# Courts and arbitral tribunals may not rely on parties' determination of financial nature of dispute (Swiss Supreme Court)

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In *decision 4A_328/2015*, dated 10 February 2016, which is intended for official publication, the Swiss Supreme Court considered whether it is in the parties' discretion to decide whether their dispute is of an economic nature or not.

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The Swiss Supreme Court has clarified that it is not in the parties' discretion to decide whether their dispute is of an economic nature or not.

The claim related to a bank employee's request to prohibit her former employer from disclosing personal data to the US Department of Justice. The parties had agreed to fix the amount in dispute at CHF10,000. The Swiss Supreme Court upheld a lower court's' ruling rejecting subject-matter jurisdiction as the claim was not of a financial nature.

The Swiss Supreme Court held that the question of whether a dispute is of economic interest or not must be decided by the court or arbitral tribunal. It noted that Swiss law assumes that the parties are in lesser need of protection in economic matters and should therefore be allowed greater responsibility for the legal enforcement of their rights and broader powers of disposition regarding the modalities of legal proceedings. The court concluded that it would be contradictory to this policy to permit parties to decide whether their dispute is of a financial nature or not.

This policy is also reflected in Article 177(1) of the Swiss Private International Law Act (PILA), under which only disputes of economic interest may be the subject of arbitration. Consequently, the distinction between economic and non-economic disputes is of paramount importance with regard to the arbitrability of a dispute in Switzerland.

Incidentally, Swiss law does not define when a dispute is of economic interest. The Swiss Supreme Court relies on whether the claim in question ultimately and predominantly serves commercial purposes. Apart from the obvious cases of claims for payment of sums based on contract, tort, or unjust enrichment, the court also considers claims for declaratory judgments or injunctions related to unfair competition practices, or requests for the removal of a company from the commercial register to be of a financial nature. By contrast, claims related to personality and name rights or to the registration of trademarks are qualified as non-financial disputes.

Case: *Decision 4A_328/2015 ( www.practicallaw.com/D-036-7962)* (Swiss Supreme Court).

**Resource information**

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