Swiss Supreme Court confirms contribution requirement for protected investments under AANZFTA

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

Legal update: case report | Published on 19-Aug-2026 | Switzerland

In *Cases 4A_531/2025* and *4A_633/2025*, the Swiss Supreme Court dismissed a Singaporean company's challenge to an award in which a Geneva-seated tribunal declined jurisdiction under the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA). The court confirmed that, to be protected under that treaty, an investment requires a contribution, which was not satisfied by the claimant's acquisition of an Australian company through an intra-group share swap. It also rejected the claimant's revision request alleging arbitrator bias.

Anya George (Partner) and Nawel Augsburger (Associate), Schellenberg Wittmer Ltd

In two recently published decisions, the Swiss Supreme Court dismissed a Singaporean company's set-aside application and parallel revision request against an award in which a Geneva-seated tribunal declined jurisdiction over the company's treaty claims against Australia.

The claimant was incorporated in Singapore during the restructuring of an Australian mining group, acquiring an Australian company from its New Zealand parent through a share swap. In 2023, it initiated an UNCITRAL arbitration under the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA). The tribunal declined jurisdiction, finding that the claimant had not made a protected investment.

The court upheld that finding. Applying the Vienna Convention's treaty interpretation rules, it held that, under the AANZFTA, ownership or control of an asset is insufficient; a covered investment also requires a contribution from the investor. The treaty's references to investments being "established, acquired or expanded", its treatment of invested or reinvested returns, and its distinction between making an investment and merely owning or controlling one all supported that requirement.

The claimant held SGD1 as initial capital, and its newly issued shares had no value at the time of the share swap. The court rejected the argument that receiving valuable shares amounted to a contribution, holding that the contribution must be evaluated from the acquiring entity's perspective, not the group's. Although a contribution may take various economic forms and does not strictly require a capital flow into the host state, the claimant had failed to establish a qualifying contribution, including through its involvement in the Australian company's management.

In parallel revision proceedings, the claimant alleged arbitrator bias, asserting that the fees stated in the award showed that the arbitrators had spent only seconds reviewing each page of the record. The court declared the request inadmissible. Because the fee data was included in the award, the bias challenge should have been raised under article 190(2)(a) of the Swiss Private International Law Act (PILA) within the 30-day set-aside deadline.

This is the first time the Supreme Court has accepted that a contribution requirement may be implicit in a treaty's definition of a (covered) investment. In *Case No 4A_306/2019*, it declined to infer an active investment or consideration requirement from the treaty before it, while in *Case No 4A_492/2021*, it expressly left open whether contribution and risk were inherent under the ECT's definition of "investment". The second decision confirms that revision cannot cure omissions in a set-aside application.

© 2026 Thomson Reuters. All rights reserved.

Case: *Cases 4A_531/2025 and 4A_633/2025 (Swiss Supreme Court) (15 June 2026)* (in German language).

END OF DOCUMENT

Related Content

Topics

Arbitral Awards and Challenges
Investment Treaty Arbitration
Applications to Court
Jurisdictional Issues - Arbitration

Practice note: overview

Jurisdiction and admissibility in investment arbitration: overview • Maintained
Investment treaty arbitration: overview • Maintained

Practice notes

Arbitration in Switzerland • Maintained

Country Q&A

Arbitration Procedures and Practice in Switzerland: Overview • Law stated as at 01-Jan-2026

© 2026 Thomson Reuters. All rights reserved.