



# RCIL ARBITRATION NEWSLETTER

August 2023

## INVESTMENT ARBITRATION AND CLAIMS

### Third-party funder clears way for potential treaty arbitration against India over frozen mining project & Dispute over mining licence may result in multifaceted treaty claim

25<sup>th</sup> August 2023

A subsidiary of the gold mining company Panthera Resources Plc (“Panthera”) has obtained a funding confirmation notice by LCM Funding (“LCM”) to pursue a treaty claim against India.

Panthera has now confirmed that LCM completed its due diligence analysis and issued a funding confirmation notice, providing access to an unconditional funding facility to Indo Gold worth 13.6 million USD. The announcement also provides additional details regarding the funding agreement and Indo Gold’s prospective claim, which are briefly analysed below.

Panthera, in a recent statement, accuses the government of Rajasthan of obstructing Indo Gold's pursuit of a prospecting license and asserts that India's 2021 act providing reimbursement for expired mining rights breaches the Bilateral Investment Treaty (BIT). Panthera claims India unlawfully expropriated Indo Gold's investment and violated the BIT's fair and equitable treatment standard. While the compensation amount is undisclosed, Panthera cites the Bhukia Project's significant market value, as it's regarded among the world's premier undeveloped gold projects, supported by indications of

substantial gold reserves in the area, potentially confirmed by an Indian government agency.

### US investment funds lodge ICSID claim against Mexico

14<sup>th</sup> August 2023

A pair of US investment funds involved in a legal battle to recover debt from Mexico’s second-largest mass media company have brought a NAFTA legacy claim against the state at ICSID.

The claim involves debt instruments and financial services and centers around owed payments and damages linked to Mexican multimedia group TV Azteca. A trustee representing two claimants, along with Fidelity Investments, filed a lawsuit against TV Azteca to recover \$480 million. TV Azteca, owned by Mexican billionaire Ricardo Salinas Pliego, has been withholding payments from US creditors for over a year while continuing to service other Mexican debts. One of the claimants, Cyrus, is among three bondholders seeking to push TV Azteca into involuntary bankruptcy for about \$63 million in unpaid debt. A Mexican court prohibited TV Azteca from publishing quarterly financial data due to the bondholder dispute and had previously blocked bond payments, citing the non-endorsed end of the COVID-19 pandemic by the World Health Organization.

Cyrus and Contrarian are bringing the claim under the North American Free Trade Agreement (NAFTA) and its successor treaty, the United States-Mexico-Canada Agreement (USMCA).

## Iran's central bank prepares treaty claim against Korea

01<sup>st</sup> August 2023

The Central Bank of Iran is preparing to file a treaty claim to recover US\$7 billion of Iranian assets frozen by South Korean banks due to sanctions – as Texas private equity group Lone Star seeks to annul an ICSID award that rejected the bulk of its US\$4.7 billion claim against the state.

Iran's Ayatollah Seyyed Ebrahim Raisi has presented a bill to Iran's parliament, suggesting the referral of the country's \$7 billion dispute with South Korea over unpaid petrochemical and petroleum purchases to international arbitration, using the Iran-Korea bilateral investment treaty. This would involve proceedings likely under UNCITRAL rules at the Permanent Court of Arbitration, since Iran is not part of ICSID, after the funds were frozen by two Korean banks due to US-imposed sanctions after Donald Trump abandoned the 2015 nuclear deal.

## UK sand miner prepares claim against Sri Lanka

01<sup>st</sup> August 2023

A UK company has instructed counsel for a potential treaty claim against Sri Lanka over the cancellation of its mining licences that it says the state is trying to award to third parties.

Capital Metals, having initiated proceedings under the UK-Sri Lanka bilateral investment treaty for ICSID arbitration, is embroiled in a dispute with Sri Lanka over investments made in the Eastern Minerals Project. The company

asserts it invested in the mineral sands deposit, but Sri Lanka's Geological Survey and Mines Bureau suspended exploitation licenses held by its subsidiary, Damsila Exports, due to ownership adherence concerns, leading to divestiture negotiations and license cancellations. Damsila is challenging the cancellations in Sri Lankan courts, while Capital Metals engages in discussions with the Sri Lankan government to resolve the matter, influencing parliamentary oversight and investigations into alleged "misappropriation."

## Uncertainty for funders after UK Supreme Court ruling

26<sup>th</sup> July 2023

The UK Supreme Court has raised doubts about the enforceability of many litigation funding agreements in England and Wales, as funders look set to review the terms of their agreements.

By a 4-to-1 majority, the court found that litigation funding agreements (LFAs) under which the funder is entitled to a percentage of any damages fell within the statutory definition of damages-based agreements (DBAs).

The Judgment is available [here](#)



## INSTITUTIONS, PEOPLE AND GROUPS

### Russian institution says it is not target of US sanctions

24 August 2023

One of Russia's longest-running arbitral institutions has said it is not affected by recent US sanctions imposed on a separate entity that shares the same name as its parent organisation.

The US Treasury Department erroneously added the Russian Union of Industrialists and Entrepreneurs (RSPP) to its sanctions list due to technology sector activities, mistakenly linking it to the Arbitration Centre at the RSPP. However, the Arbitration Centre clarified that the sanctioned RSPP is a distinct Russian employers' association, whereas the Arbitration Centre is administered by a separate public organization with the same name. The Arbitration Centre emphasized the entities' legal, structural, and operational differences, asserting that the sanctions on RSPP association of employers won't impact the Arbitration Centre's administration of cases, including international disputes.

