

● 高等院校法学教学参考书 ●

国际法资料选编

(中英文对照)

International Law: Materials

司法部法学教材编辑部审定

刘颖 吕国民 编



中信出版社
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国际私法资料选编

Private International Law: Materials

Switzerland's Federal Code on Private International Law

Chapter 1 Provisions in Common

Section 1 Scope

Article 1

1. This Code governs, in an international context:

- a. The jurisdiction of the Swiss judicial and administrative authorities;
- b. The applicable law;
- c. The conditions for the recognition and enforcement of foreign decisions;
- d. Bankruptcy and composition agreements;
- e. Arbitration.

2. International treaties take precedence.

Section 2 Jurisdiction

I. In general

Article 2

Unless this Code provides otherwise, the Swiss judicial or administrative authorities at the domicile of the defendant shall have jurisdiction.

II. Emergency jurisdiction

Article 3 If this Code does not provide for jurisdiction in Switzerland and if proceedings abroad are impossible or cannot reasonably be required to be brought, the Swiss judicial or administrative authorities at the place with which the facts of the case are sufficiently connected shall have jurisdiction.

III. Validation of attachment

Article 4 If this Code does not provide for any other jurisdiction in Switzerland, an action to validate an attachment may be brought at the place in Switzerland where the attachment was obtained.

IV. Agreed venue

Article 5

1. The parties may agree on a venue for an existing or a future dispute concerning pecuniary claims arising from a specified legal relationship. The agreement may be made in writing, by telegram, telex, telecopier, or by any other means of communication which evidences the terms of the agreement by a text. Unless stipulated otherwise, the court agreed upon shall have exclusive jurisdiction.

2. The agreement on venue shall be void if one party is denied in an improper manner a venue to which that party is entitled under Swiss law.

3. The court agreed upon may not decline its jurisdiction:

- a. If one party has his domicile, place of habitual residence, or place of business in the canton of the Swiss court agreed upon; or
- b. If, pursuant to this Code, Swiss law is applicable to the dispute.

V. Appearance by the defendant

Article 6 In the case of pecuniary claims, the court before which the action is brought shall have jurisdiction if the defendant proceeds to the merits without contesting the court's jurisdiction unless the court may decline jurisdiction pursuant to Article 5, paragraph 3.

VI. Arbitration agreement

Article 7 If the parties have concluded an arbitration agreement with respect to an arbitrable dispute, the Swiss court before which the action is brought shall decline its jurisdiction unless:

瑞士联邦国际私法

(1987 年 12 月 18 日通过)

第一编 总则

第一节 适用范围

第 1 条

(一) 本法适用于下述具有国际因素的事项:

1. 瑞士法院和主管机关的管辖权;
2. 法律适用;
3. 承认和执行外国法院判决的条件;
4. 破产和清偿协议;
5. 仲裁。

(二) 国际条约有不同规定的, 适用国际条约的规定。

第二节 管辖权

一、一般原则

第 2 条 除本法有特别规定外, 管辖权属于被告住所地的瑞士法院或主管机关。

二、必要时的法院

第 3 条 本法在瑞士没有指定法院并且在外国无法进行诉讼或在外外国提起诉讼不合理的, 与诉由有充分联系的地方的瑞士法院或主管机关有管辖权。

三、财产保管的有效性

第 4 条 本法没有在瑞士指定法院的, 财产保管的有效性的诉讼可在财产保管地瑞士法院提起诉讼。

四、法院的选择

第 5 条

(一) 在有关财产的事项中, 当事人可以协商选定处理就特定的法律关系所产生或将要产生的争议的法院。可通过书写、电报、电传、传真或其他可构成书面证明的通讯方式达成选择协议。如无相反的规定, 对法院的选择是排他的。

(二) 如果通过滥用选择导致剥夺瑞士法律所给予一方当事人的保护的。此种选择无效。

(三) 所选择的法院不得拒绝管辖, 如果

- (1) 当事人一方在法院有住所、习惯居所或营业地, 或
- (2) 根据本法对诉讼应适用的法律是瑞士法律。

五、应诉管辖

第 6 条 在有关财产的事项中, 被告未作保留而应用于诉的, 法院有管辖权, 除非该法院根据第 5 条第 3 款的规定拒绝管辖。

六、仲裁协议

第 7 条 如果当事人就可以仲裁的争议签订有仲裁协议, 受理案件的瑞士法院应拒绝管辖, 除非

- a. The defendant proceeded to the merits without contesting jurisdiction;
- b. The court finds that the arbitration agreement is null and void, inoperative or incapable of being performed; or
- c. The arbitral tribunal cannot be constituted for reasons for which the defendant in the arbitration proceeding is manifestly responsible.

