Swiss Supreme Court does not examine status of a DIFC court judgment but leaves issue to lower court

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In *decision 5A_889/2016*, the Swiss Supreme Court considered whether to leave the issue as to whether a DIFC court judgment constitutes a state court judgment or an arbitral award to a lower court, as the issue was no longer disputed between the parties.

The Swiss Supreme Court has decided not to examine the status of a DIFC court judgment again as this issue had already been decided by a lower court and was no longer disputed between the parties in the set aside proceedings before the Supreme Court.

In October 2016, in *decision 5A_672/2015*, (see *Legal update, Whether DIFC Court is arbitral tribunal or state court is relevant to enforcement of its judgments in Switzerland (Swiss Supreme Court)*), the Swiss Supreme Court set aside a lower court's decision that refused to recognise and enforce a judgment rendered by the Dubai International Financial Centre (DIFC) Court. The Supreme Court remitted the case to the second instance court of the Canton of Zug to determine whether the DIFC Court judgment constituted a state court judgment or an arbitral award.

The lower court held that the DIFC judgment qualified as a court judgment and proceeded to apply the Swiss private international law rules of enforcement, rather than the ***New York Convention***, in order to determine whether the judgment was enforceable. Enforcement was ultimately refused (again) due to improper notification of the proceedings to the Swiss defendant.

The second instance court's decision was appealed to the Supreme Court again but this time for other reasons (that is, the wrongful application of the provisions on due notification by the lower court). Given that the lower court's findings on the status of DIFC Court judgments were no longer disputed, the Supreme Court did not examine this issue again.

While the second instance court's decision has no binding effect on any other Swiss court, it is nonetheless an indication of how (other) Swiss courts will decide this question in the future.

Case: *Decision 5A_889/2016* (Swiss Supreme Court).

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