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The cover features several large, dark green leaf-like shapes scattered across the background, creating a natural, organic feel. The leaves vary in size and orientation, with some pointing upwards and others downwards.

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Enforcement of Judgments

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Bär & Karrer Ltd. is a renowned Swiss law firm with more than 170 lawyers in Zurich, Geneva, Lugano and Zug, and is therefore present in all of the three main linguistic regions of Switzerland. Bär & Karrer's core business includes advice on innovative, complex transactions and representation of its clientele in litigation, arbitration and regulatory proceedings. The firm's clients range from multinational corpo-

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1. Identifying Assets in the Jurisdiction

1.1 Options to Identify Another Party's Asset Position

The identification of the debtor's assets is key in the enforcement of judgments or awards. Under Swiss law, the resources available to a party to identify another party's assets are quite limited, save for the information which is publicly available. Indeed, there is no disclosure order that can be obtained in Switzerland according to which the debtor is obliged to disclose all its assets. Such disclosure will only occur at a late stage of the debt enforcement proceedings according to the Debt Enforcement and Bankruptcy Act (DEBA), meaning that such a debt enforcement or bankruptcy proceeding is first to be initiated. Such recovery proceedings can only occur in Switzerland provided that the debtor is domiciled or seated in Switzerland or has assets located in Switzerland that have triggered an attachment to be ordered here.

With respect to enforcement of a domestic or foreign judgments or awards, the best way to secure such enforcement is the attachment of the debtor's assets, which will ensure the

freezing of these assets pending the enforcement proceedings – this is generally what a creditor will seek first.

However, an attachment under Swiss law can only be granted provided that the claimant (i) holds a final judgment or award (or an acknowledgment of debt, among other possible requirements which are of less relevance here) and (ii) is in a position to establish, on a prima facie basis, that the debtor holds assets in Switzerland. No fishing request is allowed and absent any evidence demonstrating the existence of such assets, the attachment request is denied. Such attachment is obviously generally requested prior to initiating any enforcement measure and this is why it is recommended for the creditor to first identify the debtor's assets, if possible, prior to starting any enforcement measures.

For such identification, it is to be noted that, although quite limited, there are several publicly available resources that could potentially provide information on a person's assets. Typically, each Canton operates a land registry, which holds records of the rights associated with each plot of land located in Switzerland. Part of these records are available to the

public, including the identity of the owner(s) of a plot and building thereon. The land registry, however, only provides for information in connection with a specific plot and does not allow for direct identification of the properties held by a person, which limits the usefulness of such records.

Beside, some Cantons grant partial access to tax returns, provided that the requesting party can demonstrate a legitimate interest. This is the case in the Canton of Vaud, for example.

Absent any information, a creditor may aim at investigating the patrimonial situation of the debtor. By doing so, the creditor must ensure that only lawful methods will be used to identify any possible assets; any evidence obtained illegally shall be considered by a judge only if there is a strict necessity for finding the truth, which is applied restrictively by the courts.

2. Domestic Judgments

2.1 Types of Domestic Judgments

There are essentially two types of domestic judgments in the Swiss legal framework – final judgments and interim judgments. Distinction can also be drawn between monetary and non-monetary judgments, as well as between declaratory and injunctive judgments.

Final judgments are judgments ending the proceedings either by deciding on the merits of the claim (granting or denying it) or by declaring the claim inadmissible.

A Swiss Court may also issue interim judgments, which address only certain aspects of the case that must be decided before a final judgment could be issued. Therefore, interim judgments do not end the proceedings, but merely relate to aspects of the case other than the merits, such as procedural requirements or substantive issues that must be solved beforehand.

2.2 Enforcement of Domestic Judgments

Under Swiss law, the enforcement of domestic judgment is characterised by a dichotomy. One shall distinguish (i) the monetary judgments (ie, judgments relating to the payment of an amount of money or securities) that shall be enforced according to the provisions set out by the DEBA from (ii) the non-monetary judgments that shall be enforced in accordance with the SCPC.

To enforce the judgment ruling on a pecuniary claim, the creditor must process enforcement under the DEBA. Depending on whether the debtor is a company or a private person, the proceedings will then go on through bankruptcy proceedings or follow the path of enforcement by seizure. When such an enforcement proceeding is started further to a final judgment having been rendered, the means

of the debtor are quite limited. Indeed, a judgment, which is enforceable, constitutes, among others, a final discharge within the meaning of the DEBA. A final judgment also grants the creditor the possibility to request an attachment (see above, **1.1 Options to Identify Another Party's Asset Position**) that will generally be requested prior to starting any recovery proceeding under the DEBA.

