a tribunal is constituted. Assistance from state courts will be available even if the arbitration is seated outside of Switzerland, according to Article 185a PILA, which was introduced in the 2021 revision. The introduction of Article 185a(1) PILA is an important novelty in Swiss arbitration legislation as it considerably facilitates the enforcement of interim measures granted by non-Swiss-seated arbitral tribunals in Switzerland. Another novelty introduced is the possibility for the parties (and not only the arbitral tribunal) to request the assistance of local Swiss courts for the enforcement of interim measures granted by a Swiss-seated arbitral tribunal (Article 183(2) PILA). Before the 2021 revision, only arbitral tribunals could make such a request.

9. Please set out any default procedures applicable to appointment of arbitrators and also the Court's practice of invoking such procedures particularly in the context of investment treaty arbitrations seated in your home state.

The appointment of arbitrators is usually governed by the applicable treaty and/or the applicable arbitration rules (ICSID Rules, UNCITRAL Rules, etc.). In the absence of such rules, the appointment of arbitrators is governed by

Chapter 12 of PILA. If the parties have not agreed on the number of arbitrators, the tribunal is composed of three arbitrators by default (Article 179(1) PILA). If the parties' chosen method for selecting arbitrators fails, the state courts can be seized to appoint arbitrators (Article 179(2) PILA). If a state court is called upon to appoint or replace an arbitrator, it shall grant such request unless a summary examination shows that no arbitration agreement exists between the parties (Article 179(3) PILA). At the request of a party, the state court shall take the necessary action to constitute the arbitral tribunal if the parties or arbitrators fail to fulfil their obligations within 30 days of being called upon to do so (Article 179(4) PILA). The state court may appoint all arbitrators in the case of multi-party arbitration (Article 179(5) PILA).

10. In the context of awards issued in non-ICSID investment treaty arbitrations seated in your jurisdiction, please set out (i) the grounds available in your jurisdiction on which such awards can be annulled or set aside, and (ii) the court practice in applying these grounds.

In Switzerland, the annulment or setting aside of arbitral awards, including those issued in non-ICSID investment treaty arbitrations, is governed by Chapter 12 of PILA. Article 190(2) of PILA specifies the grounds on which an award can be set aside:

a. where the sole member of the arbitral tribunal was improperly appointed, or the arbitral tribunal improperly constituted;
b. where the arbitral tribunal wrongly accepted or declined jurisdiction;
c. where the arbitral tribunal ruled beyond the claims submitted to it or failed to decide one of the claims;
d. where the principle of equal treatment of the parties or their right to be heard in an adversary procedure was violated;
e. where the award is incompatible with public policy.

The SFSC interprets the grounds for annulment restrictively, focusing on procedural fairness rather than re-examining the merits of the case. This approach ensures that arbitral awards are not easily overturned, preserving their finality. An analysis conducted by Dasser and Wójtowicz between 1989 and 2021 found that only 7.65% of applications to set aside awards that the SFSC heard led to the successful annulment of the awards in question. Some notable Court decisions include:

- ***Croatia v. MOL Group*** *(2022)*: following the unfavourable outcome in an UNCITRAL case, Croatia sought to annul the UNCITRAL arbitration award before Swiss courts, as the seat of the arbitration was in Geneva, Switzerland. The SFSC dismissed Croatia's request to revoke the arbitration ruling on 17 October 2017 (4A_53/2017). Croatia then submitted a request for revision of the UNCITRAL award. In its decision on 23 September 2022 (4A_69/2022), the SFSC examined whether a broadly formulated waiver of appeal in the arbitration agreement could exclude the possibility of seeking a revision of the arbitral award. The Court concluded that such a waiver could indeed preclude the remedy of revision, thereby rejecting Croatia's request.
- ***EDF Energies Nouvelles S.A. v. Kingdom of Spain***: in a judgment dated 3 April 2024, the SFSC upheld an arbitral award under the ECT, dismissing Spain's application for annulment (4A_244/2023).
- ***Republic of Poland v. Saar Papier Vertriebs GmbH***: the SFSC examined whether the dispute resolution clause in a BIT qualified as an arbitration agreement under Chapter 12 of the PILA. This question arose because the investor claimant was not a direct party to the Germany-Poland BIT in question. The Court determined that the BIT could be treated as a contract for the benefit of a third party, effectively constituting an offer to arbitrate, which the investor accepted by initiating arbitration proceedings. However, the Court did not specify which acts by the parties formed the arbitration agreement, as Poland did not contest the applicability of the arbitration clause to the investor and did not object to participating in the arbitration. The Court ruled that Chapter 12 of the PILA applied because the arbitration was seated in Zurich, neither party was domiciled in Switzerland, and the parties had not explicitly excluded the application of the PILA in writing. It further clarified that the arbitrability of a dispute under an investment treaty is not affected by one party being a state. The Court also addressed whether a misinterpretation of the applicable law could breach public policy. It reiterated its established position that only an error so severe as to violate a fundamental legal principle could constitute a breach of public policy. Additionally, the Court reaffirmed that claims regarding a tribunal's violation of a party's right to be heard could only be considered if the party raised the issue promptly during the arbitration proceedings (4P.200/2001/rnd).
- ***Czech Republic v. Saluka*** (PCA Case No. 2001-04): in a challenge of a partial award, the SFSC again assessed whether the dispute resolution clause in the BIT qualified as an arbitration agreement under Chapter 12 of the PILA. Similar to its decision in *Republic of Poland v. Saar Papier*, the Court determined that the dispute resolution provision in a

BIT could qualify as an arbitration agreement under Chapter 12 of the PILA, even though the investor was not a direct party to the BIT. The Court also confirmed that the arbitrability of a BIT dispute is not compromised by the involvement of a state as one of the parties (114/2006 /bie).

- ***Republic of Lebanon v. France Telecom Mobiles International SA & FTLM SAL***: in the challenge of an investment arbitration seated in Geneva, the SFSC held that one of the clauses in the arbitration agreement between the parties constituted a valid waiver of the right to challenge the arbitral tribunal's jurisdiction (98/2005/svc).
- ***Recofi SA v. Vietnam*** (PCA Case No. 2014-14): the SFSC upheld the decision of a Geneva-seated UNCITRAL tribunal to decline jurisdiction over a French investor's claims against Vietnam. Recofi sought to annul the jurisdictional award under Article 190(2)(b) and (d) of the PILA, arguing that the tribunal had erred in its interpretation of the concept of a protected investment under the France-Vietnam BIT and had violated its right to be heard by misapplying the burden of proof. The Court dismissed both arguments, finding that the concept of investment was subject to debate and that the tribunal had appropriately interpreted it in accordance with the France-Vietnam BIT and the principles of treaty interpretation (4A_616/2015).
- In the setting-aside proceedings in ***Russian Federation v. Yukos Capital Limited*** (PCA Case No. 2013-31), the longest decision ever published in Swiss setting-aside proceedings, the Court clarified various aspects of Swiss procedural law and public international law (4A_494/2021).
- The only successful partial annulment of an investment award seated in Switzerland was of the arbitral award issued in ***Clorox Spain S.L. v. Venezuela*** (PCA Case No. 2015-30). In its 2020 decision, the SFSC overruled the arbitral tribunal's findings that there was no investment under the BIT due to Clorox's lack of active asset investment (4A_306/2019). Subsequently, the arbitral tribunal issued a new jurisdictional award on 17 June 2021, affirming its jurisdiction with a majority vote despite dissent from Venezuela's appointed arbitrator, Raúl Vinuesa. Venezuela challenged this award before the SFSC, which rejected the set-aside action in a decision dated 20 May 2022. The SFSC ruled that Venezuela failed to demonstrate the restructuring that led to Clorox's protection under the BIT was abusive, noting that the dispute was not foreseeable at the time of the restructuring (4A_398/2021). Venezuela also sought to set aside the arbitral tribunal's Final Award based on public policy grounds. The SFSC rejected this application, upholding the validity and enforceability of the Final Award (4A_486/2023).

