Emergency Arbitration in the Investor-State Dispute Settlement Cases: Challenges and Perspectives for Arbitration Institutions

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Abstract

During the past decade, the arbitration institutions experienced growing demand for adequate procedures and standards that meet the requirements of the investor-state dispute settlement (ISDS). The emergency arbitration (EA) is gradually becoming one of such requirements as the parties often experience an urgent need of interim relief that precedes the constitution of the arbitral tribunal and commencement of the regular arbitration proceedings. In order to meet this demand, numerous arbitration institutions have introduced emergency arbitration procedures under their arbitration rules. While the arbitration institutions have already accumulated certain experience in applying emergency arbitration in commercial cases, the first ISDS EA cases under the bilateral investment treaties (BITs) have started to emerge only in 2014. The paper provides a critical analysis on the suitability of the current emergency arbitration rules to the peculiarities of ISDS including issues such as timing, applicability of the "cooling-off clauses" under the relevant BITs, substantive criteria for granting interim relief, and the enforceability of the EA decisions. The research builds on the study of the first EA decisions rendered in ISDS cases.

Key Words: investment disputes, investor-state dispute settlement, emergency arbitration, arbitration institution, bilateral investment treaty, interim relief

Manuscript received: Feb. 22, 2018; review completed: Mar.23, 2018; accepted: May 16, 2018

I. Introduction: The Rise of Emergency Arbitration

The emergency arbitration (EA), a form of interim relief granted under the expedient procedure by the specially appointed emergency arbitrator prior to the formation of the arbitral tribunal, has firmly entered the landscape of commercial arbitration as arbitration institutions strive to provide their clients with the cost-efficient and expedient dispute resolution services.[1] Pioneered by the International Centre for Dispute Resolution (ICDR) in 2006,[2] the EA proceedings have been continuously introduced by the leading arbitration institutions around the world. The rapidly developing practice of the EA in commercial disputes has raised a number of legal issues, including the enforceability of EA decisions because the plaintiffs are interested not only in expediency but also in the effectiveness of these procedures.[3] One of the immediate questions asked by the academics and practitioners alike is whether EA decisions (orders, decisions, awards, etc.) can be equated with arbitral awards enforceable under provisions of the New York Convention.[4]

The Asian arbitration institutions have been among the pioneers in introducing EA rules in the portfolio of their dispute resolution services: the Singapore International Arbitration Center (SIAC) in 2010 and the Australian Center for International Commercial Arbitration (ACICA) in 2011.[5] In 2012, the EA procedures were incorporated into the arbitration rules by the International Chamber of Commerce[6] and the Swiss Chambers' Arbitration

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1) *See e.g.* Peter J.W. Sherwin & Douglas C. Rennie, *Interim Relief Under International Arbitration Rules and Guidelines: A Comparative Analysis*, 20 AM. REV. INT'L ARB. 317-66 (2009); Raja Bose & Ian Meredith, *Emergency Arbitration Procedures: A Comparative Analysis*, 15 INT'L ARB. L. REV 186-94 (2012).

2) *See* Ben H. Sheppard Jr. & John M. Townsend, *Holding the Fort Until the Arbitrators are Appointed: The New ICDR International Emergency Rule*, 61 DISPUTE RESOL. J. 75-81 (2006); Guillaume Lemenez & Paul Quigley, *The ICDR's Emergency Arbitrator Procedure in Action. Part I: A Look at the Empirical Data*, 63 DISPUTE RESOL. J. 61-70 (2008).

3) *See e.g.* Ana Ubilava, *International Investment Arbitration Across Asia: A Symposium*, KLUWER ARB. BLOG (Mar. 1, 2017), http://kluwerarbitrationblog.com/2017/03/01/international-investment-arbitration-across-asia-symposium/.

4) *See e.g.* Leonie Parkin & Shai Wade, *Emergency Arbitrators and the State Courts: Will They Work Together?*, 80 ARB. 48-54 (2014).

5) *See* Andrea Sturini, *Emergency Arbitrators Under the ACICA*, KLUWER ARB. BLOG (Aug. 4, 2011), http://arbitrationblog.kluwerarbitration.com/2011/08/04/emergency-arbitrators-under-the-acica/.

6) *See* Baruch Baigel, *The Emergency Arbitrator Procedure Under the 2012 ICC Rules: A Jurisdictional Analysis*, 31 J. INT'L ARB. 1-18 (2014).

Institution.[7] Continuously, during the last several years, the EA mechanisms have been introduced into the arbitration rules of several leading Asian arbitration institutions: the Hong Kong International Arbitration Centre (HKIAC) in 2013; the Kuala Lumpur Regional Centre for Arbitration (KLRCA) in 2013; the China International Economic and Trade Arbitration Commission (CIETAC) in 2015;[8] the Beijing Arbitration Commission (BAC) in 2015; the Japan Commercial Arbitration Association (JCAA) in 2014; and the Korean Commercial Arbitration Board (KCAB) in 2016.

Among these arbitration institutions, only the HKIAC and the KCAB have expressly provided that their newly introduced EA rules do not have retrospective effect.[9] Others will allow parties to resort to the EA even if the arbitration clauses/agreements have been concluded prior to the adoption of the EA procedures by the respective institutions.[10] For example, the SIAC Rules applicable to the commercial arbitration provide for retrospective application, which allowed this Asian arbitration institution to accumulate a substantial experience in the field of interim relief.[11] The 2010 edition of the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) also allows the retroactive applicability of the EA procedure. The EA under SCC rules can be launched even prior to the commencement of the main proceedings, and emergency arbitrators can adopt their decisions in the form or an order or an award. A member of the SCC Board of Directors, Patricia Shaughnessy, explained that the choice for the opt-out scheme was based on the assumption that "if most parties were to make an informed choice, they would want to include the option of pre-

7) *See* Christoph Müller & Sabrina Pearson, *Waving the Green Flag to Emergency Arbitration Under the Swiss Rules: The Sauber Saga*, 33 ASA BULL. 808-24 (2015).

8) *See* Wei Sun & Melanie Willems, *Interim Measures Ordered by Emergency Arbitrator or Arbitral Tribunal*, in ARBITRATION IN CHINA 433-42 (2015); Bernardo Cartoni, *The Emergency Arbitrator Under CIETAC Rules 2015*, SSRN (March 11, 2016), http://ssrn.com/abstract=2746385. In China, the interim injunctions can be ordered only by competent court. Therefore, the decisions of the emergency arbitrator could be viewed as binding on the parties but practically unenforceable as such.

