

Your World First

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# International Investment Arbitration

July 2015

# Securing your interests – delivering results

Having CMS represent your interests brings genuine competitive advantages. Whatever the nature of the investment dispute you are contemplating or are already caught up in, we will help you resolve it.

In international investment arbitration — as in all areas where we provide legal advice — we deliver results by taking a distinctive approach to applying our expertise on our clients' behalf. We put client understanding and commitment ahead of everything else. Our priority is always to deliver on 'Your World First', which is how we describe our commitment to focusing our expertise, knowledge and commercial insight on our clients' issues and objectives.

Strong relationships with clients who expect and deserve the best, have earned us our place among the world's leading law firms. For CMS lawyers, connecting with and making a difference to your world is our mission, our motivation and the measure of our success.

This is why clients trust us with their most complex international investment disputes.

Having CMS on your side means:

#### **Top-tier expertise and depth of resources.**

International investment arbitration is an area of practice which requires highly specialised advice on issues of jurisdiction and merits. At CMS, we have a large team of highly experienced lawyers in this area who have spent many years representing clients before international investment tribunals, sitting as arbitrators in investment treaty cases as well as teaching and conducting research in the area. We are on top of the latest developments. Your investment dispute will be in safe hands with us.

**Global reach with local insight.** CMS is truly international and bridges cultural differences. Our investment arbitration lawyers offer clients international expertise, a variety of legal backgrounds and linguistic skills combined with a profound local insight. It is part of our culture for lawyers to work across offices. We know all our colleagues well from many joint projects.

**Proven high-stakes advisers.** Whether you are the claimant or the respondent in an international investment arbitration, it is often the case that the

relationship between the parties is severely damaged and that considerable sums are at stake by the time arbitral proceedings are initiated. We are very familiar with such situations as we handle disputes worth billions on a daily basis. We also appreciate how politically sensitive investment disputes can be and that they must be handled with the appropriate level of discernment and sensitivity.



They brought two key capabilities: the first was a sufficient understanding of the technical aspects of the whole file; the second was a very flexible approach towards the strategy we took. They were very supportive in explaining the consequences of trajectory A, B or C. They have an open mind when it comes to the dispute resolution process.

*Chambers – Dispute Resolution, 2015*



# Planning for success



CMS 'has strong expertise', and is 'a very consistent and reliable performer.'

*Legal 500 – Dispute Resolution*



Disputes happen. Whatever business you are in, resolving disputes is a fact of life. Knowing you have experienced and proactive advisers on your side is the first step towards a successful resolution.

Investment disputes present specific challenges, and getting advice early in the process is vital. This applies whether you are an investor considering bringing a claim against a host State or a host State faced with a claim by a foreign investor.

- **Reputation.** Whether you are bringing or defending an international investment claim, important reputational issues should be considered from the outset. International investment arbitration is different from commercial arbitration in that the confidentiality of the proceedings is by no means guaranteed, but is increasingly uncommon due to transparency concerns. This means that at the very least, the names of the parties can be expected to enter the public domain and sometimes details of the case such as procedural orders and awards are made public.
- **Nature of the proceedings.** It is common for the bilateral investment treaty, underlying investment agreement or the national law governing foreign investment to set out the procedure in case of a dispute between an investor and the host State. This will most often include provisions for a specific set of
- rules or for a specific arbitral institution, but may sometimes leave the choice to the investor in which case it is worth exploring the different options available from the outset and analysing the ramifications of one choice over another.
- **The right expertise.** Public international law and international investment law are specialised areas of law which sit apart from national laws and require the involvement of counsel with proven expertise to navigate them and understand them. CMS lawyers are well-versed in the substantive and procedural aspects of public international law and international investment law. Extensive knowledge and expertise is also required from the arbitrators who sit in international investment arbitrations because some aspects of the law applicable to the dispute are constantly changing and evolving. The formation of the arbitral tribunal is a critical step in the investment arbitration process. CMS is well placed to assist you in identifying an arbitrator with the right level of knowledge and expertise and in ensuring that you obtain the right arbitral tribunal for your case.

# Our experience

CMS handles hundreds of cases across the world covering the full range of major business and investment disputes and involving clients from a wide range of industries. Here is a sample of our recent experience.

