

No annulment of award based on inaccurate designation of party and alleged lack of independence of arbitrator (Swiss Supreme Court)

by *Practical Law Arbitration*, with *Schellenberg Wittmer Ltd*

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In *Decision 4A_404/2021*, the Swiss Supreme Court dismissed an application to set aside a procedural order issued in ICC proceedings under article 190(2)(a) of the Swiss Private International Law Act (PILA), which allows parties to challenge awards where the arbitral tribunal is not properly constituted.

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In a French-language decision, the Swiss Supreme Court rejected an application to set aside a procedural order (PO) issued by an ICC tribunal made under article 190(2)(a) of the Swiss Private International Law Act (PILA), which allows parties to challenge awards where the arbitral tribunal is not properly constituted.

X Inc and Mr C had initiated arbitration against company A. A claimed that X Inc did not exist, that the request for arbitration should therefore be declared inadmissible and the arbitration terminated. The tribunal rectified the designation of the claimants to "B Corp (formerly X Inc) and Mr C" and dismissed A's request in the PO. The ICC dismissed A's challenge that one of the arbitrators lacked independence.

In support of its application to have the PO set aside, A renewed its arguments of inadmissibility and lack of independence.

The Swiss Supreme Court underlined that a formal inaccuracy in the designation of a party can be rectified when there is no real doubt as to the identity of that party. Only if the party cannot be identified at all, or if a claim is brought by a non-existent party, must the claim be declared inadmissible. In this case, it could not be argued that the claimant did not exist, as the claim had also been brought by Mr C.

A's other argument was that one of the arbitrators, Mr Hirth, had failed to disclose that a partner in his law firm had been honorary consul to the Philippines. A alleged that the Filipino government had an interest in the dispute and that Mr C was sitting as a Filipino congressman. The court recalled its settled case law under which grounds for challenge may exist where a judge or arbitrator, or a member of their law firm, is acting for, or regularly acts for, one of the parties, by carrying out "typical activities of a lawyer". In the present case, the court noted that the activities of the honorary consul were not comparable to the "typical activities of a lawyer", that he had provided them privately and *pro bono*, that he had stopped providing them before the arbitration commenced and that the Philippines were not party to the arbitration.

Case: *Decision 4A_404/2021 (Swiss Supreme Court)* (24 January 2022).

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