Challenges based on public policy are rare and succeed only in cases involving fundamental principles of justice, such as fraud or corruption. The SFSC has confirmed that only the outcome of an award, not the tribunal's legal reasoning, can justify annulment for violating public policy. The SFSC respects the autonomy of arbitral tribunals and intervenes only when a clear violation of the grounds under Article 190 of the PILA is demonstrated.

11. In the context of ICSID awards, please set out: (i) the grounds available in your jurisdiction on which such awards can be challenged and (ii) the court practice in applying these grounds.

Swiss courts do not have the authority to annul or set aside ICSID awards because they are governed by the ICSID Convention, which establishes a self-contained and autonomous regime for annulment. As provided in Article 53 of the ICSID Convention, the award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in the ICSID Convention. Awards can only be annulled through an internal process administered by an ICSID annulment committee (Article 52 of the ICSID Convention). Article 54 further specifies that each Contracting State shall recognise an award as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that state. Therefore, Switzerland shall recognise ICSID awards as binding and enforce the pecuniary obligations imposed by them within its territories as if the awards were final judgments rendered by Swiss courts. Swiss courts have, consequently, no power to review an ICSID award, but can only be involved in the enforcement process.

The SFSC has consistently held that its role is confined to verifying the authenticity of the award and does not extend to substantive review (5A_406/2022). Another recent decision was the challenge of an ICSID award in *AsiaPhos and Norwest v. China* (ICSID Case No. ADM/21/1). In a decision issued on 11 January 2024 (4A-172/2023), the SFSC confirmed the ICSID decision upholding China's objection regarding the tribunal's jurisdiction.

12. To what extent can sovereign immunity (from suit and/or execution) be invoked in your jurisdiction in the context of enforcement of

investment treaty awards.

There is no specific legislation concerning sovereign immunity in Switzerland. The issue is governed by case law, primarily of the SFSC, and international treaties to which Switzerland is a party (the 1972 European Convention on State Immunity, the 1972 Additional Protocol, the 2004 UN Convention on Jurisdictional Immunities of States and Their Property (not yet in force as of January 2025)). Switzerland has notified its intention to denounce the 1972 European Convention once the UN Convention enters into force.

Switzerland has adopted a restrictive concept of state immunity. The SFSC has clarified the conditions under which a foreign state can be summoned before a Swiss court (immunity from jurisdiction). It has also clarified when Switzerland is entitled to take compulsory measures against a foreign state (immunity from execution). The SFSC has adopted the distinction between actions a foreign state performs while exercising state authority (*acta iure imperii*) and actions performed in a private capacity as a private person (*acta iure gestionis*). A state may invoke immunity from legal jurisdiction only for actions performed while exercising state authority.

In principle, by entering into an arbitration agreement, a state waives its right to invoke its immunity from jurisdiction vis-à-vis both the arbitral tribunal and the local courts competent to exercise judicial review and supervisory powers over the arbitral proceedings. For ICSID cases, the question of immunity from jurisdiction does not arise since the state has agreed to the exclusive jurisdiction of ICSID and is deemed to have waived any immunity from jurisdiction.

According to the majority of legal doctrine, entering into an arbitration agreement implies a waiver of the state's immunity from jurisdiction, but legal doctrine is more divided on whether it also implies a waiver of its immunity from enforcement. The most likely position is that it does not, absent other conclusive acts.

Swiss courts have imposed three requirements for lack of immunity from enforcement (ATF 134 III 122), namely:

- the foreign state must have acted in a private capacity (*de iure gestionis*);
- there has to be a connection between the transaction out of which the claim against the foreign state arises and Switzerland (in German: "*Binnenbeziehung*"; in French "*rattachement suffisant*"); albeit criticised by scholars, this requirement has been consistently confirmed by the SFSC (ATF 144 III 411; ATF 5A_406/2022; ATF 5A_469/2022). The court determined that simply having assets in Switzerland does not establish a sufficient connection (ATF 5A_261/2009; ATF 5A_469/2022). The fact that the tribunal was seated in Switzerland also does not create such a close connection to Switzerland; and
- the assets targeted by the enforcement measures must not be assigned to tasks which are part of the foreign state's duty as a public authority, which are excluded from enforcement proceedings under Article 92(1) of the Debt Collection and Bankruptcy Act (ATF 5A_681/2011).