VII. Counter-claim

Article 8 The court in which the principal claim is pending shall also decide a counter-claim if there is a factual connection between the claim and the counter-claim.

VIII. Lis pendens

Article 9

1. If the same parties are engaged in proceedings abroad based on the same causes of action, the Swiss court shall stay the proceeding if it may be expected that the foreign court will, within a reasonable time, render a decision that will be recognizable in Switzerland.
2. To determine when a court in Switzerland is seized, the date of the first act necessary to institute the action shall be decisive. The initiation of conciliation proceedings shall suffice.
3. The Swiss court shall dismiss the action as soon as a foreign decision is submitted to it which can be recognized in Switzerland.

IX. Provisional measures

Article 10 The Swiss judicial or administrative authorities may enter provisional measures even if they do not have jurisdiction on the merits.

X. Judicial assistance

Article 11

1. Acts of judicial assistance shall be implemented in Switzerland according to the law of the canton in which they are executed.
2. Upon petition of the requesting authority, foreign legal procedure may also be observed or taken into account, if necessary, for the enforcement of a claim abroad unless there are important reasons pertaining to the affected party not to do so.
3. The Swiss judicial or administrative authorities may issue documents or take an affidavit from an applicant in accordance with a form of foreign law if the Swiss form is not recognized abroad and if a claim meriting protection could not be asserted there.

XI. Time limits

Article 12 If a person abroad is required to meet a time limit before Swiss judicial or administrative authorities, it is sufficient that the filing is made with a diplomatic or consular representative of Switzerland by the last day of the allotted time period.

Section 3 Applicable Law

I. Scope of reference

Article 13 The reference in this Code to a foreign law includes all provisions applicable to the facts of the case under that law. The application of a provision of foreign law is not precluded solely because the provision is attributed the character of public law.

II. Renvoi

Article 14

1. If the applicable law refers back to Swiss law or onwards to another foreign law, that reference shall be observed only if this Code so provides.
2. In matters of civil status, reference back to Swiss law by a foreign law must be observed.

III. Exception clause

Article 15

1. The law designated by this Code shall not be applied in those exceptional situations where, in light of all circumstances, it is manifest that the case has only a very limited connection with that law and has a much closer connection with another law.

1. 被告未作保留而应诉的,
2. 法院证明仲裁协议无效、失效或不能适用的, 或
3. 显然由于被告的原因仲裁庭不能组成的。

七、反诉

第 8 条 受理本诉的瑞士法院也受理反诉, 如果两诉之间存在着联系。

八、未决案

第 9 条

(一) 如果同样当事人间对同样标的已在国外进行诉讼, 瑞士法院如预测外国法院在合理的期限内将作出能在瑞士得到承认的判决, 瑞士法院即中止诉讼。

(二) 在确定一项诉讼在瑞士提起的日期时, 为提起诉讼所进行的第一次必要的诉讼行为具有决定性意义。调解的传唤即为已足。

(三) 瑞士法院一旦收到外国法院作出的能在瑞士得到承认的判决, 即放弃对案件的处理。

九、临时措施

第 10 条 瑞士法院或主管机关即使对案件的实质问题没有管辖权, 也有权采取临时措施。

十、司法协助行为

第 11 条

(一) 在瑞士履行的司法协助行为, 依照行为地州的法律履行。

(二) 根据申请机关的请求, 对外国的程序方式也可采用或予以考虑, 如果为承认外国的诉讼请求所必需, 并且利害关系人没有重要理由表示反对。

(三) 瑞士的法院或主管机关可以按照外国法律规定的形式制作证书或接受申请人的宣誓声明, 如果瑞士法律所规定但得不到外国承认的一项形式会妨碍对一项应受保护的合法请求的认可。