9) Administered Arbitration Rules [HKIAC] art. 1.4 (2013); International Arbitration Rules [KCAB] art. 32.4 (2016).

10) *See e.g.* Arbitration Rules [SIAC] art. 1.4 (2016); Arbitration Rules [CIETAC] arts. 4.2-4.3 (2015); Arbitration Rules [BAC] art. 2.1 (2015); Arbitration Rules [KLRCA] Intro. 2 (2017); Arbitration Rules [ACICA] art. 2.4 (2016); Arbitration Rules [JCAA] 1 (2015).

11) *See* Michael Dunmore, *The Use of Emergency Arbitration Provisions*, 17 ASIAN DISP. REV. 130-34 (2015) (comparing the application of the emergency rules by SIAC and HKIAC explaining the higher number of applications for interim relief received by SIAC (34 applications during 2010-2014)). *See also* SIAC 2014 ANNUAL REPORT (2014), http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2014.pdf.

arbitral procedures."[12] Thus, despite the initial expectations that it may take many years before the newly introduced EA procedures will start being invoked,[13] their retrospective application to the contracts concluded before their entry into force shows a different picture.

The majority of the arbitration institutions administer the EA proceedings only if the main arbitration proceedings have been commenced. The notable exceptions are SCC and JCAA. The SCC arbitration rules provide that the EA decision will cease to be binding if the main arbitration proceedings are not commenced within 90 days from the date of the EA decision.[14] The JCAA allows the parties to launch the EA provided that they commence the main proceedings no later than 10 days after the request for the EA.[15] When it comes to what criteria the emergency arbitrator should take into account when deciding on the request for interim relief, the EA rules generally refer to the following three factors: (1) a *prima facie* case that the requesting party will succeed on the merits; (2) irreparable harm that would be caused in the absence of the requested interim relief; and (3) such harm outweighs the harm that is likely to result to the party affected by the interim measures.[16] The SCC's experience with the EA indicates that the claimants often fail to demonstrate the requisite urgency and irreparable harm. For example, in 2010-2013, only two applications for interim measures have been successful while seven have been denied.[17]

The continuous growth of Asian economies and their increased involvement in the global commerce led to the continuous rise of the commercial arbitration, which is handled increasingly by the Asian arbitration institutions.[18] For example, in 2014, the combined caseload of CIETAC, HKIAC, and SIAC has

12) Patricia Shaughnessy, *Pre-Arbitral Urgent Relief: The New SCC Emergency Arbitrator Rules*, 27 J. INT'L ARB. 337, 359 (2010) (She also acknowledged that "revision of the SCC Rules to include an emergency arbitrator procedure on an opt-out basis applied retroactively to arbitration agreements entered into prior to the existence of the EA Rules may test the limits of consent.").

13) *See* Robert Sills, *The Continuing Role of the Courts in the Era of the Emergency Arbitrator,* in LEGITIMACY: MYTHS, REALITIES, CHALLENGES 280 (Albert Jan van den Berg ed., 2015).

14) Stockholm Chamber of Com., SCC Arbitration Rules art 9(4)(iv), app. 2 (2017).

15) JCAA 70.7.

16) *See e.g.* ACICA art. 3.5, sched. 1. *See also* Sturini, *supra* note 5.

17) *See* Johan Lundstedt, SCC PRACTICE: EMERGENCY ARBITRATOR DECISIONS: 1 JANUARY 2010 – 31 DECEMBER 2013, http://www.sccinstitute.com/media/29995/scc-practice-2010-2013-emergency-arbitrator_final.pdf.

18) *See e.g.* Chong Yee Leong & Qin Zhiqian, *The Rise of Arbitral Institutes in Asia*, ASIA-PACIFIC ARB. REV. 2011, Nov. 10, 2010, https://globalarbitrationreview.com/insight/the-asia-pacific-arbitration-review-2011/1036651/the-rise-of-arbitral-institutes-in-asia.

surpassed the cumulative caseload of ICC, SCC, and ICDR.[19] The study indicating a recent increase in ISDS cases involving the Asian states estimates that this will become an evolving trend as the Asian nations continue to negotiate and conclude international investment agreements providing for investor-state arbitration.[20] For example, China and South Korea appear among the top ten countries by the number of concluded BITs, the majority of which provide for institutional investor-state arbitration.[21] At the same time, scholars have noted significant discrepancy in investment treaty practices not only among Asian countries, but also among individual treaties negotiated by the same Asian states.[22]

Although currently the arbitration in Asia may not be able to influence the state of play in international commercial or investment arbitration,[23] the increased use of this dispute resolution method should encourage both the Asian arbitration institutions and the legal counsel to follow the international developments in this field in order to be able to anticipate possible legal risks and learn from the practice of the established arbitration institutions in other parts of the world. The paper provides a critical assessment of the first three reported EA cases in the field of ISDS, which have been initiated by Russian investors against the Republic of Moldova and handled under the EA rules of the SCC.[24] By analyzing the key substantive and procedural issues raised in these cases before the EA arbitrators and the national courts in the enforcement procedure, the paper highlights a number of challenges in the implementation of the EA in ISDS cases, which should provide a useful guidance for the arbitration institutions, the parties, and their legal counsel.

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19) *See* Markus Altenkirch & Nicolas Gremminger, *Parties' Preferences in International Arbitration: The Latest Statistics of the Leading Arbitral Institutions*, GLOBAL ARB. NEWS (Aug. 5, 2015), http://globalarbitrationnews.com/parties-preferences-in-international-arbitration-the-latest-statistics-of-the-leading-arbitral-institutions-20150805/.

20) Julien Chaisse, *Assessing the Exposure of Asian States to Investment Claims*, 6 CONTEMP. ASIA ARB. J. 187-225 (2013).

21) *See* Elodie Dulac, *Investment Treaties and Investment Arbitration in Asia: Coming of Age*, TRANSNAT'L DISP. MGMT. 5 (2011).

22) *See* Julien Chaisse, *Investment Claims Against Asian States – A Legal Analysis of the Statist ics, Trends and Prospects* (Chinese U. of H.K. Ctr. for Fin. Reg. & Econ. Dev., Working Paper No. 14, 2013), https://www.law.cuhk.edu.hk/en/research/cfred/download/CFRED_WP14_Investment_Claims_Against_Asian_States.pdf.

