

Cost award that does not specify allocation between multiple parties cannot be enforced (Swiss Supreme Court)

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

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In *Decision 5A_335/2021*, the Swiss Supreme Court confirmed that a cost award in which two parties were ordered to pay compensation for legal costs was not enforceable in Switzerland as their joint and several liability did not follow from the award, the applicable procedural rules or the *lex arbitri*.

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In an investment arbitration between two German investors and the Czech Republic, an arbitral tribunal seated in Geneva, acting under the aegis of the Permanent Court of Arbitration, rendered an award rejecting the two investors' claims and ordering them to pay compensation to the Czech Republic for legal costs of approximately USD1.75 million. The award did not specify whether the investors were jointly and severally liable for those costs or if each was liable only for a share.

The Czech Republic conducted separate attachment proceedings in Switzerland against the two investors, each for the entire amount of compensation. However, the Swiss Supreme Court denied enforcement of the cost award, stating that a joint and several obligation to pay the compensation for legal costs could not be derived from the award itself, the UNCITRAL Arbitration Rules 1976 (which applied in the arbitration) or the Swiss *lex arbitri*.

The Supreme Court reasoned that it is not for the enforcement courts to interpret, let alone supplement, the award that is being relied on by the party seeking enforcement. Rather, in the framework of debt enforcement proceedings, the courts may only examine whether liability for payment (joint and several or otherwise) clearly follows from the award. The court dismissed the Czech Republic's argument that, in this case, unless joint and several liability of the investors were assumed, it would be impossible to enforce the cost award, holding that the role of the enforcement courts is not to provide a party with a title to enforcement, but only to determine whether such a title exists.

This decision highlights that, to the extent that the applicable procedural rules or *lex arbitri* do not contain clear provisions on the allocation of costs between the parties, such an allocation should be expressly made in the award, failing which the cost claim will not be enforceable in Switzerland.

Case: [Decision 5A_335/2021 \(Swiss Supreme Court\) \(19 July 2022\)](#).

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