13. Please outline the grounds on which recognition and enforcement of ICSID awards can be resisted under any relevant legislation or case law. Please also set out any notable examples of how such grounds have been applied in practice.

As a contracting state to the ICSID Convention, Switzerland is obliged to recognise and enforce ICSID awards under Article 54 of the Convention. Under Article 55 of the ICSID Convention, the enforcement of an ICSID award is subject to the national laws on state immunity of the state where enforcement is sought (*see* previous question). In Switzerland, the enforcement of ICSID awards is conducted through debt enforcement proceedings, excluding any cantonal exequatur procedures.

While Article 54(1) of the ICSID Convention precludes a state from invoking jurisdictional immunity in recognition proceedings, Article 55 allows states to invoke immunity from execution concerning specific assets. Although not explicitly mentioned in the ICSID Convention, Swiss courts may consider public policy as a ground for resisting enforcement, similar to the provisions under the New York Convention for non-ICSID awards.

A recent decision is the enforcement of an ICSID award from the case *OperaFund and Schwab Holding v. Spain* (ICSID Case No. ARB/15/36). In its ruling issued on 17 March 2023, the SFSC confirmed that a creditor does not have to obtain a prior or separate exequatur decision when requesting the attachment of assets based on an ICSID award (Article 271(1)(6) Debt Collection and Bankruptcy Act). In accordance with Article 54(2) of the ICSID Convention, the creditor only needs to submit a copy of the ICSID award certified by the Secretary-General of ICSID. While Swiss courts may verify the authenticity of the ICSID award, they may not review the award in light of the general recognition requirements (ATF 5A_406/2022). The SFSC upheld a cantonal court's

decision to deny attaching assets in Switzerland, allegedly owned by Spain, in aid of enforcement of an ICSID award. The court noted that the same rules apply for enforcement against foreign state assets based on an ICSID arbitral award.

It also found that in the case, the investor could not demonstrate a sufficient nexus between the legal relationship and Switzerland. This decision is also significant because it is the first time the Court has confirmed the requirement of a nexus with Switzerland (*see* Question 12 above).

14. Please outline the practice in your jurisdiction, as requested in the above question, but in relation to non-ICSID investment treaty awards.

The recognition and enforcement of non-ICSID arbitral awards in Switzerland is governed by the PILA and the New York Convention. According to Article 194 of the PILA, Swiss courts can only refuse recognition and enforcement based on the specific grounds outlined in Article V of the New York Convention, as noted in 4A_508/2010. These grounds are interpreted restrictively by the Swiss courts. Swiss Courts have the discretion to grant enforcement and recognition, even if one of the grounds is established (5A_1046/2019).

The New York Convention provides for limited grounds for refusing enforcement, such as issues related to public policy, arbitrability, and procedural fairness:

- **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.
- **Violation of Due Process (Art. V(1)(b))**: recognition and enforcement may be refused if 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))**: if the award addresses matters not contemplated by or beyond the scope of the arbitration agreement, enforcement may be resisted.
- **Irregularities in Arbitral Procedure (Art. V(1)(d))**: if the arbitration procedure was not conducted in accordance with the parties' agreement or the rules of the arbitral institution, enforcement may be denied. Similarly to the New York Convention, Swiss law allows for refusal of enforcement based on procedural irregularities, such as lack of proper notice or inability to present one's case during arbitration.
- **Award Not Binding or Annulled (Art. V(1)(e))**: enforcement can be resisted if the award is not yet binding or has been set aside by the competent authority in the country where the award was issued.
- **Public Policy (Art. V(2)(b))**: Swiss courts may refuse enforcement of a non-ICSID award if it is contrary to Swiss public policy. This is a high threshold and is applied restrictively, focusing on fundamental principles of Swiss law. It is generally the responsibility of the competent authority to raise this issue on its own initiative as set out in SFSC Decision 4A_233/2010 of 28 July 2010.