The other decisions (ie, non-monetary) are enforced in accordance with Article 335 et seq of the Swiss Civil Procedural Code (SCPC). These provisions neither apply to judgments that modify a legal relationship (Article 87, SCPC) nor declaratory judgments (Article 88, SCPC), but only to decisions requiring the unsuccessful party to adopt a specific behaviour.

To enforce a judgment, the prevailing party must submit a request for enforcement to the court. The question of the enforcement of a decision generally does not arise before the trial judge, who is only entrusted with deciding the substantive issues. It is only in exceptional cases that a decision may directly be enforced and the trial judge would immediately order enforcement measures (see below, **2.3 Costs and Time Taken to Enforce Domestic Judgments**). The enforcement proceedings occur on an adversarial basis and the defendant will be given the opportunity to raise its views.

For enforcement to start, a judgment must be enforceable. According to Article 336 SCPC, a domestic decision is enforceable if it is legally binding and the court has not suspended its enforcement or if its early enforcement has been authorised notwithstanding any possible appeal.

Therefore, judgments are in principle enforceable, when there is no further possibility to appeal the decision (as a rule, an appeal under Swiss law bears a suspensive effect).

According to Article 343 (1) of the SCPC, a Swiss judge can use different measure to ensure enforcement, such as:

- issue a threat of criminal penalty under Article 292, SCC1;
- impose a disciplinary fine not exceeding CHF5,000;
- impose a disciplinary fine not exceeding CHF1,000 for each day of non-compliance;
- order a compulsory measure such as taking away a movable item or vacating immovable property; or
- order performance by a third party.

All these measures can be ordered alone or in combination with other measures. In their prayers for relief, the parties can ask for specific types of measures. However, the enforcement court is not bound by these and can freely choose the mechanisms it deems the most appropriate in casu to ensure the enforcement of the judgment.

Even if the law does not specifically foresee that the court may issue an injunction to a third party, the Federal Tribunal ruled that the judge can compel a third party to behave in a certain way, in particular to refrain from a certain action and/or behaviour, in order to ensure the proper execution of a judgment.

Finally, should the unsuccessful party not follow the orders of the court and thus not perform its obligation in forma specifica, the prevailing party may claim damages. It is also possible for the prevailing party to request from the beginning of the enforcement proceedings that the performance be converted into the payment of a specific sum.

2.3 Costs and Time Taken to Enforce Domestic Judgments

The costs and time required to enforce a decision vary depending on whether the judgment is directly or indirectly enforceable.

Article 337(1) SCPC foresees the direct enforcement of judgments. It provides that if the court making the decision has already ordered the necessary enforcement measures, the decision may be directly enforced. Such measures are ordered by the court at the request of the successful party.

Direct enforcement of domestic judgments therefore saves considerable time and costs. This option avoids having to initiate new proceedings before the enforcement court. For instance, if the trial judge asserts his/her judgment with the threat of the sanctions of Article 292 SCC and if the unsuccessful party does not comply, the other party will not need to request the enforcement of said judgment by filing a request. On the contrary, it will be sufficient for this party to file a criminal complaint for violation of Article 292 SCC. Direct enforcement thus, so to speak, ‘kills two birds with one stone’.

As explained above (2.2 Enforcement of Domestic Judgments), indirect enforcement of judgments is the rule in the Swiss legal system. In this path of enforcement, the prevailing party must first submit a request for enforcement. This will entail both extra costs and time, notwithstanding the fact that the enforcement court decides in summary proceedings. Generally, it takes between two and six months to obtain an enforcement decision.

Since the enforcement proceedings can last for a few months as they are adversarial, the enforcement court may order protective measures without hearing the opposing party beforehand, if necessary. Such measures will then apply during the enforcement proceedings.

