Issue 28
April 2013

NEWSLETTER

EAST-WEST DEBT

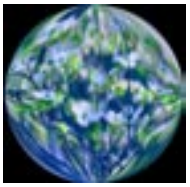
Specialist in defaulted debt and antitrust damages claims

IN THIS ISSUE

EAST-WEST DEBT N.V.
Meir 24
2000 Antwerp
Belgium
Tel.: +32 3 231 45 03
Fax: +32 3 231 95 45
mail@eastwestdebt.com
www.eastwestdebt.com

Introduction

While spring is in the air, it seems that some markets are however still lacking the first rays of sunshine. We are happy to present you with the latest issue of our newsletter and hope you find it a stimulating read. We know that hard cash is difficult to come by in the current economic crises so this might be a good time to review the receivables still in your books and let us assist you in turning these figures into liquidity. We wish you a fantastic prelude to summer and although the markets are still volatile, we hope that you enjoy the first good weather, obtain new energy and resolve from it!



The team of East-West Debt

Claim funding in Europe

In the past years claim funding as means for access to justice has become more prevalent in Europe. How does claim funding work? Roughly five types of funding can be identified (CSLS,Oxford, 2012), namely:

• ***Assignment:*** Where rights to a claim are assigned to a funder who takes over full responsibility for running the claim. In essence the owner of the claim has an inactive role in the claim process. The funder has research carried out, chooses the lawyer, designs the strategy and bears all responsibility. Only under certain circumstances the owner of the claim is actively involved, for example in decisions concerning settlements. These circumstances must be exactly predefined in the Assignment Agreement.

• ***Full Funding:*** In this type of scenario, a lawyer has a client with a claim and the lawyer seeks funding to cover fees and other legal costs. Of course in these cases the funder cannot employ another law office and the strategic decisions will be made by the lawyer and the claim owner. Sometimes the funder will expect the lawyer to co-fund the case. The funder does not interfere with the claims process.

• ***Variable Funding:*** In this scenario the funder is an active participant in planning the whole claim process. Either a lawyer or the owner of the claim will carry out a preliminary due

This article continues on page 2

diligence of the claim, the funder will usually conduct a more in-depth due diligence.

• ***Brokerage of funding solutions:*** In this case the client or his lawyer approaches the funder to see what the various options are. This type of funding is often mixed and can therefore come from several parties such as ATE insurers, hedge funds and claim funders. The broker will attempt to find funding and receives a percentage of the funders commission.

• ***Lawyer Funding:*** The lawyer who handles the case simply pays for all legal costs and receives a percentage of the outcome. This type of funding is typically what American lawyers who deal with (for instance) damage claims provide.

Some Pros and Cons of Claim funding:
Of course the biggest upside in claim funding is that it provides access to rule of law for those who lack financial means to pursue a claim. Secondly it levels out the playing field in the legal arena where smaller parties can be literally derailed by larger parties with more access to capital. Claim funding is also a mechanism that spreads the risk of legal action and often provides added value not only in a monetary sense but also adds extra knowledge and expertise to the management of a claim.

The biggest downsides to claim funding are: risk of abuse of the legal system and frivolous litigation, litigation for the benefit of the funder instead of the claim holder or an emphasis on litigation, not on the merits of the case but solely on monetary results, were entities start litigation just to see if their counterpart will settle to avoid further cost or other negative impacts of a trial, the so called "blackmail settlement". Also, since the claimant has no costs involved in the litigation process, there is a risk that claimants develop unreasonable expectations surrounding the pay out and drag litigation out forever, thus clogging up the courts and unduly harming the interests of the defendants
and the funder.

East-West Debt has funded legal procedures for over 17 years and invites parties with a claim to contact us to see whether your claim matches our funding criteria.

Upcoming events:

ICTF, International Credit Professionals Symposium
Amsterdam, April 2013

FCIB, International Credit & Risk Management Summit
Prague, May 2013

IIR, Annual Insuring Export Credit & Political Risk
London, February 2014

**Are you looking for a partner in sharing financial risk in obtaining or executing judgments?
Please contact us
at + 32 (0)3 231 45 03
or email
mail@eastwestdebt.com.**

EAST-WEST DEBT
Specialist in defaulted debt and antitrust damages claims

IRAN: Pressure point

Sanctions on Iran are exacting a heavier toll than ever. The effects – on inflation, oil revenue and investment – have likely curtailed the leadership's room for manoeuvre.

Economist Djavad Salehi-Isfahani was visiting relatives in Neishabour in north-eastern Iran in July when hundreds marched down the town's main street protesting at a shortage of chickens at the official price.

