

SWITZERLAND

LEGAL BASIS

1. Has your State signed and/or ratified the *European Convention on State Immunity (1972)* and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)*? Do the authorities of your State consider the provisions on these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?

Switzerland signed the *European Convention on State Immunity* on 16 May 1972 and ratified it on 6 July 1982. Switzerland signed the *United Nations Convention on Jurisdictional Immunities of States and Their Property* on 19 September 2006 and ratified it on 16 April 2010. Switzerland regards Article 16 of the *European Convention* as customary law. When Switzerland serves documents on a foreign State through diplomatic channels, the Swiss embassy regularly alludes to the fact that in conformity with international practice, the time-limits mentioned in the documents begin to run two months after the date of receipt of the documents by the Ministry of Foreign Affairs.

With regard to the *United Nations Convention on Jurisdictional Immunities of States and Their Property*, Switzerland is of the view that the Convention, in principle, codifies current customary law. With regard to the provisions on service of process in particular, Switzerland considers Article 22 of the *United Nations Convention* to reflect customary international law. Article 23, on the other hand, concerns default judgments against a State. According to Article 23, in order for a court to render a judgment by default, a period of not less than four months must have expired from the date on which service of the document instituting a proceeding has been effected. Switzerland is of the opinion that it is legitimate that the Convention allows enough time for a State to reply to a lawsuit filed against it; four months from the date of receipt seems reasonable and even desirable but is not considered as a codification of customary law.

Other legal instruments applicable to the service of process on a foreign State may be two Hague Conventions: the *1965 Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters* as well as art. 1 - art. 7 of the *1954 Convention on civil procedure*.

2. Please provide information on:

a. National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).

Switzerland is a monist country. Once approved by Switzerland, an international legal norm (e.g. from an international treaty as well as from customary law) becomes an integral part of Swiss law. In contrast to what would happen in a dualist system, there is no need to pass additional legislation, for example a specific act of parliament, for an international legal instrument to become part of Swiss law (for more details see *La relation entre droit international et droit interne, Rapport du Conseil fédéral du 5 mars 2010*, Feuille fédérale 2010 p. 2067, in particular p. 2102-2106, <https://www.fedlex.admin.ch/eli/fqa/2010/383/fr>).

In principle, national procedural law applicable to civil and commercial proceedings also applies to civil and commercial disputes involving a State as a party. For instance, according to Article 140 Swiss Civil Procedure Code (<http://www.admin.ch/opc/en/classified-compilation/20061121/index.html>; unofficial translation) the court may instruct parties with domicile or registered office abroad to provide a domicile for service in Switzerland. Switzerland considers a foreign State to be a party with domicile abroad.

Similarly, according to Article 33 paragraph 2 Swiss Insolvency Law (<http://www.admin.ch/opc/fr/classified-compilation/18890002/index.html>) it is possible to extend the time-limits that usually apply in insolvency cases if the party to the proceedings is domiciled abroad.

b. Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.

The lawfulness of the service of the documents instituting the proceedings is one of the criteria for the recognition and enforcement of foreign judgments or for its refusal. Depending on the legal basis, the criterion is examined *ex officio* or upon objection. Switzerland is Party to a number of Conventions dealing with the recognition and enforcement of judgements in a specific legal field. With regard to proceedings against a State Article 27 Paragraph 2 Letter a of the Swiss Federal Act on Private International Law of 18 December 1987 (https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/en; unofficial translation) or Article 34 Point 2 of the Convention on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters concluded on 30 October 2007 (Lugano Convention) are the most likely to apply. For a decision on Article 27 Paragraph 2 Letter a of the Swiss Federal Act on Private International Law see Decision of the Swiss Supreme Court of 9 January 2023, [5A 413/2022](#), Section 4.2.2.

PROCEDURE

3. Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.

In principle and even if there is an agreement allowing a simpler way, Switzerland prefers to serve documents on a foreign State through diplomatic channels in order to be sure that the Foreign State is informed of the extension of the time-limit mentioned in the documents and, to, if possible, increase the chance that the Foreign State will participate in the proceedings. Service is deemed to be effected by receipt of the documents by the Ministry of Foreign Affairs of the receiving State. Switzerland however serves documents on a foreign State according to the channel provided for in a specific treaty if so wished by the foreign State concerned.

In conformity with international practice, time-limits mentioned in the documents begin to run two months after the date of receipt. If the documents to be served contain a summons to appear in court, the summons to appear is served whenever possible no less than two months before the date of the hearing.

Immunity from process is not a ground to refuse service of process. Grounds to refuse service of process could be technical criteria, such as lack of translation or incompleteness of the documents to be served. Also, the channel of service of process could be a ground to refuse service of process.

The consequences of the unlawfulness of the service will be determined by the competent court according to the procedural laws applicable in a particular case.

a. How are the terms “diplomatic channels” (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.

As a rule and according to Swiss practice, service of extra-judicial or judicial documents addressed to a foreign State is deemed to be effected by their receipt by the Ministry of Foreign Affairs of the respondent State. Such documents are transmitted to the Ministry of Foreign

Affairs through diplomatic channels, i.e. from the diplomatic mission of the forum (sending) State to the Ministry of Foreign Affairs of the respondent (receiving) State.

In exceptional circumstances, for instance if the forum State has no representation accredited to the respondent State or if the diplomatic mission of the forum State in the respondent State is temporarily inoperative, the diplomatic channel may also consist of transmission from the Ministry of Foreign Affairs of the forum State to the diplomatic mission of the respondent State in the forum State.

Or, if neither of the two States involved disposes of a diplomatic mission in the other State, the diplomatic channel may also consist of transmission from the diplomatic mission of the forum State in a third State to the diplomatic mission of the respondent State in the same third State. In other words, the diplomatic mission of the forum State, which is representing the forum State to the respondent State but is established in a third State, transmits the documents to the diplomatic mission of the respondent State in the same third State. Or, the diplomatic mission of the forum State in a third State transmits the documents to the diplomatic mission of the respondent State, which is representing the respondent State to the forum State but is established in third State.

In both exceptional cases just described service of the documents is deemed to be effected by their receipt by the diplomatic mission of the respondent State.

b. How are the terms “if necessary” (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?

Paragraph 2 of Article 16 of the European Convention on State Immunity contains the same wording as the UN Convention: “These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the defendant State.”

Switzerland interprets Article 22 § 3 of the United Nations Convention in the same way as it interprets Article 16 § 2 of the European Convention. That is to say, the words “if necessary” are interpreted as meaning “if the language of the documents to be served is different from the official language of the State upon which the documents need to be served”.

In Swiss practice, if a Swiss court requests the Federal Department of Foreign Affairs, through the Federal Department of Justice, to serve judicial documents on a foreign State, these documents have to be accompanied by a translation into the official language of that State. The requesting court is in charge of the translation.

4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.

As a rule, Switzerland considers the service of process through the Embassy of the forum State in Switzerland to the Ministry of Foreign Affairs of Switzerland as the adequate service of process through diplomatic channels.

In exceptional circumstances, for instance if the forum State has no representation accredited to Switzerland or if the diplomatic mission of the forum State in Switzerland is temporarily inoperative, Switzerland also accepts service of process to the Swiss embassy in the forum State. However, the documents must be transmitted to the Swiss embassy by diplomatic channels, that is to say from the Ministry of Foreign Affairs of the forum State. Service of process directly from the competent court or authority to the embassy would not be accepted due to the inviolability of the premises of the embassy.