As regards additional costs, each Canton has issued a regulation setting the rates for civil costs. In Geneva, the lawmaker issued the regulation fixing the Tariff of Costs in Civil

Matters (RFTCM). According to Article 26 RFTCM, the fee levied for enforcement proceedings is set within a range of CHF150 (minimum) to CHF10,000 (maximum). Moreover, the enforcement court may require the requesting party to advance part or the entire estimated costs. Finally, it should be stressed that these costs do not take into account lawyers’ fees – these may be charged to the losing party at the end of the proceedings, it being specified that such indemnity only corresponds to a limited share of the effective incurred fees.

2.4 Post-judgment Procedures for Determining Defendants’ Assets

As indicated above (1.1 Identifying Assets in the Jurisdiction), there is no dedicated proceeding under Swiss law according to which a creditor can constrain a debtor to disclose its assets.

It is only within the course of the debt enforcement proceeding under the DEBA that the debtor shall, belatedly, disclose its assets when the authority will process the seizure or an inventory in case of bankruptcy.

2.5 Challenging Enforcement of Domestic Judgments

An objection under Article 319 et seq of the SCPC (which is an extraordinary mean of appeal) can be lodged against enforcement judgments.

Third parties may also challenge enforcement decisions by filing an objection if the decision affects their rights (Article 319 lit b cum Article 346, SCPC).

However, challenging enforcement of domestic judgments is very limited: objecting against the enforcement decision in no way allows the substantive judgment to be challenged. On the other hand, one may, for example, challenge the question of statute of limitation, extinction or choice of enforcement measures.

2.6 Unenforceable Domestic Judgments

The Swiss legal framework has some types of decisions that cannot be enforced in accordance with the above-mentioned proceedings.

Indeed, some judgments modify the legal situation by their very nature at the time of their entry into force (Article 87, SCPC). It is thus not necessary to enforce such judgments, since their effects have already automatically taken place.

The same applies to declaratory judgments (Article 88, SCPC), the very purpose of which is to establish the existence or non-existence of a right.

2.7 Register of Domestic Judgments

As a federal State, Switzerland has courts at both cantonal and federal level.

The decisions of the Federal Tribunal – the highest court in the country – are accessible on www.bger.ch. Every judgment of the Federal Tribunal is electronically published on the website, but only the most relevant ones are published in the Supreme Court gazette.

Each Canton then has its own register for cantonal decisions, which means that there are therefore 26 different registers. Unlike the federal decisions, not all the cantonal judgments are accessible. In particular, not all the cantons have yet made their case law directly accessible, either electronically or on paper. However, any decision must be accessible upon request.

3. Foreign Judgments

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

Absent any applicable international convention, the Swiss Private International Law Act (PILA) applies to the recognition and enforcement of foreign decisions.

Article 25 et seq of PILA provides for general provisions on recognition and enforcement of foreign judgments. These general provisions are supplemented by specific rules applying to dedicated topics (eg, matrimonial regime, divorce, intellectual property, trusts, etc). These specific rules are considered as *lex specialis* in relation to the general provisions of Article 25 et seq of PILA.

Some specific countries are bound by international conventions that prevail over the PILA provisions. The Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (LC) is such an international treaty. The LC is the most relevant treaty for Switzerland with regard to the recognition and enforcement of foreign judgments.

Recognition of judgments from a state party is automatic under the LC. The prevailing party may therefore file directly for enforcement of the decision without having to first file a request for recognition of the decisions; see below, **3.4 Process of Enforcing Foreign Judgments**.

The solution adopted under the PILA is different: the foreign judgment must mandatorily first be recognised by Swiss courts before any enforcement be possible. Furthermore, the decision must be final and binding. The foreign authority must also have had jurisdiction (*de jure imperii*) within the meaning of Article 26, PILA.

As a general rule, the question of recognition of the foreign judgment is to be decided by way of preliminary rulings in the context of the enforcement proceedings of said judgment. Consequently, the decision will only be recognised in

the frame of the enforcement proceedings. Recognition will therefore not have any *res judicata* effect.

In order to obtain recognition of the foreign judgment with *res judicata* effect, the prevailing party must submit a separate request for recognition. The latter will give rise to proceedings separate from the enforcement proceedings. Filing a separate request for recognition offers the advantage that once the foreign decision is recognised, it may be used in other matters of the party. The party will hence only have to file for enforcement without having to first request the recognition of the judgment. It therefore could save time and costs in future disputes.