23) *See* Chiann Bao, *International Arbitration in Asia on the Rise: Cause & Effect*, 4 ARB. BRIEF 31-51 (2014).

24) *See also* Alexandr Svetlicinii, *Arbitration of Investment Disputes: Experiences of the Republic of Moldova*, 11 VINDOBONA J. INT'L COM. L. & ARB. 99-112 (2007).

II. The First Emergency Arbitration Case in an Investor-State Dispute: *TSIKInvest LLC v. Republic of Moldova* (SCC, 2014)

The emergency decision[25] on interim measures in the case *TSIKInvest LLC v. Republic of Moldova*, delivered on April 29, 2014 under the SCC arbitration rules,[26] is regarded as the "first known investment treaty emergency arbitration."[27] The facts of the case were as follows. In 2012, the Russian investor, TSIKInvest LLC, has acquired a number of shares in the Moldovan bank, BC Victoriabank SA.[28] In 2014, the National Bank of Moldova (NBM)[29] found that the claimant acting in concert with other investors acquired a substantial share (more than 10%) in the share capital of the respective bank without NBM's permission as mandated by the Moldovan financial regulations.[30] The NBM has suspended the voting rights of these shareholders and ordered them to dispose their shares within a three-month period.

The Moldovan law provides for the following cumulative criteria that have to be satisfied in cases where the court is asked to suspend the decisions of the NBM: (a) the reasons adduced by the applicant in support of the action are relevant and well-founded and is a *prima facie* case against the legality of the contested act; (b) the applicant submits arguments which have a factual basis and the circumstances of the dispute require urgent suspension of the contested administrative measure to avoid serious and irreparable harm to the applicant's interests; (c) the harm that might be caused to the applicant exceeds the public interest pursued by the contested administrative measure.[31] The national procedure for the suspension of the NBM's decisions is also expedient: the NBM has three working days to reply and the court has five

25) TSIKInvest LLC v. Republic of Moldova, SCC Emergency Arb. No. 2014/053, Interim Measures, (Apr. 29, 2014), http://www.italaw.com/cases/2988.

26) The case was decided under the 2010 edition of the SCC Arbitration Rules.

27) Joel Dahlquist, *The First Known Investment Treaty Emergency Arbitration: TSIKInvest LLC v The Republic of Moldova*, *SCC Emergency Arbitration No EA 2014/053, 29 April 2014 (Kaj Hobér)* 17 JOURNAL OF WORLD INVESTMENT AND TRADE 261-71 (2016).

28) VICTORIABANK, http://www.victoriabank.md/ (last visited Apr. 25, 2018).

29) BANCA NAȚIONALĂ A MOLDOVEI, http://bnm.md/ (last visited Apr. 25, 2018).

30) National Bank of Moldova, Decision No. 19, (Feb. 5, 2014) (on TSIKInvest LLC (Russia) and BC Victoriabank SA).

31) Law No. 548 art. 111(3) (on the National Bank of Moldova, re-published in the Official Gazette No. 297-300 on October 30, 2015).

days to deliver its judgment.[32] The claimant's application for the suspension of the NBM's decision has been rejected by the first instance court on March 4, 2014.

The claimant has applied for emergency relief to the SCC, arguing that the NBM's decision is arbitrary because it has no factual basis and contains bare allegations that several investors pursued a common economic strategy.[33] TSIKInvest LLC requested the emergency arbitrator to order the stay of the NBM's decision.[34] The claimant submitted the application for the appointment of an emergency arbitrator on April 23, 2014, and the decision on interim measures was made on April 29, 2014. The Republic of Moldova, as a respondent state, has neither made any contacts with the emergency arbitrator nor has it submitted any response to the claimant's application.[35] This ISDS case is based on 1998 Russia-Moldova BIT,[36] which provides for a period of six months for amicable settlement of disputes before submitting them to arbitration.[37] On the meaning of the "cooling-off period" of the Russia-Moldova BIT, the emergency arbitrator concluded that it would be procedurally unfair for the claimant and contrary to the principles of the emergency arbitration to apply the "cooling-off period" to emergency arbitration.[38]

When setting out the criteria for granting interim relief, the emergency arbitrator Kaj Hobér referred to Swedish law, which was summarized in the SCC EA case 170/2011 as follows: "This statement reflects the universal consensus with regard to the requirements that need to be present when granting interim measures, e.g. *prima facie* establishment of a case; urgency; and, irreparable harm, or serious or actual damage if the measure requested is not granted."[39] When balancing the prospective harm to be suffered by the parties, the arbitrator concluded that the claimant would be permanently deprived of its status as a shareholder of the bank while the respondent's harm

32) *Id*. art. 111(4).
33) *TSIKInvest LLC* ¶ 38.
34) *TSIKInvest LLC* ¶ 47.
35) *TSIKInvest LLC* ¶ 9.
36) Bilateral Investment Treaty, Moldova-Russia, Mar. 17, 1998. Treaty between the Government of the Russian Federation and the Government of the Republic of Moldova on the Promotion and the Reciprocal Protection of Investments, March 17, 1998, http://investmentpolicyhub.unctad.org/Download/TreatyFile/2013.
37) *Id*. art. 10.
38) *TSIKInvest LLC* ¶ 66.
39) *TSIKInvest LLC* ¶ 53. For details of SCC Emergency Arbitration 070/2011, *see* Lundstedt, *supra* note 17, at 12-15.

resulting from the interim relief "ought to be limited."[40] As a result, the emergency arbitrator ordered the Republic of Moldova to stay the NBM's decision pending the resolution of the dispute by a way of final award.[41]

III. Changing Tides in the State's Favour: *Evrobalt LLC v. Republic of Moldova* (SCC, 2016)

On May 20, 2016, the sole arbitrator, Georgios Petrochilos, delivered the award on emergency measures in the case, *Evrobalt LLC v. Republic of Moldova,* under the SCC arbitration rules.[42] The facts of the case resemble those already examined in the *TSIKInvest LCC* EA proceedings. In 2013-2014, the Russian company, Evrobalt LLC, has acquired shares in the Moldovan bank, BC Moldova Agroindbank SA.[43] In 2016, the NBM found that the claimant acting in concert with other investors acquired a substantial share (more than 30%) in the share capital of the respective bank without NBM's permission as mandated by the Moldovan law.[44] The NBM has suspended the voting rights of these investors and ordered them to dispose their shares within a three-month period.[45] The claimant has applied for emergency relief to the SCC arguing that, contrary to the NBM's decision, it did not act in

40) *TSIKInvest LLC* ¶¶ 64-65.

