

### Question 1 (25%)

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 (25%)

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.**

### Question 3 (50%)

A and B (both domiciled outside Switzerland) negotiate a framework agreement. To this end, A sends a draft agreement to B. The draft agreement is 30 pages long and contains – *inter alia* – the following clauses:

*“Any dispute arising out of or in connection with this agreement shall be resolved by arbitration. The seat of the arbitration is Lausanne.*

*The arbitration shall be conducted according to the Swiss Rules. (...)*

*This contract is submitted to Swiss law. (...)*

*This contract (and all clauses contained therein) only becomes binding with the signature of both parties.”*

B sends a substantially amended version of the agreement back to A. In the following weeks and months, the parties continue to exchange draft agreements, though without reaching consent. However, they make substantial investments in view of the envisaged execution of the contract, believing that an agreement will eventually be reached.

While other clauses in the contract undergo considerable changes during the negotiations, the above-cited clauses remain identical in all proposed versions. Finally, eight months after the initial contact, A sends yet another, signed version of the draft contract to B. The enclosed letter states that A hopes that this final version is acceptable to B. A couple of days later, A calls B by phone and inquires if the latest version is acceptable to it. B explains that the final version has been forwarded to its legal department for scrutiny.

After this call, no more versions were exchanged between the parties. B never returns a signed copy of the contract to A. The latter is of the view that B is in breach of its duties and initiates arbitration proceedings against B. B, however, is of the view that there is no basis for an arbitration procedure and objects to the Panel’s jurisdiction.

**How will the Panel decide? Please assume that all legal regimes applicable are identical to Swiss law, and please address all questions raised.**

Art. 16 (1) Swiss Code of Obligations provides as follows:

*Where the parties agree to make a contract subject to formal requirements not prescribed by law, it is presumed that the parties do not wish to assume obligations until such time as those requirements are satisfied.*