### SIAC adds board and court members

17<sup>th</sup> August 2023

The Singapore International Arbitration Centre has appointed India's Cyril Shroff to its board of directors and two new members to its arbitration court. Shroff – who is managing partner of Cyril Amarchand Mangaldas (CAM) in

Mumbai – will serve under SIAC chairman Davinder Singh SC of Davinder Singh Chambers in Singapore.

Moreover, CAM's head of international arbitration Shaneen Parikh will step down from the court after four years and Vijayendra Pratap Singh, who heads the New Delhi disputes group at AZB & Partners is a new member of the SIAC court.

### SOAS University of London launches arbitration research centre

15<sup>th</sup> August 2023

SOAS University of London has launched a research and knowledge exchange centre focused on arbitration, with professor Emilia Onyema serving as its director and WilmerHale partner Steven Finizio as deputy director.

The SOAS Arbitration and Dispute Resolution Centre's (SADRC) main objectives will include promoting research, teaching and knowledge-sharing in arbitration and other forms of ADR, with a particular emphasis on Asia, Africa, and the Middle East.

You can sign up to become a member of SADRC [here](#).

### International Centre for Dispute Resolution releases 2022 case statistics

04<sup>th</sup> August 2023

The latest caseload report of the international division of the American Arbitration Association reveals the International Centre for Dispute



Resolution (ICDR) handled US\$4.2 billion worth of cases last year, while less than a quarter of arbitrators on its roster come from diverse backgrounds.

The ICDR says it provided services for 755 cases between businesses last year, and also registered 12% more cases than in 2021. According to the statistics, 850 cases were pending at the ICDR as of December. 94 countries were represented in cases filed last year. There were also 120 parties from Canada, 106 from China, 57 from the UK, 31 from Mexico and 28 from Switzerland.

The majority of these applications were made under the ICDR’s International and Commercial rules, with two made under the ICDR Canada Rules and one under the rules of US trade association The Independent Film & Television Alliance.

## CONFERENCES AND EVENTS

### Invitation to the UN World Investment Forum in Abu Dhabi, 16-20 October

17<sup>th</sup> August 2023

The UNCTAD World Investment Forum 2023 is the biggest in-person sustainable investment event of the year. It will take place at the Abu Dhabi National Exhibition Centre (ADNEC) in Abu Dhabi, United Arab Emirates (UAE), from 16 to 20 October 2023.

The World Investment Forum is where strategies and solutions are created for global investment and development challenges. The Forum offers a unique opportunity to influence investment-related policymaking, to shape the global investment environment, and to network with global leaders in business and

politics. Join your peers in Abu Dhabi this October for the pre-eminent global platform for investment and development.

Interested participants are invited to [register here](#).

## GLOBAL ARBITRATION TRENDS & REPORTS

### UNCTAD presents a new reform toolbox for the energy transition in its IIA issues note on trends in investment treaty regime

21<sup>st</sup> August 2023

UNCTAD presents a reform toolbox for the energy transition in its latest report on global trends in the investment treaty regime.

Climate imperatives and other emerging global challenges highlight the urgency of accelerating the reform of the investment treaty regime. UNCTAD developed a toolbox for international investment agreements (IIAs) on the promotion of sustainable energy investment. The objective is to transform IIAs into instruments that actively support the energy transition.

Countries and regions continued their efforts to reform the IIA regime in 2022-2023. This includes new types of investment-related agreements with innovative provisions promoting sustainable investment, the termination of bilateral investment treaties (BITs) and ongoing multilateral discussions on reforming investor-State dispute settlement (ISDS) mechanisms.



The landscape is still largely dominated by old-generation IIAs that are inconsistent with the global sustainability imperative and can hinder policy measures needed for the energy transition. Of the 2,584 treaties currently in force, over 2,300 were signed before 2012.

Such old-generation IIAs serve as the basis for almost all existing ISDS claims. As of 1 January 2023, the total number of publicly known ISDS claims had reached 1,257. To date, 132 countries and one economic grouping are known to have been respondents to one or more ISDS claims. The Energy Charter Treaty continued to be the most frequently invoked IIA.

The report is available [here](#).

### UNCTAD released review of investor-state arbitration awards: new insights for investment treaty reforms

04<sup>th</sup> August 2023

UNCTAD has released a new review of investor–State dispute settlement (ISDS) decisions rendered by arbitral tribunals in 2021. It covers high-profile decisions such as *Eco Oro v. Colombia* and several renewable energy-related cases under the Energy Charter Treaty such as *Infracapital v. Spain*.

About 95 per cent of the reviewed decisions concerned claims based on old-generation international investment agreements (IIAs) signed between 1980 and 2010. UNCTAD’s IIA Reform Accelerator, launched in November 2020, was developed to facilitate the interpretation, amendment and replacement of such IIAs.

The review of recent ISDS decisions highlights the need to speed up the reform of the IIA regime. Reforms are essential to ensure that investment

treaties and associated risks of investor–State disputes do not hinder countries’ efforts to address public policy concerns.

The review is available [here](#).

## TREATIES, CHARTERS AND CONVENTIONS

N/A

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