

## **ARGENTINA UPDATE: ICSID PROCEEDINGS, SUPREME COURT AND PARIS CLUB**

*SAUR International SA v. Republic of Argentina*, ICSID Case No. ARB/04/4

### **Introduction**

In a decision dated 22 May 2014 in *SAUR International SA v. Republic of Argentina*, ICSID Case No. ARB/04/4, an ICSID arbitral tribunal ordered Argentina to pay French water management company Saur International US\$59 million arising from the expropriation of a water and sewerage concession.

### **Background**

The dispute arose out of SAUR's investment in Obras Sanitarias de Mendoza ("OSM"), the water and sewerage concessionaire of the Province of Mendoza. Following the privatization of OSM, SAUR, as part of a consortium, acquired a participation in OSM following its successful tender bid.

In 1998, OSM signed with the Province of Mendoza a concession agreement under which OSM was designated the provider of public drinking water and sewage disposal. SAUR's role was twofold – firstly, it received compensation through dividends received from OSM; and secondly, it received a fee as the technical operator of OSM as provided for by the technical assistance contract.

The Argentine financial crisis erupted in early 2002 and the Province of Mendoza was required to take urgent measures. OSM, which had generated profits between 1999-2001, began to record losses in 2002 and requested a rate increase. The Province of Mendoza failed to implement the agreed service tariff increases.

On 17 November 2003, SAUR filed a request for arbitration with ICSID, citing the France-Argentina Bilateral Investment Treaty.

In a decision dated 27 February 2006, the ICSID tribunal dismissed Argentina's objections to jurisdiction. In 2009, the service was placed under administrative control. Following that decision, in 2010, the concession agreement was terminated and the service renationalized.

In its Decision on Jurisdiction and Liability dated 6 June 2012, the tribunal delivered its decision on jurisdiction and liability, holding that Argentina had expropriated SAUR's investment without compensation and violated the fair and equitable treatment standard under the France-Argentina bilateral investment treaty.

### **Decision**

In its Award, the Tribunal (comprising Professor Juan Fernández-Armesto as President, along with Professor Bernard Hanotiau and Professor Christian Tomuschat) held that Argentina

was liable for the Province of Mendoza's failure to implement the service tariff increases agreed upon with OSM. Further, Argentina was also liable for the authorities' decision to subject the concession to administrative control before terminating the concession and renationalizing the service in 2010.

The Tribunal ordered Argentina to pay US\$39.99 million (along with 6% interest compounded annually since September 2007), and also entered a significant costs award in favor of SAUR. (SAUR had originally sought compensation of US\$143.9 million, but later adjusted its claim to only US\$40.2 million, slightly more than half the amount paid to acquire the shares of OSM).

The Tribunal noted that the quantification of compensation due to SAUR due to violations committed by Argentina was precisely the purpose of the award. The consequences of both the expropriation, and also the unfair and inequitable treatment would be compensated (contrary to Argentina's argument that the finding of a breach of the fair and equitable standard duplicated the expropriation claims, and should therefore only be a declaratory decision). The compensation should, in line with previous arbitral decisions, compensate the investor for both actual damage and the loss of profits.

## **Argentina Debt Update: US Supreme Court and Paris Club**

### Supreme Court

In a decision released on 16 June 2014, the Supreme Court declined to consider Argentina's appeal of the decision of the Second Circuit Court in New York that it remains liable for debts to holdout creditors who earlier refused to accept its restructured debt offerings, and that whenever Argentina made payments on the restructured debt, it had to make a "ratable payment" to the holdout creditors.

As a result of the Supreme Court's decision, the Second Circuit Court York formally lifted the stay it had placed on the previous injunction that prevented payment to holders of the restructured debt via the U.S. banking system unless holdout creditors are paid at the same time.

In a separate case, the Supreme Court also ruled that holdout creditors have the right to seek Argentina's "hidden" assets around the world.

Argentina has responded to the Supreme Court's decision and said it will not abide by the rulings, but will continue to make payments to holders of the restructured debt (the next payment is due on 30 June 2014). Lawyers representing the holdout creditors have asked the New York courts to make an order preventing these payments from being made, which the judge has agreed to do. On 18 June 2014, Argentina told the New York court that Argentina would negotiate for the first time with the holdout creditors. It seems likely that the claims will ultimately be the subject of some form of settlement.

Our previous alerts on this topic can be found [here](#) and [here](#)

## Paris Club

The Paris Club is an informal group of financial officials from 19 of some of the world's biggest economies, which provides financial services such as, debt restructuring, debt relief, and debt cancellation to indebted countries and their creditors. As at 2014, Argentina owed US\$9.7 billion to the Paris Club.

On 2 September 2008, President Cristina Fernández de Kirchner of Argentina announced plans to pay off the entirety of debt owed to the Paris Club. However, this did not happen at the time, due in part to political pressures and the collapse of Lehman Brothers.

On 29 May 2014, Argentina announced that it would repay the Paris Club over five years, with the first payment for \$650 million due in July 2014, followed by \$500 million in May 2015.

The announcement in relation to the Paris Club came a few weeks after Argentina gave around \$5 billion in government bonds to Spanish oil company Repsol SA as compensation for the expropriation of a controlling stake in its local subsidiary two years ago.

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