In the past, enforcement has been denied in only a limited number of cases, indicating an arbitration-supportive approach. A notable case includes the decision in case **5A_335/2021**, in which the SFSC denied enforcement of an award that ordered two claimants to pay party compensation but failed to specify joint and several liability. The Court emphasised that enforcement courts cannot interpret ambiguous awards to infer obligations. Since the award did not explicitly state joint liability, it was deemed unenforceable due to insufficient clarity in the payment obligation.

15. To what extent does your jurisdiction permit awards against states to be enforced against state-owned assets or the assets of state-owned or state-linked entities?

In Switzerland, the enforcement of arbitral awards against state-owned assets or the assets of state-owned or state-linked entities is subject to strict legal principles grounded in sovereign immunity and the distinction between sovereign (*acta jure imperii*) and commercial (*acta jure gestionis*) activities.

Swiss courts permit the enforcement of awards against states under specific conditions. A key requirement is the "*sufficient domestic connection*" between the legal relationship underlying the claim and Switzerland. This means that the obligation from which the claim arises must have been established or performed in Switzerland, or the foreign state must have undertaken acts in Switzerland that establish it as the place of performance.

In one SFSC decision from 2018 (5A_942/2017), the Court dealt with the issue of state immunity in the context of the enforcement of an arbitral award and the relationship between Swiss procedural law and the New York Convention. It found that state immunity prevents the enforcement of an arbitral award against a foreign state if there is no sufficient connection between the claim and

Switzerland and that this situation does not conflict with Switzerland's obligations under the New York Convention.

Swiss courts carefully differentiate between a state and its state-owned entities. State-owned entities that are separate legal entities and conduct commercial activities may not benefit from the state's sovereign immunity.

Swiss courts may permit enforcement against assets of state-owned entities or state-linked entities if:

- The entity is not legally or functionally distinct from the state.
- The entity acts as an alter ego of the state, used to shield state assets from enforcement.
- The targeted assets are directly connected to the underlying arbitration award or dispute.

In cases involving state-owned enterprises, Swiss courts have required detailed evidence of (1) ownership or control by the state; (2) the nature and use of the assets (sovereign vs. commercial). For example, in cases involving airlines, oil companies, or national banks, Swiss courts have evaluated whether the entity operates independently or as an extension of the state. Specific categories of assets are protected by immunity, such as diplomatic and military assets, which are protected by absolute sovereign immunity. Central bank reserves are also highly protected under customary international law and Swiss practice. Commercial bank accounts are subject to enforcement if the accounts are demonstrably used for commercial transactions. Assets of state-owned enterprises engaging in commercial activities are generally not immune from enforcement.

16. Please highlight any recent trends, legal, political or otherwise, that might affect your jurisdiction's use of arbitration generally or ISDS specifically.

Legal Reforms and Modernization: in 2021, Switzerland implemented updates to its international arbitration framework, enhancing clarity and efficiency in arbitration proceedings. On 1 January 2021, the revised version of Chapter 12 of the PILA entered into force. The revised act expanded the PILA from 19 to 24 provisions, although it retained its conciseness and maintained its key features. As of 1 January 2023, Switzerland has implemented new legal provisions and rules facilitating the arbitration of corporate law disputes. The revised Swiss CO now includes Article 697n, which permits Swiss companies—such as corporations, limited partnerships, and limited liability companies—to incorporate arbitration clauses into their articles of association. This allows internal corporate disputes to be resolved through arbitration rather than traditional court litigation.

Trends in Arbitration Practice: the Swiss Arbitration Centre reported a rise in new cases in 2023, with significant activity in sectors like manufacturing, commodities, and finance. There is a growing preference for expedited arbitration procedures, reflecting parties' desire for swift dispute resolution. Switzerland is also reported to be among the most favoured seats for international arbitration. In 2023, the ICC reported that Geneva ranked among the top five preferred arbitration seats globally.