However, both the LC and the PILA provisions meet on a crucial problematic of recognition and enforcement of foreign decisions: under LC and PILA, the requesting party cannot contest the judgment on the merits. Issues such as extinction or limitation of claim are indeed ruled by the trial (foreign) judge. The core issue under both regimes that may actually prevent the enforcement of a foreign decision lies in the mere public policy (see below, **3.3 Categories of Foreign Judgments Not Enforced**).

There are significant differences in the procedural regimes under LC and PILA that will be detailed below.

3.2 Variations in Approach to Enforcement of Foreign Judgments

The LC provides that certain topics do not fall under its application. This is the case for disputes regarding the status and capacity of natural persons, matrimonial regimes, wills and successions, bankruptcies, compositions and other similar proceedings as well as social security and arbitration.

These topics therefore fall under the PILA, even though the state in which the decision was rendered is bound by the LC.

Article 25 of PILA provides that a foreign decision can be recognised in Switzerland if the court of public authorities of the country where the decision was rendered has jurisdiction. Moreover, there must be no further legal remedies available to challenge the decision (ie, the decision must be final). Finally, the decision will be recognised if there are no grounds for non-recognition pursuant to Article 27 of PILA. Foreign judgments are thus recognised and enforced independently of the legal domain to which they belong.

Other than the area of law, the type of decision issued may constitute an obstacle to the enforcement of a foreign judgment. This is, for instance, the case for provisional measures: under the LC, the enforcement of provisional measures is provided for in Article 31 of LC. Conversely, the provisions of the PILA do not contain any regulation on those measures. Both case law and scholars are divided on this issue. To this date, there is still no clear solution on the question

of whether provisional measures can be enforced under the PILA.

The core difference between both the PILA and the LC regimes lies in the proceedings. Indeed, under the LC, the recognition and enforcement is automatic and issued on an *ex parte* basis. It is only during the appeal proceeding that the defendant will be in a position to challenge such enforcement and to raise any objection against it. Unlike under the LC, the PILA regime entails that the first instance is already an adversarial proceeding. The defendant will then be informed about the request prior to any decision on enforcement being issued and will be given the opportunity to reply and object to such recognition and enforcement at that stage.

3.3 Categories of Foreign Judgments Not Enforced

According to Article 25 of PILA, a foreign decision is recognised in Switzerland if there are no grounds for non-recognition pursuant to Article 27 of PILA. Should a judgment not be recognised by Swiss courts, it will not be enforced in accordance with the PILA provisions.

A decision rendered abroad is not recognised in Switzerland if recognition would be clearly incompatible with Swiss public policy (*ordre public*). This is the case where the foreign judgment is blatantly contrary either to substantive or to procedural *ordre public*. The first refers to any infringement of the fundamental values of substantive Swiss law. The second covers some particularly important procedural rights such as the right to a fair trial or the right to be heard before a judge.

However, the notion of *ordre public* must be interpreted very restrictively: only the most blatant violations prevent the recognition of a foreign decision. This is also reflected in the last two aspects provided for by Article 27(2) of PILA, which give substance to the concept of *ordre public*. According to these provisions, a foreign decision is thus not recognised if a party proves that it was not duly summoned or if the decision was rendered in violation of essential principles of Swiss procedural law, such as the right to be heard before the court.

Furthermore, if a party shows that a dispute between the same parties about the same matter was first initiated or judged in Switzerland, the foreign judgment may not be recognised. This provision is made to ensure compliance with the *res judicata* principle, which is a fundamental principle of the Swiss legal framework.

3.4 Process of Enforcing Foreign Judgments

While filing their request for recognition and enforcement, the parties must submit the original foreign decision, a statement certifying that the decision is final or may no longer be appealed in an ordinary way and also, in case of a default judgment, an official document establishing that the default-

ing party was given proper notice and had the opportunity to present its defence.

With regard to the enforcement of judgments governed by the LC provisions, decisions rendered in a state bound by the LC shall be recognised in the other states bound by the convention. The creditor, however, still needs to file a request for enforcement if it wants its foreign judgment to be declared enforceable in Switzerland. Together with its request, the creditor must produce:

- a certified copy of the judgment; and
- a certificate of enforceability issued by the foreign judge using the form attached in Annex IV of the LC or any other equivalent document.

The creditor must indeed prove that the decision is enforceable in its country of origin.

