



ANTHONY SINCLAIR

When the Award is Challenged – What Can Still be Done?

Overview: Three courses of action

- Enforcement of annulled award
- Stay of enforcement, on condition of security
- Partial enforcement

Enforcement of annulled award

- France
 - *PT Putrabali Adyamulia v. Rena Holdings* (2007 Rev. Arb. 507, Cour de cassation)
- Netherlands
 - *Yukos Capital v. OAO Rosneft* (28 April 2009, Amsterdam Court of Appeal)
- cf. Switzerland
 - Swiss Federal Court, (9 December 2008, 4A_403/2008)

Security

- Article VI, New York Convention
 - ...the authority before which the award is sought to be relied upon may ...on the application of the party claiming enforcement of the award, order the other party to give suitable security
- Article 36(2), UNCITRAL Model Law
 - ...the court where recognition or enforcement is sought may ...on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security

Security: Judicial tests

- United States
 - *Europcar Italia S.p.A. v. Maiellano Tours Inc.* (156 F 3d 310, 1998)
- England
 - *IPCO (Nigeria) Ltd v. Nigerian National Petroleum Corp* (27 April 2005, QB Com.)

Partial enforcement

- New York Convention
 - Distinct question from Article V(1)(c)
 - Silent on partial enforcement of an award where a challenge is pending
 - “Award” construed to mean the award or any part of it

Partial enforcement: Judicial tests

- Austria
 - Austrian Supreme Court (26 January 2005, No. 3Ob221/04b)
- England
 - *IPCO (Nigeria) Ltd v. Nigerian National Petroleum Corp* (21 October 2008, Court of Appeal)

Questions?

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