十一、期限

第 12 条 在国外的人如必须遵守瑞士法院或主管机关规定的期限, 其请求在期限的最后一日送达瑞士外交或领事机构即可。

第三节 适用的法律

一、指向的范围

第 13 条 本法对外国法的指定, 包括所有依该外国法适用于该案件的法律规定。不得仅以该外国法律规定被认为具有公法性质而排除其适用。

二、反致

第 14 条

(一) 当可适用的法律反致瑞士法律或反致另一外国法时, 该反致只有在本法有规定时才予以考虑。

(二) 在民事身份领域, 外国法对瑞士法的反致应予接受。

三、例外条款

第 15 条

(一) 根据所有情况, 如果案件与本法指定的法律明显地仅有松散的联系, 而与另一法律却具有更密切的联系, 则作为例外不适用本法所指定的法律。

2. This article is not applicable in the case of a choice of law by the parties.

IV. Establishment of foreign law

Article 16

1. The content of the applicable foreign law shall be established ex officio. The assistance of the parties may be requested. In the case of pecuniary claims, the burden of proof on the content of the foreign law may be imposed on the parties.

2. Swiss law shall apply if the content of the foreign law cannot be established.

V. Public policy (ordre public)

Article 17 The application of provisions of foreign law shall be precluded if it would produce a result which is incompatible with Swiss public policy (ordre public) .

VI. Mandatory application of Swiss law

Article 18 This Code does not prevent the application of those mandatory provisions of Swiss law which, by reason of their particular purpose, are applicable regardless of the law designated by this Code.

VII. Taking into account of mandatory provisions of foreign law

Article 19

1. If, pursuant to Swiss legal concepts, the legitimate and manifestly preponderant interests of a party so require, a mandatory provision of a law other than that designated by this Code may be taken into account if the circumstances of the case are closely connected with that law.

2. In deciding whether such a provision must be taken into account, its purpose is to be considered as well as whether its application would result in an adequate decision under Swiss concepts of law.

Section 4 Domicile, Residence, and Citizenship

I. Domicile, habitual residence, and place of business of a natural person

Article 20

1. For the purposes of this Code, a natural person:

- a. Has his domicile in the State in which he resides with the intention to remain permanently;
- b. Has his place of habitual residence in the State in which he lives for an extended period of time, even if this time period is limited from the outset;
- c. Has his place of business in the State in which his professional or business activities are centered.

2. No person can have more than one domicile at the same time. If a person has no domicile, the place of his habitual residence shall be determinative. The provisions of the Civil Code regarding domicile and residence shall not be applicable.

II. Corporate domicile and place of business

Article 21

1. In the case of companies, the registered office shall be deemed to be the domicile .

2. The registered office of a company is the place specified in the certificate of incorporation or the deed of partnership. In the absence of such designation, the registered office of the company shall be the place where it is administered in fact.

3. The place of business of a company shall be in the State in which it has its registered office or a branch.

III. Citizenship

Article 22 The citizenship of a natural person shall be determined by the law of the State of the citizenship in question.

IV. Multiple Citizenship

Article 23

1. If a person is a citizen of one or more States to Switzerland, Swiss citizenship shall be determinative for purposes of jurisdiction based on citizenship.

(二) 该规定不适用于(当事人)选择法律的情况。

四、外国法的查明

第 16 条

(一) 外国法的内容由法院依职权查明。为此可以要求当事人予以合作。有关财产的事项, 可令当事人负举证责任。

(二) 外国法内容不能查明时, 适用瑞士法律。

五、公共秩序保留

第 17 条 如果外国法的适用将导致同瑞士公共秩序不相符的结果, 则排除其适用。

六、瑞士强制性规定的适用

第 18 条 本法不影响瑞士强制性规定的适用, 该强制性规定由于有它们的特别目的, 无论本法指定的法律如何, 都必须予以适用。

七、考虑外国法的强制性规定

第 19 条

(一) 如果按照瑞士的法律观念为合法并在显然特别重要的利益需要时, 本法所指定的法律以外的另一法律的强制性规定可予考虑, 如果涉及的情形与该法律有密切的联系。

(二) 判定是否考虑此种规定时, 应当考查此种规定的目的及其适用的后果, 以作出符合瑞士法律观念的决定。

第四节 住所, 居所和国籍

一、自然人的住所、习惯居所和营业地

第 20 条

(一) 按本法的意义, 自然人

1. 在其居住并有定居意图的国家有其住所;
2. 在其于某一时间内生活的国家有其习惯居所, 即使这种时间一开始就是有限期的。
3. 在其职业或商业活动的中心所在地国家有其营业地。

