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Remedies and Tactical Considerations in Connection with State Courts

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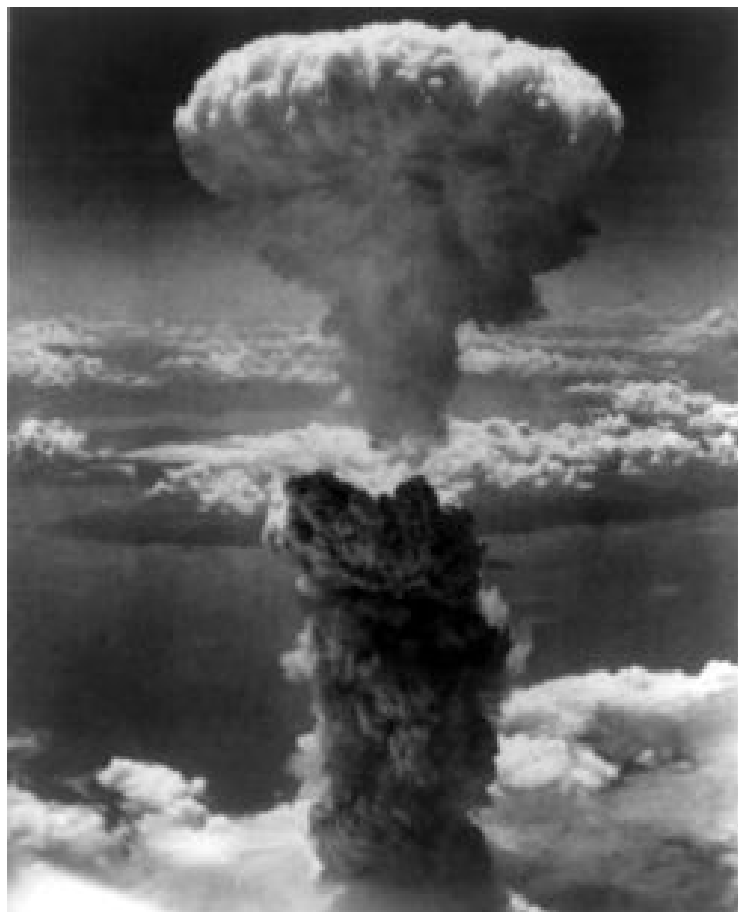
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State Courts – Torpedo or the Nuclear Option?

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How Do State Courts Intervene in the Arbitral Process?

1. Positively – The Court Assists the Tribunal or the Arbitration
2. Negatively – The Court Hears Matters Arising in the Arbitration
3. Challenge of Awards

Example “Positive” Tools in the Tactical Tool Box

1. Anti-Suit Injunction – available outside the EU
2. Court Support Mechanisms
 - Pre-emptory Orders (e.g. Section 42 Arbitration Act 1996)
 - Attendance of Witnesses (e.g. Sections 43 and 44 Arbitration Act 1996)
 - Preserving evidence, property and assets (i.e. including Freezing Injunctions) (e.g. Section 44 of the Arbitration Act 1996)
3. Claim for Breach of the Arbitration Agreement
 - Damages for costs incurred in foreign proceedings (though perhaps not in other EU states)
 - Declaratory Relief: National Navigation Co v Endesa Generacion SA [2009] EWHC 196 (comm) held that West Tankers did not preclude court intervention to grant declaration that a defendant was bound by an arbitration agreement.

Example “Positive” Tools in the Tactical Tool Box (cont’d)