While such protests are hardly new, Salehi-Isfahani, professor at Virginia Tech and a senior fellow at the Brookings Institution, believes this summer's US and EU sanctions targeting Iran's oil exports have hit the country harder than earlier measures. "These financial sanctions have seriously disrupted Iran's trade, for which the authorities were ill prepared," he tells Emerging Markets. "They're still trying to figure things out after nine months that have brought a currency crisis and higher inflation as well as chicken protests."

The rial has fallen to record lows against the US dollar with some reports suggesting it has lost more than 80% of its value since last year. In a news conference in Tehran in October 2012 President Mahmoud Ahmadinejad blamed his country's "enemies" for the depreciation of the currency and said nobody can put pressure on Iran.

The new sanctions have cut Iran's oil exports to around 1 million barrels a day (b/d) in August 2012 according to data from the International Energy Agency. Although marginally higher than July's exports, this is less than half the level of 2011, so curbing an income stream that nets 80% of foreign earnings and 50–60% of government revenue. But there is less agreement on the effect on the wider economy.

As tensions have increased over Iran's controversial nuclear programme, with the US leading a drive to undermine the country's economy as a means to make the Iranian leadership back down, the authorities in Tehran have become more secretive over economic data.

Keeping secrets
"There are no reliable numbers any more about the budget," says Salehi-Isfahani. "The Oil Stabilization Fund [a windfall oil account for 'rainy days' and infrastructure investment] has been raided, and some say it's down to zero. There is little transparency for obvious reasons: this is now a resistance – or war – economy, and the government has itself fumbled badly on several fronts."

The lack of transparency has sparked speculation, encouraged by Iran's opponents, that the economy is on the verge of collapse, and that this prospect brought Iran into renewed nuclear talks in the spring with the P5+1, the five permanent members of the UN security council plus Germany.

"They are increasingly isolated – diplomatically, financially and economically," David Cohen, the US Treasury Department's under-secretary for terrorism and illicit finance, said last August. "I don't think there is any question that [the sanctions]...played a role in Iran's decision to come to the [negotiating] table."

But Salehi-Isfahani is unconvinced: "Overall, I would suggest the leadership does not believe it is staring into the economic or political abyss just yet."

It is difficult to find data on the impact of sanctions on the economy because of the government's secrecy and the unreliability of the figures, but Iqtisad Iran (Iran Economics), a Tehran business monthly that is trusted by many inside the country, has made its own detailed assessment of the effect of sanctions on gross domestic product. Two years ago, the magazine put the cost at a loss of 0.5% in GDP growth, but it has recently estimated it at 1%.

When GDP is measured in dollars, the effect is compounded by the inflation that has resulted from the depreciation of the rial and by expansionary monetary and budget deficit policies followed by the government to combat sanctions. Iqtisad Iran shows the value of GDP adjusted for the depreciation of the currency down by $55 billion from the Iranian year 1389 (March 2010–March 2011) to 1391 (March 2012–March 2013).

Subsidy plans

Calculations over the Iranian economy are complicated by the ambitious programme, begun in 2010, of phasing out subsidies of everyday items, especially fuel, which cost over $50 billion a year. The IMF welcomed the programme as one "expected to increase efficiency and competitiveness of the economy, improve income distribution, reduce poverty, and help Iran unlock its full growth potential."

The removal of subsidies has, however, been mired in political calculations, partly because the Ahmadinejad government has tried to bolster its popularity and partly because the wider Iranian leadership, headed by rahbar (leader) Ayatollah Ali Khamenei, has been concerned not to alienate the wider public at a time of growing international pressure.

Hence, subsidies have been replaced with 'targeted payments', which have extended to almost all of Iran's 75 million people. The current payment of 485,000 rials (around $27) per person a month is now worth less than it once was because of inflation, says Kevan Harris, a postdoctoral research associate at Princeton University who is of Iranian descent, tells Emerging Markets.

"If it is true that 95% of people are getting them, then this is not a 'handout' as the media likes to write. It is an income grant – and quite a large one compared to most developing countries. In Brazil's poor region of Bahia, for instance, only 60% of households are enrolled in the country's grant programme, Bolsa Familia."

But critics are sceptical about the programme's success, saying that liberalizing prices while paying cash subsidies instead is self-defeating. Iqtisad Iran has calculated that, from its introduction in December 2010 until October 2012, the subsidies programme incurred an overall deficit of $20 billion considering an average exchange rate of 13,000 rials to the dollar.

Nonetheless, Salehi-Isfahani judges the programme a relative success. "The one thing people [in Iran] feared most – riots – didn't happen," he says. "The government has paid too much in cash compensation – perhaps about a third too much – and this has contributed to inflation. Their friends at the IMF should have known better and given better advice on the numbers; the government people in Iran are not the best on figures."

