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Yukos Oil Wins with Good Samaritan Third Party Funder's Help?

Lisa Bench Nieuwveld (Conway & Partners) · Wednesday, August 8th, 2012

The saga with Yukos Oil and its nationalization – and the effects on its various related entities – has been ongoing for quite some time. As reported in the news of late (see e.g. Business Wire.com and Cisarbitration.com), in late July an arbitral award was rendered under the auspices of the Stockholm Chamber of Commerce. This award ordered the government of Russia to pay Spanish investors whose investment was damaged through nationalization. The claimants in this case – the Spanish investors – were funded by the majority shareholder of Yukos Oil, Menatap; to my knowledge no legal rights to the recovery existed for this shareholder.

The basis of the arbitral claims were founded in the bilateral investment treaty between Spain and Russia and stemmed out of the Russian government issuing tax bills and other enforcement proceedings which led to bankruptcy, ultimately creating losses to the Spanish investors and resulting in Russia nationalizing Yukos Oil. In order to place a monetary amount on the value of Yukos Oil for damages purposes, the panel looked at the value of Yukos Oil at the time of the nationalization, which it estimated at more than \$60 billion.

The arbitral tribunal held that the tax bills were “arbitrary and discriminatory”. It started with the principle that valid tax measures against a company do not result in an illegal nationalization (or, in other words an expropriation without compensation). The tribunal, however, considered the possibility that tax measures may indeed be illegitimate and – depending on how they are issued and enforced- result in an expropriation. In this case (1) illegitimate tax measures were issued – with the Russian government using claims such as that related companies were simply shams and that Yukos Oil impermissibly maximized tax loopholes in the law, (2) subsequently these questionable tax measures were enforced – ignoring Yukos requests to defer payment or settle the claims in any manner (and another consideration was auctioning of the shares of one the intermediaries), and (3) Yukos was ultimately forced into bankruptcy allowing the Russian government to buy up a majority of its assets.

The arbitral tribunal – composed of Jan Paulsson, Charles Brower, and Toby Landau QC – awarded damages based on the share value as the claimants were shareholders, looking at the date of nationalization.

What peaks my interest about this case is the use of a form of third party funding. Not a form that is now seen much more – in which an independent group of investors create a fund to invest in arbitrations or litigation. Instead, the funder in this case was the majority shareholder. The tribunal

held that this was not a traditional third party funding arrangement, but more of a “good Samaritan” offering and, therefore, no binding obligation to share the damages with the majority shareholder existed. However, there certainly was a moral obligation. It is indeed interesting to see how this funding arrangement existed and whether the investors do comply with their moral obligation. How will this encourage other groups with similar motivations to act as good Samaritans? Or were there other motivations involved, greater than the risk value of money involved here?


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The graphic features a black background with white text and a circular icon. The icon depicts a group of stylized human figures, with one figure in the center being magnified by a magnifying glass. The background is accented with horizontal lines in blue and green.

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