41) Following the conclusion of the emergency arbitration proceedings, the claimant has initiated an arbitration on the merits (Case V2014/072) but failed to pay the requisite arbitration fees and the proceedings have been discontinued. See *Moldova are câştig de cauză în faţa Institutului de Arbitraj al Camerei de Comerţ din Stockholm [Moldova Has a Win Over the Stockholm Chamber of Commerce Arbitration Institute]*, MINISTRY OF JUST. OF MOLD. (Oct. 15, 2014), http://www.justice.gov.md/libview.php?l=ro&idc=4&id=2284. SCC Arbitration Rules, art. 9(4), app. II (2010). (According to the SCC Arbitration Rules, the EA decision ceases to be binding if the arbitration is not commenced within 30 days from the date of the emergency decision.).

42) Evrobalt LLC v. Republic of Moldova, SCC Case No. 2016/082, Award, (May 30, 2016), http://www.italaw.com/cases/4179. The emergency arbitration proceedings were commenced on May 24, 2016. The respondent state did not participate in the proceedings.

43) MOLDOVA AGROINDBANK, https://www.maib.md/ (last visited Apr. 27, 2018).

44) National Bank of Moldova, Decision No. 43, (Mar. 2, 2016) (on Evrobalt LLC (Russia) in BC Moldova Agroindbank SA). *See also BNM a blocat un grup de acţionari ai BC „Moldova-Agroindbank" S.A. şi a retras confirmarea a doi administratori ai BC „Moldindconbank" S.A. [NBM Blocked a Group of Shareholders of BC "Moldova-Agroindbank" SA and Withdrew the Confirmation of Two Directors of BC "Moldindconbank" SA]*, BNM (Mar. 3, 2016), http://www.bnm.md/ro/content/bnm-blocat-un-grup-de-actionari-ai-bc-moldova-agroindbank-sa-care-activeaza-concertat-si.

45) *See Anunţ [Ad]*, BNM (June 8, 2016), http://www.bnm.md/ro/content/anunt-10.

concert with other investors.[46] Evrobalt LLC requested the emergency arbitrator to order the stay of the NBM's decision.[47]

On the issue of application of the 2010 SCC Arbitration Rules, the arbitrator noted that "it was within reasonable contemplation of the Republic of Moldova and the Russian Federation that arbitration pursuant to the Arbitration Rules of the "Arbitration Court of the Stockholm Chamber," in terms of Article 10(2)(b) of the Treaty, meant arbitration pursuant to the version of the SCC Rules extant at the time the arbitration was commenced…[i]f they so wished, it would have been straightforward to freeze the applicable version of the SCC Rules by inserting a few words in Article 10(2)(b). This they did not do."[48] Regarding the meaning of the "cooling-off period" of the Russia-Moldova BIT, the emergency arbitrator in *Evrobalt LCC* concluded that, since the respondent state decided to implement the contested decision on the suspension of voting rights and disposal of the shares within three months, the application of the "cooling-off period" of six months would make the claimant's application for the interim relief futile.[49]

In a search for appropriate criteria for the availability of interim relief, the arbitrator referred to the 2006 edition of the UNCITRAL Model Law[50] and 2010 UNCITRAL Arbitration Rules,[51] as well as to the arbitrator's decision in the above-mentioned *TSIKInvest LLC* case. These have determined the following criteria: the risk of non-compensable harm and *prima facie* case for success of the claimant in the dispute at hand. The claimant asserted that, unless the sought interim relief is granted, it would irrevocably lose its rights as a shareholder of the bank and any subsequent award in claimant's favor would be unenforceable.[52] On the issue of harm, the arbitrator disagreed with the claimant and concluded that both suspension of voting rights and disposal of shares will cause harm that is "purely economic in its nature and confined in its scope."[53] The case also noted that the respondent state could make it good by way of a monetary compensation.[54] In substantiating his assessment,

46) *Evrobalt LLC* ¶ 12.
47) *Evrobalt LLC* ¶ 16.
48) *Evrobalt LLC* ¶¶ 29-30.
49) *Evrobalt LLC* ¶¶ 22-23.
50) UNCITRAL Model Law on International Commercial Arbitration art. 17.
51) *Id*. art. 26.
52) *Evrobalt LLC* ¶ 42.
53) *Evrobalt LLC* ¶ 48.
54) *Evrobalt LLC* ¶ 52.

the arbitrator referred to *Paushok v. Mongolia*[55] where the economic harm (new tax) would economically ruin the claimant. The arbitrator also referred to *Chevron v. Ecuador*[56] where the amount at stake (USD 18 billion) was "potentially huge." None of such circumstances were demonstrated in the case at hand. The emergency arbitrator also distinguished this case from *TSIKInvest LLC* by emphasizing that, despite claimant's allegations that the NBM's decision was not grounded on facts, the record indicated that judicial review was available in the Moldovan courts while the emergency arbitrator did not have sufficient factual record to analyze the NBM's decision.[57] Based on the above-mentioned considerations, the claimant's application for interim measures was dismissed.[58]

It should be noted that the claimant resorted to the judicial review by Moldovan courts in the present case but was unsuccessful in suspending the implementation of the NBM's decision.[59] When challenging the respective decision of the first instance court, Evrobalt LLC argued that, unless the NBM's decision is suspended, it would irreversibly lose the status of a shareholder and the compensation obtained from the forceful disposal of the shares would be less than could be otherwise obtained under market conditions. The Chişinău Court of Appeal analyzed the claimant's submission in the light of the above-mentioned criteria for suspending NBM's decisions.[60] One of the criteria is the requirement that the harm to the applicant exceeds the public interest pursued by the contested administrative act.[61] In the present

55) Sergei Paushok, CJSC Golden East Co. & CJSC Vostokneftegaz Co. v. Gov't of Mongolia, Order on Interim Measures, ¶¶ 78, 89 (Sept. 2, 2008), http://www.italaw.com/cases/documents/818.

56) Chevron Corp. & Texaco Petroleum Co. v. Republic of Ecuador, PCA Case No 2009-23, Fourth Interim Award, ¶ 83, (Feb. 7, 2013), http://www.italaw.com/sites/default/files/case-documents/italaw1274.pdf.