- Application for stay or Dismissal of Proceedings

Example “Negative” Tools in the Tactical Tool Box

1. Anti-Arbitration Injunction

- Appropriate when wrong party or wrong seat
- Should be exceptional remedy

2. Claims Involving Matters Arising in the Arbitration

3. Interventive Injunctions that curtail the Arbitral Process

“Positive” or “Negative” Tools

1. Freezing Injunctions
2. Steps to Preserve Assets
3. Claims Against a Connected Party

NO AWARD = NO

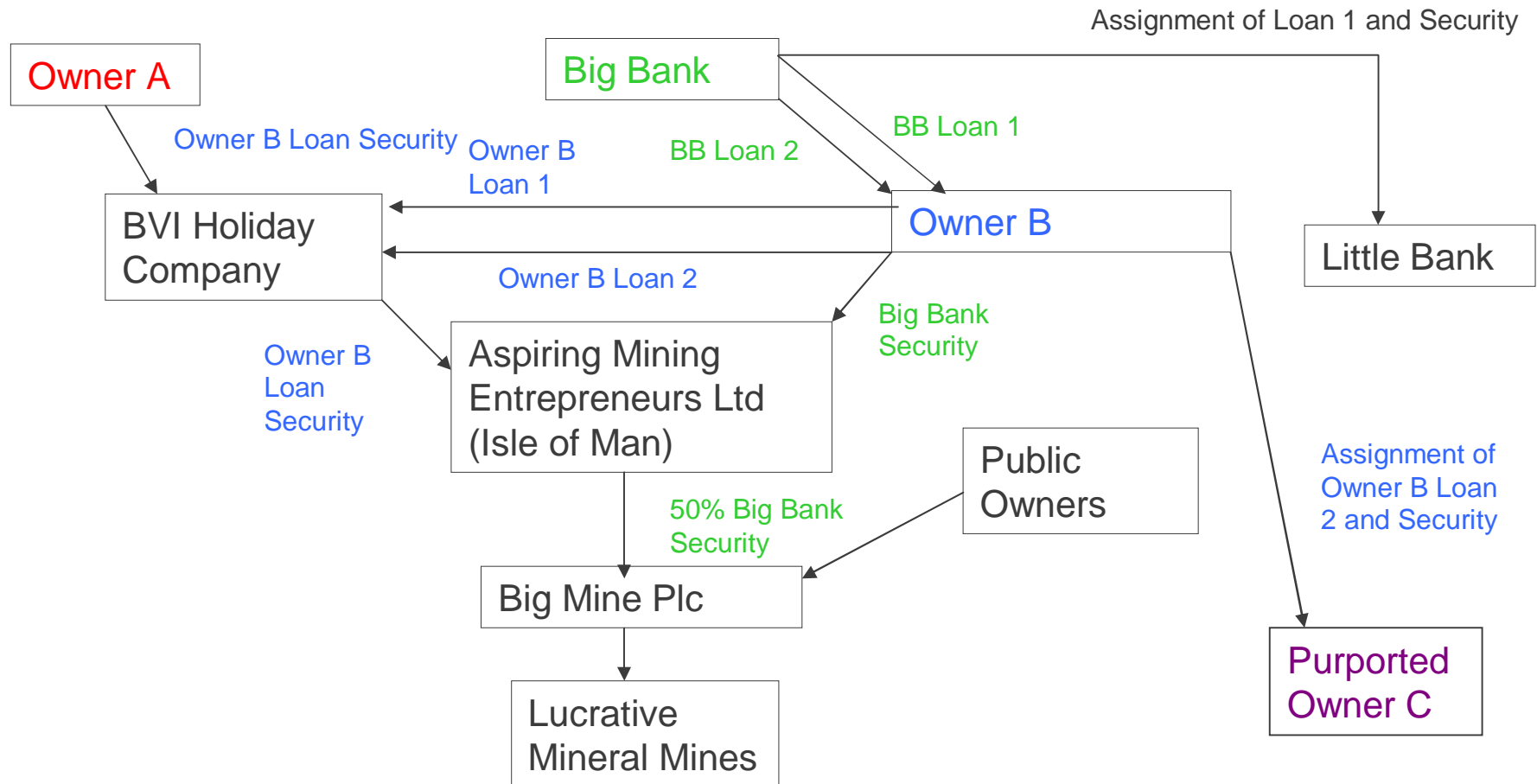


- New York Convention sets out the Requirements for Recognition and Enforcement of an Award.

Challenge of Awards (cont'd)

- Five Grounds to Invoke to Resist Recognition and Enforcement
 - Incapacity
 - No Due Process
 - No Jurisdiction
 - Composition of the Tribunal/Procedure Not as Agreed
 - Award Not Binding
- Two Further Important Grounds
 - Arbitrability (e.g. subsoil)
 - Public Policy (rarely succeeds)

Discussion Example



1. The Arbitration Claim

2. The Steps in Courts

- Freezing Injunctions
- Preservation of Evidence

3. Orders of the Tribunal vs Court Orders

Discussion Example