Under the LC, Swiss courts declare the judgment enforceable upon receipt of these documents. At this stage, there is no analysis of the compatibility of the decision with the Swiss legal order. Moreover, the party against whom enforcement is sought is not entitled, at this stage of the proceedings, to submit any statement of position even on a voluntarily basis. Should it do so nonetheless, the judge shall disregard any of the defendant's comments. The decision of the Swiss judge ruling on the enforceability of the foreign judgment is served to the other party only after the end of the first instance proceedings.

Once the foreign judgment is declared enforceable, the method to implement it is similar to the enforcement of domestic judgments: if the claim is of a pecuniary nature, the provisions of the DEBA will govern its enforcement. If the claim is of another type, Article 335 et seq of SCPC will apply and the judge may order specific measures when ordering the enforcement.

Attachment may also be required provided that the requirements discussed above (**1.1 Identifying Assets in the Jurisdiction**) are met.

3.5 Costs and Time Taken to Enforce Foreign Judgments

Enforcing foreign judgments under the LC is quicker than under the PILA regime since the defendant is not heard when the first instance judge is to rule on enforcement of an LC judgment.

Under the LC regime, the enforcement decision can be issued in a few weeks, but it can be extended to a few months depending on the court's agenda. Under the PILA, first instance proceeding is likely to take between six months to a year.

Under Swiss law, should the LC or the PILA provisions be applicable, the court fees of enforcement proceedings can amount up to CHF10,000 (Article 26, RTFMC).

3.6 Challenging Enforcement of Foreign Judgments

Under the PILA, recognition and enforcement proceedings are contradictory. The unsuccessful party can therefore state its position already before the court of first instance. In addition to this – and in order to protect himself before any request of enforcement proceedings – a pre-emptive brief can be filed to the court. Such a measure can be useful should the creditor requests interim measures to be ordered *ex parte* to secure any right pending the enforcement ruling.

Several substantive grounds can be brought to challenge the enforcement of foreign judgments. However, the enforcement proceeding shall never allow the debtor to have the judgment reviewed on the merits. Actually, only facts subsequent to the rendering of the foreign decision can be invoked before the Swiss courts. Typical objection would lie in the fact that the obligations has been extinguished either by payment or become time-barred for enforcement, for instance.

Beside, the general grounds to object the enforcement also are available such as a breach of public order or due process.

Challenging enforcement of foreign judgments under the LC is particularly limited. Since the first instance proceedings are *ex parte*, substantive grounds to challenge the enforcement can only be brought before the appeal court. This also means that a party does not have the possibility to file a pre-emptive brief to attempt circumventing any possible interim measures that may be ordered *ex parte*, unlike under the PILA.

After being served with the decision declaring enforceability, each party can file an appeal in accordance with Article 43 of LC. The appeal proceedings are contradictory. The appeal can be granted only for grounds set in articles 34 and 35 of LC: enforcement can be refused if the decision is manifestly against Swiss *ordre public*, if it is irreconcilable with a judgment between the same parties in Switzerland, if it is irreconcilable with an earlier judgment in another state between the same parties and which could be recognised in Switzerland or if it is rendered in violation of an exclusive jurisdiction within the meaning of Article 22 of LC.

It is worth mentioning that Switzerland does not enforce foreign decisions, which were not regularly served on a party or given in default of appearance where the defendant was not duly served. To this end, Switzerland made a reservation to Article 34(2) of LC. The defaulting party is therefore better protected than in other states bound by the LC.

4. Arbitral Awards

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

Switzerland is a party to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards (NYC).

Under the NYC, the grounds for refusal are expressly set forth and limited to those listed under Article V. There is no possibility for the parties to review the award on the merits through the enforcement process. The crux when objecting to the enforcement will merely lie in a possible breach of due process during the arbitration proceeding. Absent any breach in this respect that may entail a breach in the public order of the requested state, enforcement will hardly be avoided in Switzerland. Indeed, as a well-known arbitration hub and arbitration-friendly jurisdiction, Swiss courts have always demonstrated a pro-arbitration view but also a pro-enforcement approach.

4.2 Variations in Approach to Enforcement of Arbitral Awards

The main distinction is to be drawn between domestic and international arbitration. Under Swiss law, international arbitration is governed by Chapter 12 of the PILA. Any arbitration that opposes two parties, out of which at least one has its seats or is domiciled abroad is deemed international arbitration. Conversely, domestic arbitration is governed by the SCPC, which applies to arbitration where all the parties are domiciled or seated in Switzerland.