57) *Evrobalt LLC* ¶¶ 59-62. *See also* Yelena Burova, *Opposite Results in Two SCC Emergency Arbitrations (Evrobalt v Moldova and Kompozit v Moldova)*, CIS ARB. F. (Aug. 10, 2016), http://www.cisarbitration.com/2016/08/10/opposite-results-in-two-scc-emergency-arbitrations-evrobalt-v-moldova-and-kompozit-v-moldova/.

58) The lack of urgency and lack of imminent harm have been the most common grounds for rejecting the claimant's requests for interim relief in SCC arbitration practice. *See* Lotta Knapp, EMERGENCY ARBITRATOR DECISIONS RENDERED 2014, http://www.sccinstitute.com/media/62020/scc-practice-emergency-arbitrators-2014_final.pdf.

59) On May 17, 2016, the first instance court has dismissed claimant's request for suspension of the NBM's decision.

60) Case No. 3r-530/16, Chişinău Court of Appeal, Decision, (June 30, 2016).

61) Law No. 548, *supra* note 31. In its explanatory decision the Supreme Court of Justice has explained that the imminent harm could be realized in the form of disruption of the

case, the NBM argued that, concerning the allegedly illegal acquisition of more than 30% share in one of the major commercial banks, the public interest of stability of the national banking system prevails over any potential economic loss that may be sustained by the investors. In the court's view, the claimant failed to demonstrate the irreversible and irreparable loss that it would suffer because of the NBM's administrative action. As a result, the request for suspension of the NBM's decision was dismissed.

IV. Testing the Enforceability of the Emergency Arbitration: *Kompozit LLC v. Republic of Moldova* (SCC, 2016)

The emergency arbitrator, Jose Rossel, delivered the emergency award on interim measures in *Kompozit LLC v. Republic of Moldova* on June 14, 2016.[62] The case concerned the shares in the BC Moldova Agroindbank SA acquired by the claimant in 2015. In 2016, the NBM found that the claimant acting in concert with other investors acquired a substantial share in the capital of the respective bank without NBM's permission as mandated by the Moldovan law.[63] As in the previous cases, the claimant sought an order suspending the implementation of the NBM's decision.

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functioning of a public institution or provision of public service, as well as having other grave effect on public or private interest. *See* Sup. Ct. of Just. ¶ 47, Decision No. 10, (Oct. 30, 2009) (on application of certain rules of administrative procedure by the courts, published in the Bulletin of the Supreme Court of Justice No. 7-8 (2010)), http://jurisprudenta.csj.md/search_hot_expl.php?id=179. Similar guidance was offered by the Constitutional Court in a decision concerning constitutionality of certain provisions of the administrative procedure law. *See* Const. Ct., Decision No. 18, (Dec. 11, 2012) (on constitutionality of certain provisions of the Administrative Procedure Law No. 793-XIV of Feb. 10, 2000, published in the Official Gazette No. 6-9 on Jan. 11, 2013. The Constitutional Court explained that when analysing requests for suspension of administrative decisions the courts must appreciate in every case the character of the alleged loss, which should be imminent and irreversible.)

62) Kompozit LLC v. Republic of Moldova, SCC Case No. 2016/095, Emergency Award on Interim Measures, (June 14, 2016), http://www.italaw.com/cases/4187. The emergency arbitration proceedings were commenced on June 9, 2016. The respondent state did not participate in these emergency proceedings. The state representative has only requested the arbitrator that the decision on interim measures should be made in the form of an award pursuant to SCC Arbitration Rules art. 32(3) (2010).

63) National Bank of Moldova, Decision No. 43, (Mar. 2, 2016) (on Kompozit LLC (Russia) in BC Moldova Agroindbank SA). *See also Banca Națională aduce la cunoștință companiilor*

Like in the *TSIKInvest LLC* and *Evrobalt LLC* cases, the claimant in the *Kompozit LLC* case unsuccessfully attempted to challenge the NBM's decision in Moldovan courts prior to resorting to EA[64] The Chişinău Court of Appeal has applied the above-mentioned criteria in order to suspend the NBM's decision.[65] The court noted that the state has a right to apply specific rules in the important economic sectors such as banking, which is vital for the national economy. [66] The court concluded that the claimant failed to demonstrate that its potential loss exceeds the public interest pursued by the NBM's administrative act in the present case. In the court's view, there also was no evidence of irreparable harm that could be suffered by the investor.

On the issue of jurisdiction and applicability of the SCC arbitration rules, the emergency arbitrator sided with his colleague in *Evrobalt LLC* and concluded that if "the contracting parties wished to be bound by a specific version of the SCC Arbitration Rules, they were free to make an agreement in this regard."[67] The "cooling-off period" under the Russia-Moldova BIT was not applicable according to arbitrator because the respondent state "has not made possible the amicable settlement of the dispute by refusing to negotiate with the Claimant."[68]

In its assessment of the availability of the interim relief, the UNICITRAL Model Law provided guidance to the arbitrator, following the approach of the emergency arbitrator in *TSIKInvest LLC*. In the view of the arbitrator, the urgency of the case was justified by the presence of the imminent risk of share divestiture that would be implemented pursuant to the NBM's decision.[69] When assessing the nature of the harm that would be inflicted upon the claimant if the interim relief were not granted, the arbitrator decided to follow the test of "substantial/significant prejudice" instead of "irreparable harm," as provided for in the UNCITRAL Model Law. In the view of the arbitrator, the

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- *„Symbol Wood Limited", „Salvia Enterprise" LTD, OOO "КОМПОЗИТ", „Setora Limited", „Dunlin Invest" LTD [The National Bank Advises the Companies-"Symbol Wood Limited," "Salvia Enterprise" LTD, OOO "Komposit," "Setora Limited," "Dunlin Invest" LTD*, BNM (Mar. 22, 2016), http://www.bnm.md/ro/content/banca-nationala-aduce-la-cunostinta-companiilor-symbol-wood-limited-salvia-enterprise-ltd.

64) The claimant's request for suspension of the NBM's decision was dismissed by the first instance court on April 22, 2016. The court concluded that the claimant did not demonstrate the existence of irreparable harm.

65) Law No. 548, *supra* note 31.

66) Case No. 3r-351/16, Chişinău Court of Appeal, Decision, (May 24, 2016).

67) *Kompozit LLC* ¶ 38.

68) *Kompozit LLC* ¶ 55.

