Swiss Supreme Court rejects China's public policy challenge to costs allocation in investment treaty award

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

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In *Decision 4A_100/2025*, the Swiss Supreme Court dismissed an application by the People's Republic of China to set aside a final award rendered by a Geneva-seated arbitral tribunal under the 1986 China-UK BIT. Alongside other failed grounds, it rejected China's argument that the tribunal's costs allocation violated substantive public policy under article 190(2)(e) of the Swiss PILA. It held that China had not shown that the "costs follow the event" principle is a fundamental public policy legal principle, and that an allegedly excessive costs award is not in itself a ground for intervention.

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The Swiss Supreme Court has dismissed an application by the People's Republic of China to set aside an award rendered by a Geneva-seated tribunal under the 1986 China-UK bilateral investment treaty (BIT) concerning alleged expropriation of land rights. The investor claimed USD453 million. The tribunal awarded USD26 million and ordered China to bear 85% of the arbitration costs and the claimant's legal costs.

China applied to the Swiss Supreme Court to set aside the award, including on grounds that the tribunal's cost allocation violated substantive public policy under article 190(2)(e), Swiss Private International Law Act (PILA). China submitted that ordering the state to bear 85% of costs contradicted the "costs follow the event" principle and breached public policy, having successfully defended approximately 94% of the claimed amount. China further argued that the claimant's legal fees were excessive and distorted by agreements with its counsel and litigation funder.

The court recalled that substantive public policy is violated only when an award disregards fundamental legal principles, leading to an outcome irreconcilable with the essential values underpinning every legal order under prevailing Swiss conception. The court noted that it is not theoretically inconceivable that a tribunal's costs decision could violate substantive public policy. However, costs are an area in which the court intervenes with great restraint, even when reviewing state court decisions for arbitrariness, and it exercises greater restraint in international arbitration. Describing the costs awarded as excessive is insufficient.

The court found that China had not shown that "costs follow the event" is a fundamental principle of public policy. Article 42 of the UNCITRAL Rules establishes cost-following only as a general rule, permitting tribunals to apportion costs reasonably based on circumstances. The court held that the tribunal properly considered China's non-compliance with orders and that the investor prevailed on jurisdiction and the merits, despite not obtaining full quantum. Regarding legal fees, the tribunal was justified in considering the claimant's burden of proof and China's reliance on government lawyers. Funding and fee agreements did not render the costs contrary to public policy.

This decision underscores the high threshold for challenging arbitral costs on Swiss public policy grounds. The court did not elevate "costs follow the event" to a public policy principle. Procedural non-compliance and asymmetrical burdens may be considered in allocating costs, and a respondent defeating the vast majority of quantum may nonetheless bear most costs where the claimant prevails on jurisdiction and liability.

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Case: *Decision 4A_100/2025 (Swiss Supreme Court) (2 September 2026)* (in German language).

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