

The Largest International Arbitration Award – Yukos vs Russia

July 20, 2014

On 18 July 2014, a United Nations Commission on International Trade Law (UNCITRAL) arbitral tribunal seated in The Hague under the auspices of the Permanent Court of Arbitration (PCA) rendered in *Hulley Enterprises Limited (Cyprus) v. The Russian Federation* (PCA Case No. AA 226), *Yukos Universal Limited (Isle of Man) v. The Russian Federation* (PCA Case No. AA 227) and *Veteran Petroleum Limited (Cyprus) v. The Russian Federation* (PCA Case No. AA 228), three parallel arbitrations, the largest award in history. The arbitral tribunal ordered Russia to pay over USD 50 billion in compensation for the indirect expropriation of OAO Yukos Oil Company (Yukos).

The claimants in the parallel arbitrations were majority shareholders in Yukos, operating in the oil and gas sectors. The claimants brought their claims against Russia under the Energy Charter Treaty (ECT) seeking approximately USD 114 billion.

According to the claimants, Russia took a series of measures leading to the expropriation of the claimants' investments in Yukos. Such measures included the imposition of tax reassessments, VAT charges, fines and asset freezes against Yukos, as well as the criminal prosecution of Yukos and its management. The claimants argued that Russia breached the fair and equitable treatment (FET) standard under Article 10(1) of the ECT and expropriated the claimants' investment in Yukos in violation of Article 13(1) of the ECT.

One of Russia's defences was that Yukos was a criminal enterprise engaged in tax evasion, tax fraud and embezzlement.

In an interim award dated 2009, the arbitral tribunal upheld its jurisdiction holding, amongst others, that as the claimants were organized under the laws of Cyprus, they were protected investors under the ECT, regardless of the nationality of the claimants' owners or controllers.

In its final award, the arbitral tribunal considered that the measures taken by Russia had an effect equivalent to expropriation without compensation in breach of Article 13 of the ECT. Accordingly, the arbitral tribunal did not consider it necessary to decide whether Russia breached Article 10 of the ECT on fair and equitable treatment.

Finding for the claimants, the arbitral tribunal awarded the claimants the value of their shares in Yukos, the value of lost dividends, and interest on both. The arbitral tribunal granted pre- and post-award interest and ordered Russia to pay USD 50 billion in total damages, as well as arbitration costs and 75% of the claimants' legal fees. According to the arbitral tribunal, the 25% reduction in the amount of damages ordered was due

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to the claimants' contributory fault in their abuse of the low-tax regions within Russia and their misuse of the Cyprus-Russia tax treaty.

It will be interesting to see whether Russia complies with the award within the time-frame ordered by the arbitral tribunal or whether it applies for its annulment before Dutch courts, that is, the courts at the seat of the parallel arbitrations.

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