69) *Kompozit LLC* ¶ 71.

forced divestiture of the shares as opposed to the inability to exercise voting rights could be viewed as permanent and irrevocable harm.[70] In support of his view, the emergency arbitrator referred to *PNG Sustainable Development Program v. Papua New Guinea*[71] where the ICSID tribunal held that "substantial, serious harm, even if not irreparable, is generally sufficient to satisfy this element of the standard for granting provisional measures."[72] Countering the emergency arbitrator's interpretation of *Paushok v. Mongolia* award in *Evrobalt LLC*, the arbitrator reasoned that since the compensation of the claimant for the divested shares will not necessarily reflect the market value, the availability of compensation should not exclude the availability of interim measures.[73] When comparing the harm to be suffered by each party in the absence of interim relief, the arbitrator noted that the respondent state "will not suffer any harm" while the claimant could suffer "a significant prejudice."[74] As a result, the arbitrator has satisfied the claimant's request for suspending the NBM's decision in relation to voting rights and ordered the NBM to refrain from any actions towards the divestiture of the claimant's shares.

After the conclusion of the EA proceedings, *Kompozit LLC* applied for the recognition and enforcement of the EA award before the Chişinău Court of Appeal.[75] The representatives of the NBM argued against the enforcement on the grounds of public policy, arguing that the NBM should be allowed to effectively use its powers aimed at maintenance of stability of the national banking system. In its assessment, the court took note of the recent decision of the Constitutional Court, which confirmed the constitutionality of the NBM's powers to suspend the rights of shareholders in financial institutions aimed at protecting the non-affiliated persons (such as deposit holders and other customers of the bank) as well as maintaining a stable banking system.[76] The court concluded that NBM's decision is based on imperative public policy,

70) *Kompozit LLC* ¶¶ 82-83.
71) PNG Sustainable Dev. Program Ltd. v. Indep. St. of Papua N.G., ICSID Case No. ARB/13/33, Award, (May 5, 2015).
72) *Kompozit LLC* ¶ 87.
73) *Kompozit LLC* ¶¶ 88-89.
74) *Kompozit LLC* ¶¶ 90-91.
75) *See generally* Alexandr Svetlicinii, *Enforcement of Foreign Arbitral Awards and Foreign Judgments in the Republic of Moldova*, 10 WUHAN U. INT'L L. REV. 194-213 (2009).
76) Const. Ct., Decision No. 11, (May 11, 2016) (on constitutionality of certain provisions of the Financial Institutions Law No. 550 of July 21, 1995), http://www.constcourt.md/ccdocview.php?tip=hotariri&docid=577&l=ro.

which protects important public interests such as stability of banks, protection of shareholders, protection of deposit holders, and stability of the country's financial system.[77] The court also noted that the national legal system offers an expedient judicial review procedure, which can be used by the affected persons to challenge the decisions taken by the NBM. On the basis of the above considerations, the court concluded that the EA award should be refused recognition and enforcement in Moldova on grounds of public policy as provided for in the New York Convention.[78] Moreover, the court concluded that present dispute concerning the exercise of the administrative powers by the NBM is not a subject matter capable of settlement by arbitration.[79] The Supreme Court of Justice has subsequently upheld the decision of the Chişinău Court of Appeal.[80]

77) Case No. 2-16/16, Chişinău Court of Appeal, Decision, (June 21, 2016).

78) Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V(2)(b), June 10, 1958, 330 U.N.T.S. 3 (Entry into force for Moldova on Dec. 17, 1998; Decision of the Parliament of the Republic of Moldova No. 87 of July 10, 1998 on accession of the Republic of Moldova to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, published in the Official Gazette No. 71 on July 30, 1998. In its explanatory decision, the Supreme Court of Justice made reference to the International Law Association's definition of the international public policy of a state, which includes (1) the fundamental principles, pertaining to justice or morality which the State wishes to protect even when it is not directly concerned with; (2) the rules designed to serve the essential political, social or economic interests of the State, these being known as 'lois de police' or 'public policy rules;' and (3) the duty of the State to respect its obligations towards other States or international organizations.) *See* Plenum of the Sup. Ct. Just. of the Republic of Moldova ¶ 42, Decision No. 9, (Dec. 9, 2013) (on judicial practice of applying legislation concerning recognition and enforcement of foreign judgments and foreign arbitral awards).

79) New York Convention art. II(1). In an explanatory decision, the Supreme Court of Justice provided several examples of the types of disputes that enter into the exclusive competence of the courts: public law relationships where one of the parties is a public authority (administrative, fiscal, customs); issues related to the insolvency proceedings; disputes concerning the disposal of public property; disputes that concern right to life and physical integrity; non-economic rights over intellectual property. *See* Plenum of the Sup. Ct. Just. of the Republic of Moldova ¶ 11, Decision No. 2, (Mar. 20, 2015) (on application by the courts of the legal provisions related to certain issues in the judicial proceedings where parties have concluded an arbitration agreement).

80) Case No. 2r-707/16, Sup. Ct. of Justice Decision, (July 27, 2016). *See also* Alexandr Svetlicinii, *Enforcement of Foreign Arbitral Awards in the Republic of Moldova: Evolution of the Pro-Arbitration Policy in the Case Law of the Supreme Court of Justice*, 24 J. INT'L ARB. 249-64 (2007).

V. Remaining Challenges for Emergency Arbitration in Investor-State Disputes

The first cases of the EA in the investor-state disputes raised a number of issues, which should be considered by the arbitration institutions striving to provide their customers (both private parties and the states alike) with an expedient and efficient interim relief that could be enforced prior to the establishment of the arbitration tribunal. One of these issues refers to the expediency of the EA proceedings, which have been designed to produce urgent remedies in commercial arbitration cases. In the ISDS cases, however, the appointment of the EA arbitrator and the resolution of the claimant's request in a matter of days could effectively inhibit the respondent state from a meaningful participation in the EA proceedings. It has been argued that the high expediency of the EA proceedings makes them highly pro-plaintiff, which will make the states less agreeable to an idea of including the EA procedures into the future arbitration agreements.[81]

Despite the different outcomes of the three EA proceedings launched by Russian investors against the Republic of Moldova, none of the EA decisions contains an assessment of the current situation of the Moldovan banking sector, which could provide a meaningful understanding of the potential harm that the state would suffer in case the requested emergency relief is granted and enforced. Namely, already in 2014, three banks of systemic importance to the Moldovan banking sector have reached the insolvency limits. According to the financial intelligence company Kroll, engaged by the Moldovan government in early 2015 for investigation on the causes of the financial crisis suffered by the three banks, the degradation of financial situation was caused by a set of fraudulent transactions aimed at extracting cash in the form of loans from the respective banks. According to the Kroll report, as a result of several restructurings in the ownerships, various companies and individuals, presumably acting in concert, have acquired stakes less than 5% in the respective banks with the aim to avoid the notification and authorization procedures of the NBM. The obscure changes in ownership have affected the corporate governance of the three banks and resulted in granting allegedly