Whilst any award issued in domestic arbitration will be enforced as a judiciary decision pursuant to the SCPC or the DEBA, a further distinction is to be drawn in respect of international award.

Indeed, should an international award be issued whilst the tribunal was seated in Switzerland, it is then deemed a domestic award that is immediately enforceable in Switzerland. Unlikely, a foreign international award will first have to be recognised and declared enforceable in Switzerland prior to any enforcement proceedings can be initiated in Switzerland.

Such recognition and enforcement will be subject to the New York Convention (NYC).

4.3 Categories of Arbitral Awards Not Enforced

As previously mentioned (see **4.1 Legal Issues Concerning Enforcement of Arbitral Awards**), the sole grounds for refusal of enforcement of an arbitral award are those expressly set forth under Article V of NYC. Article V(2) of the NYC which provides that recognition and enforcement of a foreign award may be refused if the competent authority in the country where recognition and enforcement is sought

finds that (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of that country, or (ii) the recognition or enforcement of the award would be contrary to the public policy of that country.

Unlike Article V(1), Article V(2) clearly states that it is up to the competent authority – and not to the parties – to examine these grounds. Therefore, the court must rule *ex officio* on the enforceability of the arbitral awards with regard to the two above-mentioned aspects.

In addition, Swiss public policy is doubtless a cause for non-enforcement of an arbitral award. This reservation of enforcement can also be found under the LC and the PILA provisions. An award violates public policy when it goes against the fundamental principles of the Swiss legal framework and conflicts in an intolerable way with the Swiss sense of justice. Should an award be considered as against the Swiss *ordre public*, the court shall not enforce it.

4.4 Process of Enforcing Arbitral Awards

International arbitral awards are governed by the provisions of the NYC. This convention entered into force for Switzerland on 30 August 1965. However, Swiss law provides that the NYC is applicable to the recognition and enforcement of all arbitral awards. Thus, if a party seeks recognition and enforcement of an arbitral award rendered in a country that is not a party to the NYC, the Swiss judicial authorities will nevertheless apply the NYC with regard to recognition and enforcement of such award. From a Swiss law standpoint, the NYC is applicable to all arbitral awards issued outside the territory of Switzerland.

Then the enforcement process will be similar to that applying when enforcing a court decision as described previously (see above 2.2 **Enforcement of Domestic Judgments** and 3.4 **Process of Enforcing Foreign Judgments**).

In a nutshell, further to the enforcement being ordered in Switzerland, the creditor will then seek enforcement under the DEBA in case of monetary claim or pursuant to the SCPC in case it needs a specific behaviour to be performed by the debtor.

In most cases, the creditor will aim at recovering a monetary claim in Switzerland. The best tool in this respect certainly lies in the attachment. However, as previously stated, such an attachment can only be requested in Switzerland in order to freeze the debtor's assets provided that (among other possible alternatives) (i) the creditor holds a final and binding judgment, and (ii) the debtor has assets located in Switzerland, which the creditor must establish.

The existence of assets in Switzerland will be of further relevance in case of a debtor being not Swiss-domiciled. In such a case, absent any Swiss-located assets, Swiss courts would not have jurisdiction to rule on enforcement.

4.5 Costs and Time Taken to Enforce Arbitral Awards

With respect to arbitral awards made by a court having its seat abroad, the NYC requires contracting states to recognise and enforce arbitral awards made in another contracting state in accordance with the rules applicable in the territory where the award is invoked, under the conditions established by the convention. Such a proceeding is adversarial and it is likely to be at least six months before a first instance judgment is issued.

Court fees for recognition and enforcement shall depend on each canton. In Geneva, they could be charged up until CHF10,000 (only for the recognition proceeding and exclusive of the DEBA and possible attachment proceeding).

4.6 Challenging Enforcement of Arbitral Awards

The enforcement of a foreign award can be challenged during the enforcement proceedings based on the grounds set forth under Article V of the NYC. Such proceeding being adversarial, the defendant will be in a position to challenge enforcement as of the first instance proceedings.

The first instance judgment is subject to an appeal. In turn, the decision to be issued by the court of appeal, still at a cantonal level, will be subject to a further appeal before the Swiss supreme court that will rule as the final instance.

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