Political and Economic Context: following the government-facilitated takeover of Credit Suisse by UBS in March 2023, bondholders have initiated legal actions against Switzerland, alleging violations of property rights due to the write-down of AT1 bonds. Law firms and litigation funders are actively organising collective actions on behalf of affected bondholders. Withersworldwide is leading a collective investor treaty arbitration action exclusively targeting international investment treaty remedies against the Swiss Confederation, emphasising that there is no contemplated action against UBS or Credit Suisse themselves. Omni Bridgeway, a third-party litigation funder, is working on a proposed investor-state group action by holders of Credit Suisse AT1 bonds against the Swiss Confederation to claim compensation for the losses incurred due to the merger. U.S. asset manager AllianceBernstein indicated it planned to sue Switzerland for USD 225 million following the erasure of USD 17 billion of Credit Suisse's debt after UBS's takeover. This lawsuit adds AllianceBernstein as a plaintiff in a case already brought by the law firm Quinn Emanuel Urquhart & Sullivan on behalf of Credit Suisse bondholders. The amended complaint, filed in a New York court, now includes 39 plaintiffs and seeks over USD 370 million in total damages. Notable new plaintiffs include AllianceBernstein and a subsidiary of Japan's Nomura. The lawsuit contends that Swiss authorities favoured UBS's terms during the acquisition, bypassing other potential buyers and violating investors' rights by wiping out the AT1 bonds. In response, the Swiss government has filed a motion to dismiss the lawsuit, citing sovereign immunity and arguing that the case should be adjudicated in Swiss courts. A decision on this motion is pending, and the legal proceedings are ongoing.

17. Please highlight any other investment treaty

related developments in your jurisdiction to the extent not covered above (for e.g., impact of the Achmea decisions, decisions concerning treaty interpretation, appointment of and challenges to arbitrators, immunity of arbitrators, third-party funding and other non-conventional means of financing such proceedings).

***Achmea* Decisions**: Swiss courts have addressed the Court of Justice of the European Union (CJEU) 2018 *Achmea* decision, which invalidated intra-EU BIT arbitration clauses. In a landmark decision of 3 April 2024 (4A_244/2023), the SFSC upheld an arbitration agreement between an EU investor and an EU member state, rejecting the *Achmea* and *Komstroy* doctrines. The Court emphasized that CJEU decisions do not bind Swiss courts, reaffirming Switzerland's commitment to honouring arbitration agreements irrespective of EU jurisprudence. According to the Court, the decisions issued by the CJEU, including the *Komstroy* ruling, are not binding on state courts adjudicating annulment requests against awards made by arbitral tribunals seated in Switzerland. The SFSC proceeded with its own interpretation of Article 26 of the ECT, stating that it must be interpreted in good faith, consistent with the ordinary meaning of the treaty terms within their context, its object, and purpose, and the principle of good faith, though not expressly mentioned in Article 31 of the Vienna Convention.

Furthermore, the SFSC dismissed Spain's argument regarding the relevance of the Declaration by 22 EU member states dated 15 January 2019 concerning the legal consequences of the *Achmea* judgment and investment protection. The SFSC noted that the Declaration was not formulated by all contracting parties to the ECT but solely by certain EU member states. Thus, the Declaration could not be considered a subsequent agreement between the parties under Article 31 of the Vienna Convention. Upon closer examination, the Declaration aimed to clarify the legal consequences of the *Achmea* ruling rather than interpret the provisions of the ECT. Consequently, the SFSC held that Article 26 of the ECT, which provides for investor-State arbitration, is neither superseded nor modified by EU law, allowing intra-EU disputes to still be submitted to arbitration.

Immunity or Liability of Arbitrators: Swiss law does not explicitly regulate the immunity or liability of arbitrators. It is widely accepted, however, that any liability of arbitrators for breaching their duty of care should be limited to cases of gross negligence or intentional misconduct, as reflected in the exclusion of liability in Article 45 of the Swiss Rules of International Arbitration. Arbitrators' liability is also often excluded or limited by the applicable arbitration rules. Such exclusion or limitation of liability clauses are usually valid under Swiss law, except in cases of gross negligence or wilful misconduct. This is in line with Article 100(1) of the Swiss CO, which permits the exclusion of liability except for acts involving gross negligence or intentional misconduct.

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