



ARBlog

INTERNATIONAL ARBITRATION NEWS, TRENDS AND CASES

Posted on June 8th, 2017 By Melissa Ordonez and Chris White

Somewhere beyond the seen: Paris Court of Appeal sets aside an award on the basis of serious indications of money laundering after considering new evidence and reevaluating the record.

Abstract:

On 21 February 2017, the Paris Court of Appeal set aside an UNCITRAL award on international public policy grounds due to serious indications of money laundering. Allegations of corruption and criminal activity have been used increasingly in recent years in French courts to argue for the setting aside of arbitral awards on the grounds of a breach of international public policy. This is the first time, however, that the Paris Court of Appeal has set aside an award on the basis of alleged money laundering. Further, this decision appears to specify the extent of review that French courts may perform when dealing with allegations of a breach of international public policy in cases where issues of money laundering are at stake, as it follows a detailed review of facts that were put before the arbitral tribunal and the consideration of new evidence.

Relevant facts:

Mr Belokon, a Latvian citizen, acquired Insan Bank in Kyrgyzstan in 2007 and renamed it Manas Bank. In spring 2010, political tensions in Kyrgyzstan led to the fall of President Bakiev and the Kyrgyz authorities placed Manas Bank into temporary administration. The initial temporary administration period was extended several times. On 2 August 2011, Mr Belokon commenced UNCITRAL arbitration proceedings under article 9.2(d) of the Kyrgyzstan-Latvia BIT, alleging that the continuing extension of the temporary administration period amounted to indirect expropriation.

In an award rendered on 24 October 2014, the three-member tribunal found in favour of Mr. Belokon and ordered Kyrgyzstan to pay \$15.2 million. An action to set aside the award was brought by the Kyrgyz Republic before the Paris Court of Appeal in January 2015, notably on the grounds that the recognition or enforcement of an award in contradiction with the fight against money laundering would constitute a breach of international public policy.

In its application to have the award set aside, the Kyrgyz Republic argued (as it had during the arbitration proceedings) that most of Manas Bank's activities had the purpose of furthering money laundering. As evidence, it relied on the fact that the bank's 17 main clients were offshore companies whose operations were devoid of any economic purpose and that Mr Belokon was very closely connected to the former president's son. It also adduced new evidence that Baltic International Bank, also owned by Mr Belokon, was fined 1.1 million euros in March 2016, more than a year after the award was rendered, for breaching anti money-laundering rules in Latvia between 2003 and 2015.

In seeking dismissal of the application, Mr Belokon claimed that Kyrgyzstan's application to set the award aside amounted to a review of the merits of the case, which he argued was not permitted under French law.

Decision:

The Paris Court of Appeal set aside the award on the basis that its recognition or enforcement would be contrary to international public policy. Interestingly, it disagreed with the tribunal's finding that there was insufficient clear evidence to support serious indications of money laundering. Explaining its decision, the Court said that its task was to determine whether recognition or enforcement of the award would undermine the fight against money laundering by allowing a party to benefit from criminal activities. In carrying out this assessment, the Court said that it was not limited to the evidence available to the tribunal or bound by its assessment of the record, although it added that due process must always be respected.

Comment:

This decision constitutes the first example of an award being set aside by the French courts on international public policy grounds on the basis of alleged money laundering. In coming to this decision, the Paris Court of Appeal appears to have conducted a relatively thorough review by examining in detail evidence that was put before the tribunal and considering new evidence, such as the 1.1 million euro fine given to Baltic International Bank for breaching anti money-laundering rules in Latvia. This extent of review appears to share similarities with the reasoning in three 2014 Paris Court of Appeal decisions in the area of corruption (*Gulf Leaders, République du Congo v. Commisimpex* and *SAS Man Diesel*), the first two of which have been upheld by the *Cour de cassation* (French Supreme Court). It also appears to be in contrast with the 2004 Paris Court of Appeal decision in *Thalès*, an important case in this area, according to which national courts should not carry out a thorough review of matters dealt with by the arbitral tribunal and that only a flagrant, effective and concrete breach of international public policy could lead to an award being set aside.

Case: CA Paris, Belokon v Kyrgyzstan, 21 February 2017, No. 15/01650

Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004 | USA
Phone: +1 202 637 5600
Fax: +1 202 637 5910

Hogan Lovells International LLP
Atlantic House
Holborn Viaduct
London EC1A 2FG
United Kingdom
Phone: +44 20 7296 2000
Fax: +44 20 7296 2001

Copyright © 2018, Hogan Lovells. All Rights Reserved.