81) *See* Janice Lee, *Is the Emergency Arbitration Procedure Suitable for Investment Arbitration?*, 10 CONTEMP. ASIA ARB. J. 71, 86 (2017).

fraudulent loans in the amount of MDL 13.3 billion in 2014.[82] None of this publicly available information has been considered in the EA proceedings discussed in the present paper. The timing of the EA is often so short that it presents a severe disadvantage to the less experienced states that can be caught by surprise by the EA notice and unable to provide a reply within the tight deadlines.[83] Notably, in the three Moldovan cases, the government has not submitted any arguments and did not participate in the EA proceedings.[84]

The three cases also demonstrated that SCC EA procedure would be applicable even in cases where the underlying BIT was concluded prior to the entry into force of the respective SCC Rules containing the EA procedure. "By contrast, and in recognition of the dramatic change introduced by the new provisions, the new ICC Rules contain 'transitional provisions' exempting the application of the new Emergency Arbitrator Provisions where the arbitration agreement was concluded before the new Rules come into force (i.e. on 1 January 2012) (Article 29(6)(a) of the new ICC Rules)."[85] The EA rules introduced by the ICC in 2012 apply only to the signatories of the arbitration agreement or their successors,[86] which led to comments that EA procedures under ICC rules won't be applied to investor-state disputes.[87] As a result, the arbitration institutions following the SCC model of retrospective application of their EA procedures will be likely confronted with the contestations of the agreement to arbitrate. The three ISDS cases against Moldova also demonstrate that "cooling-off" clauses in the BITs should not be viewed as an obstacle to an EA procedure. These decisions, however, fail to clarify the issue of enforceability of the EA awards that would normally expire within

82) Adrian Lupusor et al, DECODING THE KROLL REPORT: ANALYSIS ON BASIC FACTORS WHICH LED TO THE DECAPITALISATION OF BANCA DE ECONOMII, BANCA SOCIALA AND UNIBANK 3 (2015), https://www.expert-grup.org/ro/biblioteca/item/download/1363_5d1f58bd9c3288e4cf9d 717da5a15b3e. *See also Investigaţia Kroll progresează [The Kroll Investigation is Progressing]*, BNM (Mar. 23, 2016), http://www.bnm.md/ro/content/investigatia-kroll-progreseaza.

83) *See also* Joel Dahlquist Cullborg, *Emergency Arbitrators in Investment Treaty Disputes*, KLUWER ARB. BLOG (Mar. 10, 2015), http://arbitrationblog.kluwerarbitration.com/2015/03/10/emergency-arbitrators-in-investment-treaty-disputes/.

84) *See* Alexandr Svetlicinii, *Moldova*, *in* LAW AND PRACTICE OF INTERNATIONAL ARBITRATION IN THE CIS REGION 211-54 (Kaj Hobér & Yarik Kryvoi eds., 2017).

85) Justin D'Agostino et al., *First Aid in Arbitration: Emergency Arbitrators to the Rescue*, KLUWER ARB. BLOG (Nov. 15, 2011), http://arbitrationblog.kluwerarbitration.com/2011/11/15/first-aid-in-arbitration-emergency-arbitrators-to-the-rescue/.

86)ICC Rules art. 29(5) (2012).

87) D'Agostino et al., *supra* note 85.

certain period of time if the main arbitration proceedings, which remain to be barred by the "cooling-off" clauses, were not commenced.

The legal uncertainty related to the requisite standard of proof is also unfortunate given the fact that, despite having a limited time frame for deciding on the emergency interim relief request, the consequences of the emergency arbitrator's ruling could have substantial ramifications on the progress of the main arbitration procedure. The emergency interim relief in commercial arbitration cases has created certain degree of confusion in relation to the requirement concerning the showing of *prima facie* case by the claimant. It was noted that at least two standards have emerged: a lighter standard requiring the showing of the requisite elements of the claim and a stricter standard requiring showing a certain degree of likelihood of success to be attained by the claimant in the arbitration on the merits.[88] The recent review of the SCC EA practice demonstrates that the emergency arbitrators normally require the claimants to demonstrate a reasonable possibility of success on the merits.[89] Furthermore, the three ISDS cases against Moldova indicate that the issue whether interim relief should be ordered in the light of the available monetary compensation by the host state remains far from certain.[90]

The ambiguity in relation to the enforcement of EA decisions remains another issue, particularly in jurisdictions that have not addressed the enforceability of the EA decisions in the arbitration laws.[91] In most jurisdictions following the UNCITRAL Model Law, the enforcement of interim orders issued by the arbitral tribunal will not fall under the exequatur procedure of recognition and enforcement of arbitral awards as regulated by the New York Convention. Therefore, the question of whether EA decisions can be viewed as final awards enforceable pursuant to the provisions of the New York Convention remains unsettled. It was reported that French and

88) *See* Kyongwha Chung, *Prima Facie Case of the Merits in Emergency Arbitrator Procedure*, KLUWER ARB. BLOG (Sept. 8, 2017), http://arbitrationblog.kluwerarbitration.com/2017/09/08/prima-facie-case-merits-emergency-arbitrator-procedure/.

89) *See* Anja Havedal Ipp, *Urgency, Irreparable Harm and Proportionality: Seven Years of SCC Emergency Proceedings*, KLUWER ARB. BLOG (June 29, 2017), http://arbitrationblog.kluwerarbitration.com/2017/06/29/urgency-irreparable-harm-proportionality-seven-years-scc-emergency-proceedings/.

90) *See* Yelena Burova, *Interim Relief Against the Host State: Analysis of Emergency Awards against Moldova*, CIS ARB. F. (July 28, 2016), http://www.cisarbitration.com/2016/07/28/interim-relief-against-the-host-state-analysis-of-emergency-awards-against-moldova/.

91) Bose et al., *supra* note 1, at 186-94.