(二) 一个人不能同时有一个以上的住所, 如果一个人没有住所, 其习惯居所起决定作用。民法典中关于住所和居所的规定不适用。

二、公司的住所和营业地

第 21 条

(一) 关于公司, 其所在地视为住所。

(二) 公司章程或公司协议所指定的地方视为公司的所在地。在无此种指定时, 公司事实上的管理地视为公司的所在地。

(三) 公司的营业地就在有其所在地或分公司的国家。

三、国籍

第 22 条

自然人的国籍依该国籍产生疑问所涉及的国家法律决定。

四、多重国籍

第 23 条

(一) 如果一个人除有瑞士国籍外还有一个或几个外国国籍, 只以瑞士国籍为准, 以确定法院管辖权。

2. If a person is a citizen of several States, the citizenship of the State with which the person is most closely connected shall be determinative for purposes of the applicable law unless this Code provides otherwise.
3. If the recognition of a foreign decision in Switzerland depends upon the citizenship of a person, it is sufficient to consider one of his citizenships.

V. Stateless persons and refugees

Article 24

1. A person shall be regarded as stateless if he is recognized as such under the New York Convention of September 28, 1954 on the legal Status of Stateless Persons or if his relationship with the State of his citizenship has become so attenuated as to be equivalent to statelessness.
2. A person shall be regarded as a refugee if he is recognized as such under the Statute of Asylum of October 5, 1979.
3. If this Code is applied to stateless persons or refugees, domicile shall replace citizenship.

Section 5 Recognition and Enforcement of Foreign Decisions

I. Recognition

1. General rule

Article 25

A foreign decision shall be recognized in Switzerland:

- a. If the judicial or administrative authorities of the State in which the decision was rendered had jurisdiction;
- b. If no ordinary appeal can be lodged against the decision or the decision is final; and
- c. If there are no grounds for refusal under Article 27.

2. Jurisdiction of foreign authorities

Article 26

The foreign authorities have jurisdiction:

- a. If a provision of this Code so provides or, in the absence of such a provision, the defendant was domiciled in the State in which the decision was rendered;
- b. If, in the case of pecuniary claims, the parties have submitted by an agreement valid under this Code to the jurisdiction of the authority that rendered the decision;
- c. If, in the case of pecuniary claims, the defendant proceeded to the merits without objecting to jurisdiction; or
- d. If, in the case of a counter-claim, the authority which rendered the decision had jurisdiction over the principal claim and there is a factual connection between the principal claim and the counterclaim.

3. Grounds for refusal

Article 27

1. A foreign decision shall not be recognized in Switzerland if such recognition would be manifestly incompatible with Swiss public policy (ordre public).
2. A foreign decision shall likewise not be recognized if a party establishes:
 - a. That he was not duly summoned, either according to the law of his domicile or according to the law of his place of habitual residence unless he had proceeded to the merits without contesting jurisdiction;
 - b. That the decision was rendered in violation of fundamental principles of Swiss procedural law, in particular that he was denied the right to be heard;
 - c. That a lawsuit between the same parties and concerning the same causes of action had already been brought or decided in Switzerland or that the lawsuit had proceeded to judgment in a third State and that judgment can be recognized in Switzerland.
3. Except as herein provided, the foreign decision is not subject to review on the merits.

II. Enforcement

Article 28 A decision recognized under Articles 25 to 27 shall be declared enforceable upon application by the interested party.

(二) 除本法另有规定外, 如果一个人有几个国籍, 只以其人与之有最密切联系的那个国家的国籍为准, 以确定所适用的法律。

(三) 如果在瑞士对外国判决的承认有赖于一个人的国籍, 则考虑其人的任一国籍即可。

五、无国籍人和难民

第 24 条

(一) 一个人如果依照 1954 年 9 月 28 日关于无国籍人地位的纽约公约, 被认为是无国籍人, 或者他与其本国的关系中断到他与无国籍人一样, 就视为无国籍人。

(二) 一个人如果依照瑞士联邦 1979 年 10 月 5 日关于收容的法律, 被认为是难民, 就视为难民。

(三) 当本法适用于无国籍人或难民时, 住所取代国籍。

第五节 外国判决的承认和执行

一、承认

1. 原则

第 25 条 外国判决可在瑞士得到承认:

1. 如果作出判决的法院或主管机关被认为有管辖权,
2. 如果判决已不能再上诉或判决为终局判决, 以及
3. 如果不存在依第 27 条拒绝承认的理由。

2. 外国机关的管辖权

第 26 条 外国机关被认为有管辖权:

1. 如果依本法的规定应有管辖权, 或在没有这种规定时, 被告在判决作出国有住所;
2. 在有关财产事项中, 如果当事人根据本法认为有效的公约而自愿服从作出判决的机关的管辖。
3. 在有关财产事项中, 如果被告应诉而未作保留, 或
4. 在反诉的情况下, 如果作出判决的机关对本诉有管辖权, 并且在两诉之间有联系。

3. 拒绝的理由

第 27 条

(一) 如果对外国判决的承认明显地不符合瑞士的公共秩序, 在瑞士应拒绝承认该判决。

(二) 对外国判决的承认也同样应予拒绝, 如果当事人一方能证明:

1. 他没有依其住所地法或依其习惯居所地法受到正常传唤, 但无保留地应诉的除外;
2. 判决的作出违反瑞士程序法的基本原则, 尤其是前述当事人没有得到出庭辩护的机会,
3. 相同当事人间就同一标的进行的诉讼已在瑞士提起或已在瑞士作出判决, 或者第三国已先行作出判决, 并且该判决又符合瑞士予以承认的条件。

(三) 如本法另有规定, 否则外国的判决不得作为实质审查的对象。

二、执行性

第 28 条 根据第 25 条至 27 条被承认的判决, 经利害关系人的申请, 即宣告可以执行。

III. Procedure

Article 29

1. The application for recognition or enforcement must be submitted to the authority having jurisdiction in the canton in which the foreign decision is to be invoked. It must be accompanied by:
 - a. A complete and authenticated copy of the decision;
 - b. A confirmation that no ordinary appeal can be lodged against the decision or that it is final; and
 - c. In the case of a judgment rendered by default, an official document establishing that the defaulting party was duly summoned and that he had the opportunity to enter a defense.
2. The party opposing recognition and enforcement shall have the right to a hearing; he may introduce evidence.
3. If a foreign decision is invoked in a proceeding as a preliminary question, the authority to which the application is submitted may itself rule on the recognition.

IV. Court settlement

Article 30 Articles 25 to 29 shall apply to a court settlement having the same status as a court decision in the State in which it was entered.

V. Non-contentious jurisdiction

Article 31 Articles 25 to 29 shall apply by analogy to the recognition and enforcement of a decision or a legal instrument resulting from non-contentious jurisdiction.

VI. Entry in the register of births, deaths, and marriages

Article 32

1. A foreign decision or a foreign act regarding civil status shall be entered in the register of births, deaths, and marriages pursuant to an order of the cantonal supervisory authority.
2. The entry shall be authorized when the requirements of Articles 25 to 27 are satisfied.
3. The persons affected shall have the right to a hearing before the entry is made if it is not established that in the foreign State where the decision was rendered, the procedural rights of the parties were adequately safeguarded.

Chapter 2 Natural Persons

I. General rule

Article 33

1. Unless this Code provides otherwise, the Swiss judicial or administrative authorities at the domicile shall have jurisdiction in matters of status of natural persons; they shall apply the law in force at the domicile.
2. Claims arising from the infringement of personality rights shall be determined according to the provisions of this Code concerning torts (Art. 129 et seq.).

II. Legal capacity

Article 34

1. Legal capacity shall be governed by Swiss law.
2. The beginning and termination of legal personality shall be governed by the law applicable to the legal relationship which presupposes legal capacity.

III. Capacity to act

1. General rule

Article 35 The capacity to act shall be governed by the law of the domicile. A change of domicile shall not affect the capacity to act once that capacity has been acquired.

2. Estoppel

Article 36

1. A party to a legal transaction who lacks capacity under the law of the State of his domicile may not invoke that incapacity if he had capacity under the law of the State in which the transaction was accomplished unless the other party knew or should have known of that incapacity.
2. This rule is inapplicable to legal transactions concerning family law, the law of inheritance, or real property rights.