

First request for revision of award under new law deemed inadmissible (Swiss Supreme Court)

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

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In *Decision 4A_422/2021*, the Swiss Supreme Court held that a request for revision of an award, brought under the new Article 190a of the Swiss Private International Law Act, that was based on an alleged conflict of interest of the claimant's counsel was manifestly inadmissible, as it was either filed belatedly or based on facts that were already known to the applicant.

Anya George (Partner) and Simon Demaurex (Associate), Schellenberg Wittmer Ltd

In a French-language decision, the Swiss Supreme Court dismissed the first case brought under the new Article 190a of the Swiss Private International Law Act (PILA), which entered into force on 1 January 2021.

A seller, a British company, initiated arbitral proceedings against a buyer in relation to a purchase agreement for shares in a Swiss company. The tribunal rendered its final award in favour of the seller in October 2020. The buyer did not challenge the award.

In September 2021, the buyer filed a request for revision of the award with the Supreme Court under Article 190a(1)(a), PILA, alleging that it had learned that the seller's counsel had a conflict of interest, as they also represented the Swiss company, its subsidiaries, as well as some of the board members of these companies.

The Supreme Court set out the five requirements for revision to be granted under Article 190a(1)(a), PILA, namely that: the applicant is relying on one or more new facts; these facts are capable of changing the outcome of the award; these facts existed before the award was rendered; these facts were discovered only after the award was rendered; and the applicant could not have relied on these facts during the arbitration proceedings, even if it had acted with due diligence.

Moreover, the Supreme Court pointed out that according to Article 190a(2), PILA, a request for revision must be filed within 90 days of discovery of the "new" facts.

In this case, the Supreme Court held that the "new" facts on which the buyer was seeking to rely were known or should have been known to the buyer as of March 2020, when a hearing was held in the arbitration during which it became apparent that the seller's counsel was also advising members of the company's board. Therefore, the requirement that the new facts be discovered after the award was not fulfilled and the request was belated, leading the Supreme Court to dismiss the request.

The Supreme Court did not provide any views as to whether a conflict of interest such as the one alleged by the buyer could amount to a ground for revision under Article 190a(1)(a), PILA, and overall, that appears doubtful.

Case: *Decision 4A_422/2021 (Swiss Supreme Court) (14 October 2021)*.

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