

Dutch Supreme Court upholds decision partially setting aside awards for lack of arbitration agreement

by *Practical Law Arbitration*, with *OSK Advocaten*

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In *Sina v GeoSolutions and others* (ECLI:NL:HR:2024:403), the Dutch Supreme Court upheld the Amsterdam Court of Appeal's ruling, which partially set aside arbitral awards for the lack of an arbitration agreement, where a clause in a license agreement was only signed under "acknowledged and agreed".

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The Dutch Supreme Court has upheld a decision of the Amsterdam Court of Appeal, partially setting aside a jurisdiction award and a merits award for lack of an arbitration agreement.

The dispute arose under a licence agreement between a subsidiary of Sina and GeoSolutions, which Sina signed simply "acknowledged and agreed". Contrary to the tribunal's finding in its jurisdiction award that the arbitration clause applied to all parties, the Court of Appeal ruled that the arbitration clause was agreed between "both parties", that being Sina's subsidiary and GeoSolutions, and not Sina itself. For further discussion of the Court of Appeal's decision, see [Legal update, Amsterdam Court of Appeal sets aside awards for lack of arbitration agreement](#).

On appeal by GeoSolutions, the Supreme Court ruled that the matter was not subject to cassation review as it did not concern a matter of legal unity or legal development.

However, in his opinion, the Supreme Court's Attorney General discussed the position more fully. He found, first, that given the fundamental nature of the right of access to justice, the Court of Appeal should not exercise any deference to the arbitral tribunal's ruling on whether or not there was a valid arbitration agreement. In other words, the Court of Appeal was not bound to respect the tribunal's ruling on jurisdiction. This was the case despite the fact that the tribunal had heard witness evidence first-hand on the circumstances which led to the conclusion of the agreement, whereas the Court of Appeal had not.

Further, the Attorney General found that the Court of Appeal correctly ruled on whether Sina was bound by the arbitration agreement in accordance with the so-called "will and trust" theory. That means, among other things, that the signing of the matrix agreement was not considered decisive as to whether the parties had concluded a binding arbitration agreement.

The Attorney General also considered that the Court of Appeal's interpretation of the contract was neither incorrect nor incomprehensible given the circumstances, rejecting GeoSolutions' argument that the words "acknowledged and agreed" ought to be interpreted differently.

Case: *Sina v GeoSolutions and others* (ECLI:NL:HR:2024:403) (Dutch Supreme Court) (15 March 2024).

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