

Bondholders Secure Two New Victories over Argentina at ICSID

Stock states, "ICSID has properly rejected two attempts by Argentina to obstruct the international treaty arbitration. Argentina remains bound by the Tribunal's Decision on Jurisdiction, the Tribunal Majority remains in place, and the case moves forward."

The Italian Bondholders secured two important victories over Argentina at the World Bank's International Centre for Settlement of Investment Disputes (ICSID). ICSID rejected an arbitrator disqualification challenge that Argentina had filed against two of the three Tribunal members. ICSID also rejected a challenge that Argentina had filed against the Tribunal's Decision on Jurisdiction and Admissibility. Both recent ICSID decisions follow the 4 August 2011 issuance of the Tribunal's Decision on Jurisdiction in the bondholders' favor. Despite Argentina's attempted obstructions, the case moves forward.

Argentina's Arbitrator Challenge Is Rejected

On 21 December 2011, the President of the World Bank, acting in his capacity as the Chairman of the ICSID Administrative Council, issued a decision rejecting in its entirety Argentina's 15 September request to disqualify two of the three Tribunal members, President Pierre Tercier and Claimants' party-appointed arbitrator Albert Jan van den Berg. The ICSID Chairman concluded that Argentina's request did not meet the disqualification standard set forth under Article 57 of the ICSID Convention. The Italian Claimants' position was that the arbitrator challenge was utterly without legal merit.

The ICSID decision rejecting Argentina's disqualification request was accompanied by a thorough assessment of the request by the Secretary-General of the Permanent Court of Arbitration (PCA) in The Hague. At Argentina's insistence, ICSID had referred the request to the PCA for review and recommendation. In a reasoned decision, the PCA Secretary-General concluded, as did the ICSID Chairman, that Argentina's arbitrator challenge failed to articulate any valid basis to disqualify either arbitrator. The conclusions reached by ICSID and the PCA, both preeminent institutions in the field of international arbitration, confirm the well-established principle under the ICSID Convention that an arbitrator cannot be disqualified simply because a party disagrees with his decisions.

ICSID and the PCA rejected each of the grounds Argentina articulated for its disqualification request, and concluded that the request instead reflected Argentina's dissatisfaction with the Tribunal's rulings against it. Further to the decision, President Tercier and Arbitrator van den Berg retain their positions on the Tribunal.

Argentina's Annulment Challenge is Rejected

In addition to its failed attempt to challenge the Tribunal members, Argentina also has failed in its attempt to challenge the Tribunal's Decision on Jurisdiction itself. On 8 December, the ICSID Secretary-General rejected an unprecedented application by Argentina to annul (*i.e.*, set aside) the Decision on Jurisdiction. The ICSID decision followed Argentina's filing of the annulment application on 2 December and objections made by Claimants' counsel on 6 December.

The rejection of Argentina's annulment application is consistent with well-established principles under the ICSID Convention and Arbitration Rules and decades of investment treaty arbitration practice. A tribunal decision establishing jurisdiction over a case or a discontinuance does not constitute an award subject to annulment.

Italian Bondholders Press Forward

Argentina's failed arbitrator challenge and annulment application are but the latest of Argentina's ongoing but failing efforts to abuse the ICSID system. Nicola Stock, President of TFA, states, "*ICSID has properly rejected yet another attempt by Argentina to obstruct the international treaty arbitration proceedings and deny the bondholders a remedy under the ICSID Convention. Argentina remains bound by the Tribunal's Decision on Jurisdiction, the Tribunal Majority remains in place, the bondholders continue to persevere, and the case moves forward as expected.*"

While the arbitrator challenge had been pending, Argentina's party-appointed arbitrator, Georges Abi-Saab, resigned after issuing a dissenting opinion to the Tribunal's Decision on Jurisdiction. The dissent has no effect on the outcome or validity of the Decision on Jurisdiction, the Claimants' claims, or the Tribunal's jurisdiction.

After the ICSID decision rejecting the arbitrator challenge, the Tribunal took immediate action to accept Abi-Saab's resignation. Having failed in its efforts to obstruct the proceeding, Argentina must now promptly appoint an arbitrator to fill the vacancy left by the resignation. Under applicable ICSID Arbitration Rules, Argentina has until 6 February 2012 to appoint a replacement arbitrator. Should Argentina fail to do so, the Italian bondholders have the right to request that ICSID make the appointment promptly. The case goes forward and the bondholders continue to advance their claims.

This communication is being issued further to the Confidentiality Order in the case providing that the parties may engage in general discussion about the case, including procedural status, in public.

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Italian bondholders participating in the ICSID arbitration may obtain information on the case by sending a request for information to info@tfargentina.it, or consulting the website www.tfargentina.it. Any participating bondholders who revoke their participation in the cases against Argentina referenced above place the protection of their rights against Argentina at risk.

Rome, December 30, 2011