

Icon Private Equity Fund I LP v. Public Joint-Stock Company "Joint-Stock commercial industrial-investment bank" (Application on Setting Aside the Award of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry), Court of Appeals of the City of Kiev, 761/25414/14-ц, 5 March 2015

A contribution by the ITA Board of Reporters

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Headnote

Kiev City Court of Appeal (KCCA) upheld the ruling of the first instance court on refusal of setting aside an arbitral award. Notwithstanding the fact that the arbitrator proposed by one of the parties was not appointed, KCCA found composition of the tribunal legal and procedure of arbitrators' appointment lawful. Notably, KCCA confirmed obligatory nature of so-called Recommendatory List of Arbitrators which is proposed by the ICAC Presidium and approved by the Presidium of the Ukrainian Chamber of Commerce and Industry (Recommendatory List).

Summary

Facts of the case

On 19th September 2011 Icon Private Equity Fund I LP and PJSC "Prominvestbank" entered into contract of guarantee and specified in s. 4.2 that any dispute, controversy or claim arising out of or relating to this contract, or the interpretation, execution, breach, termination or invalidity thereof, shall be settled by the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry in accordance with its Rules.

Moreover, parties agreed that the governing law of the contract shall be the substantive law of Ukraine, the number of arbitrators shall be three and the seat, or legal place, of arbitration shall be Kyiv, Ukraine.

PJSC "Prominvestbank" initiated arbitral proceedings against Icon Private Equity Fund I LP. The dispute was resolved by the Arbitral Tribunal consisting of three arbitrators at the International Commercial Arbitration Court (the ICAC).

In August 2014 Icon Private Equity Fund I LP applied to Shevchenkivskiy District Court of Kyiv seeking to set the award of the ICAC aside on the ground of illegal composition of the tribunal.

Notably, arbitrator proposed by Icon Private Equity Fund I LP was not appointed to the composition of the tribunal as he/she was not included into the Recommendatory List. However, this arbitrator was not challenged neither by the parties nor by arbitrator himself.

The first instance court refused to set aside the award.

The Applicant appealed the ruling. The KCCA upheld the ruling of the first instance court.

Findings of the KCCA

The Court of Appeal made the following findings:

The composition of the tribunal was legal and procedure of arbitrators' appointment was lawful.

The KCCA explained that arbitrator proposed by the Icon Private Equity Fund I LP was not included into the Recommendatory List. Icon Private Equity Fund I LP was offered an opportunity to choose an arbitrator from the Recommendatory List. However, Icon Private Equity Fund I LP refused to do so and did not try to challenge the existing composition of the tribunal. Therefore, the composition of the tribunal was deemed lawful.

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The summary of the case file and full text of summarized court decision are available on:
<https://www.kluwerarbitration.com/document/kli-ka-15-14-007?jurisdiction=Ukraine&type=Court%20Decisions>