

Amsterdam Court of Appeals rules on enforcement of award set aside by Russian courts

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The Amsterdam Court of Appeals has given an interim judgment on an application for leave to enforce an arbitral award that has been set aside by the Russian courts. In doing so, it took a different approach to that of the court in the case of *Yukos Capital v Rosneft*.

Background

Article V(1)(e) of the *New York Convention* (www.practicallaw.com/6-205-5196) provides that the courts of a contracting state may refuse to enforce a Convention award if the defendant proves that it has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Yukos Capital v Rosneft

On 28 April 2009, the Amsterdam Court of Appeals rendered its well known judgment allowing Yukos Capital to enforce a number of ICAC arbitral awards against Rosneft in the Netherlands, despite the awards having been set aside in Russia. In short, the Amsterdam Court of Appeals decided in *Yukos* that:

- ❑ The New York Convention did not apply to the recognition of foreign state court decisions, such as a setting aside judgment.
- ❑ Recognition of a Russian decision setting aside an arbitral award is not required under the New York Convention or any other treaty between Russia and the Netherlands.
- ❑ Without an applicable treaty, recognition of a foreign state court judgment in the Netherlands is only possible under international private law rules and, for that reason, it is not possible if it is likely that the foreign judiciary is dependent or partial.
- ❑ Direct evidence of partiality or dependency of individual judges is not required.

Facts

By an arbitral award of 31 March 2011, an ICAC arbitral tribunal sitting in Moscow ordered the Russian steel conglomerate, OJSC Novolipetsky Metallurgichesky Kombinat (NLMK) to pay Nikolai Viktorovich Maximov (Maximov) RUB 8.9 billion, as balance of the price for purchasing 50% (plus one share) in Maxi-Group, and costs. Maximov secured payment by effecting an attachment of NLMK's shares in the Dutch company, NLMK International BV. In May 2011, Maximov applied to the Amsterdam District Court for leave to enforce the arbitral award in the Netherlands. However, in June 2011, the Moscow Arbitrazh Court set aside the arbitral award. This decision prompted the Amsterdam District Court to refuse enforcement of the arbitral award on 17 November 2011.