DEBA Attachment

The client and her representative versus the bank and its choice of jurisdiction

Par Joël Pahud le 3 February 2026

In its ruling 5A_50/2025 of 12 December 2025, the Federal Court ruled that the *Obergericht* of the canton of Zug had acted arbitrarily in lifting an attachment based on a judgment of the *High Court* of Singapore (Art. 271 para. 1 no. 6 LP). The dispute concerns the indirect jurisdiction of the Singapore court, which is based on a choice of court clause (Art. 26(b) LDIP). Is the alleged debtor bound by this clause under the rules on representation ? The Federal Supreme Court points out that the answer to this question requires the applicable law on representation to be established without arbitrariness. It refers the case back to the Obergericht for this purpose.

The facts of the case, which have not been definitively established at this stage and are disputed by the parties, can be summarised as follows : in 2016, an account was opened in the name of B at a digital bank based in Singapore. B now disputes that she opened it. She claims that her former husband, who was then CEO of the bank, represented her without authorisation. In the years that followed, B used this account, notably making various withdrawals. Her former husband also used the account : he paid sums into it and was the beneficiary of a debit of USD 2 million in October 2018, which generated an overdraft of approximately USD 1.8 million.

In a judgment dated 25 January 2022, the High Court of the Republic of Singapore ordered B to pay the aforementioned amount, with interest, to an entity that succeeded the Singaporean bank. On the strength of this judgment, the creditor obtained a sequestration order pursuant to Art. 271 para. 1(6) LP, which affected B's assets at several banks in Switzerland. The sequestration judge considered *prima facie* that the judgment of the *High Court* could be recognised and enforced in Switzerland under the LDIP and that the case for sequestration based on the possession of a definitive release order had therefore been made plausible.

The Obergericht (High Court) of the Canton of Zug disagreed : in December 2023, it ruled in essence that the creditor had not made it plausible that B had personally accepted the jurisdiction clause in favour of the Singapore courts contained in a 'user agreement' of the bank.

In its judgment 5A_45/2024 of 1 July 2024, the Federal Supreme Court noted that this reasoning was based on the erroneous premise that Art. 5 LDIP exhaustively regulates not only the formal requirements but also the substantive requirements of a choice of court clause. The Federal Supreme Court ruled that it was arbitrary to exclude outright in this case, on the basis of an erroneous interpretation of Art. 5 LDIP, the conclusion of a choice of court agreement in

accordance with the rules of representation, in particular the rules relating to the ratification by the represented party of acts performed without authority by the representative.

In its judgment on referral of 13 December 2024, the *Obergericht* decided once again to lift the sequestration. It ruled that the representation of B by her former husband must be assessed in accordance with Singapore law, to which, in its view, Art. 126 para. 2 LDIP refers. According to the Obergericht, the CEO had his 'establishment' and carried out 'his main activity' in Singapore. The fact that the spouses apparently had their domicile in Switzerland in 2016 is irrelevant. After observing that in summary proceedings the judge is not required to investigate the content of the applicable foreign law on his own initiative, the Obergericht noted that the creditor had not made the content of Singaporean law plausible and thus upheld the opposition to the seizure.

In the judgment under review, the Federal Supreme Court ruled that this reasoning and its outcome were arbitrary.

According to the Federal Court, in order to determine the representative's establishment within the meaning of Art. 126 para. 2 LDIP (first variant), in conjunction with Art. 20 para. 1 let. c LDIP , it is not necessary to base the determination on any commercial activity of the representative, but rather to examine whether, and if so where, the representative has carried out a representative activity on a professional basis or for profit. If the representative does not have an establishment within the above meaning or if this establishment is not recognisable to third parties, the law of the State in which the representative 'carries out his predominant activity in the specific case' applies as the '*Reserveanknüpfung*' (Art. 126 para. 2 LDIP ; second variant). The place of predominant activity is the place where the representative concentrates his or her representation activity and, in case of doubt, the place where the legal act was concluded with the third party or, in the case of legal acts between absent parties, the place where the representative makes or receives declarations of intent (consideration 4.1).

The Federal Court ruled that the Obergericht had misinterpreted the concept of establishment in the above sense. According to the Federal Court, none of the facts relied on by the Obergericht allow the conclusion that B's husband carried out a professional or gainful activity of representation, nor, *a fortiori*, that his place of business within the meaning of Art. 126(2) LDIP was located in Singapore. In particular, the fact that B's husband was then CEO of the bank or that the account was opened in Singapore is not sufficient.

The Federal Court referred the case back to the Obergericht for it to re-examine the question of the representative's possible place of business. The Federal Court thus considered it premature to apply the subsidiary criterion of the place of the representative's predominant activity (Art. 126 para. 2 LDIP ; second variant) to determine the law applicable to representation. The creditor had argued that this connection should lead to the application of Swiss law. The Federal Court also did not rule on the creditor's argument that the application of Swiss law also resulted from Art. 48 para. 1 LDIP, given that the CEO and B were married at the time the account was opened.

While it illustrates the difficulties that may be faced by creditors who have obtained a judgment in a State that is not a party to the Lugano Convention and who are therefore required to demonstrate that there are no grounds for refusing recognition and enforcement within the meaning of Art. 25 ff. LDIP, this case also allows, *mutatis mutandis,* lessons to be learned about

the opening of bank accounts by a representative and the enforceability of choice of court clauses against the (represented) client.

A (Swiss) bank wishing to reduce the risk that the choice of forum contained in its contractual documentation could one day be challenged by the represented client could thus require that its own model power of attorney be used when an account is opened by an intermediary. This model power of attorney should contain a choice of law clause, which would subject the relationship between the representative and the bank, as well as that between the represented party and the bank, to Swiss law (in our example). Contrary to what appears to have been done in the case discussed here, the bank should then carefully document the representative's acceptance, on behalf of the represented party, of the contractual documentation including the choice of jurisdiction clause.

Reproduction autorisée avec la référence suivante: Joël Pahud, The client and her representative versus the bank and its choice of jurisdiction, publié le 3 February 2026 par le Centre de droit bancaire et financier, https://cdbf.ch/en/1448/