Sector	Applicable Rules	Details
Telecoms	UNCITRAL	Chairing an arbitral tribunal in an UNCITRAL investment dispute between Vivendi and Poland.
Energy	UNCITRAL	Acting as arbitrator appointed by the Yukos shareholders in the largest investment arbitration in history.
Energy	UNCITRAL	Advising a major Russian oil company on Ukrainian law issues in relation to an UNCITRAL investment arbitration against Ukraine under the Russia-Ukraine Bilateral Investment Treaty.
Finance	UNCITRAL	Advising foreign investors in the financial sector in relation to their potential investment treaty claims against a host State in Eastern Europe arising from legislative changes.
Mining	UNCITRAL	Representing the Government of a CEE country in an investment arbitration commenced by a North American mining company.
Energy	ICSID	Chairing an arbitral tribunal in a USD 100m shareholder dispute between an Asian company and an off-shore investment company concerning rights to a shareholders agreement.
Agribusiness	ICSID	Acting as counsel to the Government of Romania in a USD 200m investment treaty arbitration relating to an investment by a Greek investor in a privatised company in the food sector.
Mining	ICSID Additional Facility	Acting as counsel for investors in a EUR 100m investment dispute against Montenegro arising from the expropriation of the investors' interests in the country's only steel mill. The claims are brought under the Montenegro-Netherlands bilateral investment treaty and the Montenegrin foreign investment laws.
Waste Management	ICSID	Acting as counsel to international investors in the context of a circa USD 50m investment treaty arbitration against the Government of Bulgaria arising out of the termination of a concession agreement in the waste management sector.
Real Estate	ICSID	Advising a group of individual investors in relation to their bilateral investment treaty claims against a host State in the Middle East arising from the loss of their investments in a real estate development project.

Sector	Applicable Rules	Details
Renewable Energy	ICSID	Advising foreign investors in renewable energy projects in the Czech Republic in relation to their potential investment treaty claims arising from legislative changes.
Mining	ICSID	Advising a German investor in a mining operation in Eastern Europe in relation to its investment treaty claims against the host State.
Energy	ICSID	Advising an international oil company in relation to a potential arbitration with a national oil company and a host State concerning taxation and cost recovery provisions in a production sharing agreement.
Energy	ICSID	Advising a multinational Scottish oil and gas company in relation to its potential investment treaty claims concerning an exploration, development and production of petroleum project in South Asia.
Mining	ICSID	Advising a mining company in relation to its potential investment treaty claims concerning a mining exploration in East Africa.
Finance	ICSID	Advising the Government of Ukraine in an ICSID arbitration brought by WNISEF, a US Government investment fund, for an alleged denial of justice by the Ukrainian courts.
Energy	ICSID	Advising a former Soviet Republic regarding the post-award enforcement phase of an ICSID arbitration brought by two foreign investors in a cross-border pipeline project.
Mining	ICC	Representing a Turkish steel manufacturer in disputes in connection with the construction of steel plants in two separate arbitration proceedings.
Real Estate	NAFTA	Acting for the claimant in relation to an expropriation claim against a NAFTA Member State.
Energy	Energy Charter	Advising an independent oil company on a potential Energy Charter Treaty claim in relation to a participating interest concerning a permit in the Mediterranean sea.
Energy	Energy Charter	Advising a contractor in a hydro-plant refurbishment project in relation to its potential investment treaty claims against a host State in Eastern Europe.
Energy	Energy Charter	Advising an investor group in relation to a multi-billion dollar investment arbitration claim against the Government of Ukraine arising out of a gas production sharing agreement.
Energy	Energy Charter	Advising an investor group in relation to possible investment treaty claims against a former Soviet Republic.



The lawyers were always very realistic in their assessment of what was going to happen, and what the risks were. We knew what to expect going forward.

*Chambers – Dispute Resolution, 2015*

# Contacts



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# CMS facts and figures

For more information on dispute resolution and on our services related to dispute resolution, please contact: [arbitration@cmslegal.com](mailto:arbitration@cmslegal.com)

- 59 offices
- 53 cities
- 33 countries
- > 800 partners
- > 3,000 fee earners
- > 5,500 total staff
- Combined annual turnover: EUR 934 million (2014)



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