Australian courts have taken a negative stance as to the enforceability of the EA decisions.[92] The current status of Indian legislation on the matter also does not allow the enforcement of EA decisions in the same manner as final arbitral awards,[93] although Indian courts have displayed more flexibility when interpreting the status of the emergency arbitrators.[94] At the time of uncertainty, individual jurisdictions have made decisive legislative steps to ensure the enforceability of the EA decisions. Thus, in 2012 the respective amendments were introduced into the Singapore Arbitration Act.[95] Similarly, Hong Kong SAR has amended its Arbitration Ordinance.[96] This prompted some commentators to conclude that "the benefits offered by the EA procedure are not undermined by uncertainty over enforceability."[97]

92) *See* Alessandro Villani & Manuela Caccialanza, *Interim Relief Through Emergency Arbitration: An Upcoming Goal or Still an Illusion?*, KLUWER ARB. BLOG (July 14, 2017), http://arbitrationblog.kluwerarbitration.com/2017/07/14/interim-relief-emergency-arbitration-upcoming-goal-stll-illusion/.

93) *See* Rishab Gupta & Aonkan Ghosh, *Choice Between Interim Relief from Indian Courts and Emergency Arbitrator*, KLUWER ARB. BLOG (May 10, 2017), http://arbitrationblog.kluwerarbitration.com/2017/05/10/choice-between-interim-relief-from-indian-courts-and-emergency-arbitrator/; Kartikey Mahajan & Sagar Gupta, *Uncertainty of Enforcement of Emergency Awards in India*, KLUWER ARB. BLOG (Dec. 7, 2016), http://arbitrationblog.kluwerarbitration.com/2016/12/07/uncertainty-of-enforcement-of-emergency-awards-in-india/.

94) *See* Nikhil J. Variyar, *Tribunal Ordered Interim Measures And Emergency Arbitrators: Recent Developments Across The World And In India*, 4 INDIAN J. ARB. L. 34-41 (2015). The author makes reference to the judgment of Avitel Post Studioz Ltd. v. HSBC Pl. Holdings Mauritius Ltd., (2014) Indlaw Mum 29 (India).

95) The amendment concerns the definition of arbitral tribunal, which now includes emergency arbitrator in § 2(1).

96) The amendment concerns Part 3A, § 22B, which now provides that emergency relief granted by an emergency arbitrator in or outside Hong Kong shall we also enforceable. *See also* Justin D'Agostino, *Hong Kong Tables Amendments to Arbitration Law*, KLUWER ARB. BLOG (Apr. 3, 2013), http://arbitrationblog.kluwerarbitration.com/2013/04/03/hong-kong-tables-amendments-to-arbitration-law/.

97) Paata Simsive, *Indirect Enforceability of Emergency Arbitrator's Orders*, KLUWER ARB. BLOG (Apr. 15, 2015), http://arbitrationblog.kluwerarbitration.com/2015/04/15/indirect-enforceability-of-emergency-arbitrators-orders/.

VI. Conclusion

While the EA proceedings continue to remain a trend in the commercial arbitration,[98] it is far from certain whether they can reach the same popularity in the ISDS field. Based on the expediency of resolving the requests for interim relief by the sole emergency arbitrator, the EA procedure can be regarded as Formula One of arbitration. However, the uncertainties regarding the status of the EA decisions for the purpose of their enforcement will continue to result in the lengthy enforcement procedures and reviews by domestic courts, which would significantly undermine their initial purpose of providing expedient remedy. The swift handling of the three ISDS cases discussed above will most likely increase the reluctance of states to agree on EA in their arbitration agreement or arbitration clauses included in the BITs/FTAs. The interpretation on the relevance of the "cooling-off clauses" to the possibility of starting EA proceedings developed by the EA arbitrators in the above cases will most likely be challenged in future cases with the states relying on the concept of their initial "agreement to arbitrate," which arguably could not anticipate the availability of EA procedures. The application of the general principles on interim relief derived from the UNCITRAL documents will have to be further developed in the arbitration practice or in the arbitration rules for investment disputes where the considerations of public policy and availability of monetary compensation play a more pronounced role than in commercial disputes. Finally, the enforceability of the EA decisions will continue to rely on the choices of particular jurisdictions and the risk of refusal to enforce on the grounds of public policy will remain especially high.

The arbitration institutions in designing their EA procedures and considering their suitability for the ISDS cases should consider the above considerations. Some of these institutors have already decided that investment disputes will require a distinct set of procedural rules. For example, the newly adopted 2017 SIAC Investment Arbitration Rules (in force since January 1, 2017) stipulate that only when parties have expressly agreed on the application of the Emergency Arbitrator provisions is when they may apply for such relief.[99] Thus, by promoting dedicated procedural solutions for the investment disputes,

98) *See* Marianne Roth & Claudia Reith, *A Continuing Trend Towards Emergency Rules*, 16 VINDOBONA J. INT'L COM. L. & ARB. 223-34 (2012).

99) SIAC IA Rules 27.4 (2017).

the arbitration institutions have a chance to enhance their credibility and attractiveness as potential dispute resolution venues for ISDS. This is especially important given the recent developments demonstrating the enhanced competition for regional and global leadership in this field of dispute settlement. Thus, on January 8, 2018, the Shenzhen Court of International Arbitration and Shenzhen Arbitration Commission have announced their merger into the Shenzhen Court of International Arbitration in order to promote Shenzhen as international arbitration hub.[100] On February 7, 2018, the KLRCA, in conjunction with its 40th anniversary, has announced its rebranding into the Asian International Arbitration Centre, which aims to further strengthen its regional footprint and presence globally.[101] Finally, it has been reported that China set up three specialized international courts to deal with trade and investment disputes in connection with its Belt and Road Initiative.[102] All of these indicate the growing availability of multiple alternative venues for ISDS, which will also affect the use of EA procedures in the investment disputes given numerous legal uncertainties discussed in this paper.

100) *See* SCIA, *Shenzhen Court of International Arbitration (Shenzhen Arbitration Commission) Announcement*, http://www.sccietac.org/web/news/detail/1722.html.

101) *Asian International Arbitration Centre (AIAC) to Spearhead Alternative Dispute Resolution Community in 2018 [KLRCA Undergoes Rebranding to Signify a New Era of Expansion]*, AIAC (Feb. 7, 2018), https://www.klrca.org/announcements-announcements-details.php?id=178.

102) *See e.g.* Nyshka Chandran, *China's Plans for Creating New International Courts are Raising Fears of Bias*, CNBC (Feb. 1, 2018, 10:22 PM), http://www.cnbc.com/2018/02/01/china-to-create-international-courts-for-belt-and-road-disputes.html.

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