

Arbitration - Switzerland

Arbitrators Sitting in Switzerland are not Bound by Foreign Court Decision on Jurisdiction

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A foreign court decision upholding the foreign court's jurisdiction in disregard of an arbitration clause may be disregarded by the arbitrators, even where the arbitration was commenced after the foreign court proceeding, because the foreign court decision cannot be recognized under the New York Convention if the arbitrators correctly find that they have jurisdiction under the arbitration clause. If some of the parties before the foreign court were not parties to the arbitration clause, the foreign court could retain jurisdiction over such non-parties.

This decision was made by the Swiss Supreme Court in proceedings to challenge the arbitral award finding jurisdiction.

Compania Minera Condesa SA et Compania de Minas Buenaventura SA v. BRGM Pérou S.A.S et Tribunal CIA (recours de droit public), ATF 124 III 83, summarized in SJ 1998, 358-360 (1997)

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