Validity of subsequent waiver of right to appeal (Swiss Supreme Court)

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In *decision 4A_475/2016*, the Swiss Supreme Court considered whether the parties' behaviour during the period for appeal led to a valid waiver of the right to appeal the award.

In a German-language decision dated 28 March 2017, published on 12 April 2017, and slated for publication in the official court reporter, the Swiss Supreme Court applied the principles of good faith to analyse whether the parties had validly waived their right to appeal after obtaining the arbitral award.

Bank X was fined by the Sanctions Commission of the SIX Swiss Exchange for violation of its ad hoc publication obligation as an issuer of listed securities. X appealed against the fine but the SIX Swiss Exchange Board of Arbitration upheld most of the fine. X then challenged the award before the Supreme Court under the relevant provisions for domestic awards.

The key issue for decision was whether X had validly waived its right to appeal the award since following notification of the award, the parties' legal representatives mutually waived the parties' rights to appeal the award.

The Supreme Court held that although in domestic arbitration the parties cannot waive the right to appeal before an award is issued, a waiver of the right to appeal in full knowledge of the award is permissible and, in principle, valid and binding. As a declaration of will, such waiver must be interpreted according to recognized principles of good faith.

Here, the Supreme Court considered the unambiguous wording of the declaration of waiver as well as the related circumstances and held that it was appropriate to give X's waiver binding and irrevocable effect. Consequently, the Supreme Court did not enter into the matter. While this decision was rendered in a domestic arbitration, the same principles would apply in international arbitration.

Case: *Decision 4A_475/2016* (Swiss Supreme Court).

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