

Question 1 (50%)

A (domiciled in Switzerland), B (domiciled in Switzerland) and C (domiciled in France) enter into a contract. The contract contains an arbitration clause that provides as follows:

“Any dispute arising out of or in connection with this agreement shall be resolved either by arbitration in Switzerland or by French courts.”

- a) **Is the PILA applicable to determine the validity of the above “arbitration agreement” in case B intends to initiate arbitration proceedings against A?**

- b) **Suppose C has assigned all its rights out of the contract to D (domiciled in Switzerland). Is the PILA applicable to determine the validity of the above “arbitration agreement” in case D intends to initiate arbitration proceedings against A?**

Question 2 (50%)

The State of A enters into an arbitration agreement with B (domiciled in Italy). The arbitration agreement provides for arbitration with seat in Paris. The Panel issues an award according to which A must pay to B the sum of CHF 1,000,000. B seeks enforcement of the award in Switzerland against assets of A. The competent court refuses to enforce the award, stating that B’s claim has “no sufficient connection with Switzerland”. B does not know what the “sufficient connection-prerequisite” is. However, he is of the view that this constitutes a breach of Switzerland’s international obligations under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Please comment.