Whether DIFC Court is arbitral tribunal or state court is relevant to enforcement of its judgments in Switzerland (Swiss Supreme Court)

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In *decision 5A_672/2015*, the Swiss Supreme Court considered whether the status of the Dubai International Financial Centre (DIFC) Court (that is, whether it constitutes an arbitral tribunal or a state court) is relevant to the recognition and enforcement of its judgments in Switzerland.

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The Swiss Supreme Court has set aside a lower court's decision that refused to recognise and enforce a judgment rendered by the Dubai International Financial Centre (DIFC) Court.

A creditor sought recognition and enforcement in Switzerland of a DIFC Court judgment containing a payment order against a Swiss defendant. The first instance court granted the creditor's application. However, the second instance court rejected the application, refusing to recognise and enforce the DIFC Court judgment. This refusal was on the basis that the Swiss defendant had not been properly notified of the DIFC Court proceedings under Article 27(2)(a) of the Swiss Private International Law Act (PILA) (Article 27 sets out grounds for denying enforcement of foreign judgments in Switzerland). The second instance court considered that its analysis applied regardless of whether the DIFC Court constitutes an arbitral tribunal or a state court and that, therefore, it did not need to decide the status of the DIFC Court.

The Supreme Court disagreed. It held that, if it decided that the DIFC court judgment constituted a state court judgment and, on that basis, concluded that Article 27(2)(a) of the PILA would not prevent recognition and enforcement, it would nevertheless be possible for the judgment, if it was considered an arbitral award in Switzerland, not to be recognised and enforced under the ***New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*** *(www.practicallaw.com/6-205-5196)* . Therefore, the question of the DIFC Court's qualification needed to be decided. The Supreme Court did not itself decide on the issue but remitted the case to the second instance court for determination.

Case: *Decision 5A_672/2015 (www.practicallaw.com/w-003-9423)* (Swiss Supreme Court).

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