Appointment of Sole Arbitrator in Benin's First ICSID Case

By:

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Teyliom v. Benin,[1] a new ICSID case has commenced following the appointment of its sole arbitrator on October 23, 2020. The request for arbitration in this case against Benin was filed this summer. This is the very first ICSID claim against Benin. What we know is that in 2017 Benin faced an investment arbitration at the Stockholm Chamber of Commerce ("SCC").[2] It was also reported in 2017 that Angola's Sonangol was aiming to file an ICSID claim against Benin. However Angola is not a signatory of the ICSID Convention.

The multi-million dispute was brought by the African conglomerate Teyliom International[3] in relation to a construction project of a five star hotel. It was reported Benin authorities terminated Teyliom lease agreement, and expelled Claimant from the construction site due to construction delays.

As regards Benin's investment framework, IA Reporter conveyed that in issue is Benin's Investment Code, which refers disputes to ICSID (Article 74.2.). Notably,

the 2001 Mauritius and Benin's BIT is not in force,[4] barring Teyliom as an investor with Mauritian nationality to have recourse to ICSID on that basis. In the absence of an applicable investment treaty, Benin's investment law will be instrumental as demonstrated in the recent *Inteorcean v. Nigeria* case. [5]

Another salient feature of the dispute is the departure from the 3 member panel practice. Parties appointed French Iranian arbitrator Yas Banifatemi[6] based on Article 37(2)(a) of the ICSID Convention. Despite a reported surge in the appointment of sole arbitrators, sole arbitrators remain a rarity in ICSID. In the history of ICSID,[7] data indicates that sole arbitrator appointments only occurred 3 times.[8] The claimant is represented by French firm CMS Francis Lefebvre Avocats,[9] whilst Benin has retained Arent Fox (Washington DC) as legal counsel.[10]

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[1] *Teyliom International and others v. Republic of Benin* (ICSID Case No. ARB/20/24).

[2] *Puma Energy Holdings (Luxembourg) SARL v the Republic of Benin*, SCC Case No. SCC EA 2017/092 The SCC Award is unpublished.

[3] Claimants: Teyliom International (Mauritian), Teyliom Hospitality (Mauritian), Inaugure Hospitality Group (Mauritian), Chain Hotels Investment (Mauritian), Teyliom Properties Group (Mauritian), Teyliom Properties Benin S.A. (Beninese), Chain Hotel Cotonou S.A. (Beninese).

[4] Nor does the Mauritius – Netherlands BIT provide for a provisional application clause similar to Article 45(1) of the Energy Charter Treaty.

[5] *See* Shareholder Disputes and the Nigerian Foreign Investment Framework: Attribution Under the Prism of the Interocean Case, commented on this blog here.

[6] This is Yas Banifatemi's fifth appointment as arbitrator. She notably sat as co-arbitrator in *Joseph Houben v. Republic of Burundi* (ICSID Case No. ARB/13/7).

[7] *See*, *Pantechniki S.A. Contractors & Engineers v. Republic of Albania* (ICSID Case No. ARB/07/21) appointment of Jan Paulsson; *Malaysian Historical Salvors,*

SDN, BHD v. Malaysia (ICSID Case No. ARB/05/10), appointment of Michael Hwang; *Inversión y Gestión de Bienes, IGB, S.L. and IGB18 Las Rozas, S.L. v. Kingdom of Spain* (ICSID Case No. ARB/12/17) appointment of Rodrigo Oreamuno.

[8] This is 3 times in 521 ICSID arbitration cases excluding mediation, with only one mediator in a case brought by a state in Republic of Equatorial Guinea v. CMS Energy Corporation and others (ICSID Case No. CONC(AF)/12/2).

[9] The firm already represented Teyliom in a 45 million mezzanine financing deal aimed to expand its hospitality projects; it also represented Salini against the Kingdom of Morocco.

[10] The firm represented Cote d'Ivoire at ICSID.

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