In the medium term, sanctions are reducing the leadership's room for manoeuvre because of their effects in three important areas: higher inflation, lower oil revenue, and less productive investment. But in all these fields, government policy has compounded Iran's problems, although the inter-relationships are complex.

In a speech on state television in August 2012, Ayatollah Khamenei urged the Ahmadinejad government to address "inflation and reduced buying power".

The official Statistics Committee reported to parliament that inflation reached 26.2% year-on-year in July 2012, with foodstuffs up 44.8% and bread up 10.2% on June, while the Central Bank reported inflation at 22.9% in July. The IMF puts consumer price inflation at 21.8% in 2012 and projects 18.2% for 2013.

High government spending, sanctions and the falling rial have all driven up prices, but there are no easy solutions. "Iran is selling half as much oil, but the rise in the price of oil means the budget is around 25% in deficit this year," says Harris.

"This is bad, but given the increased level of government spending in recent years, there is room for reductions. The problem is that reducing state spending could drive the economy into recession, as it's the only pump driving things at present. Expect the government to keep spending as high as it can for as long as it can."

Crucial here is the level of foreign exchange held by the Central Bank, a figure it has long refused to reveal. Newer is the secrecy over the Oil Stabilization Fund (OSF), which was established under the previous president Mohammad Khatami to protect oil income for increased investment in the economy to stimulate growth and create jobs.

Shortage of funds for productive investment may be the greatest medium-term problem facing Iran. For many years, popular pressure has grown for direct, immediate benefits from oil wealth.

The gold rush

"Ahmadinejad is a populist and not a builder, except of low-cost housing, and he has raided the investment budget – some say the OSF is down to zero," says Salehi-Isfahani, but he advocates caution. "This does not mean the government does not have foreign reserves, and it may for example have used the money to buy gold."

Iran has become Turkey's top export market in 2012, largely due to $6.2 billion of gold sales, according to the government statistics agency in Ankara, with gold exports in the first seven months of 2012 five times the total for 2011. The EU has introduced a ban on gold exports to Iran, but Turkey has been denied EU membership and has insisted, even to Washington, that it is not bound by the embargo.

Analysts say that booming demand for gold in Iran may reflect the Central Bank accumulating the precious metal for the government and private businesses to pay for imports without the problems of using dollars, but also ordinary Iranians, who, with a banking system offering limited options, have long bought gold coins as a safe haven.

As well as curbing government investment, sanctions have hit private-sector investment, with some blaming uncertainty and unfulfilled hopes that subsidies will go to businesses as well as individuals.

Trade with China

A further consequence of sanctions is Iran's growing dependency on China. Beijing's purchases of Iranian crude, now around half of Iran's 1 million b/d exports, are crucial to Tehran's whole fiscal position. China was already Iran's leading economic partner in 2011, with trade of $30 billion up from just $2.5 billion in 2000. As western companies over the recent years have left the Iranian energy market, so the Chinese have moved in to tap Iran's sizeable reserves of 150.3 billion barrels of oil and 33.1 trillion cubic metres of gas.

But progress in energy development has been slow, despite the signing by a Chinese company of a contract to develop part of the South Pars field, which belongs to the world's biggest natural gas field.

For years there has been disquiet expressed in the Iranian parliament and media over dependence on China. Iranians buy cheap Chinese goods but resent the way they have undermined domestic manufacturers.

Politicians are wary as the only two lifters of Iranian crude – Unipec, the trading arm of Sinopec, China's largest producer and supplier of oil, and Zhuhai Zhenrong – are both state-run. Politically, China has stood with Russia in the UN Security Council against further sanctions, contributing to the tensions seen in secretary of state Hillary Clinton's visit in September 2012 to Beijing.

But China has fine-tuned an approach reflecting its geopolitical and business interests both in Iran and in the US, while driving a hard bargain with Iran over oil prices.

Facing vociferous domestic political pressure, the US administration has gradually targeted China over Iran. Last year Washington blacklisted 20 Hong Kong shipping companies it said were fronts for the Islamic Republic of Iran Shipping Lines (IRISL), earlier censured by the UN over Iran's nuclear and military programmes, and in January 2012 the US sanctioned Zhuhai Zhenrong, allegedly Iran's largest supplier of refined petroleum products.

This was a signal to Beijing rather than a blow, as Zhuhai Zhenrong has little or no business in the US, and therefore little to lose from being sanctioned, while other Chinese companies have extensive US interests, including Sinopec, which trades in New York.

In Iran, many look forward to sanctions ending and ties with the West resuming – but not at any price. In a revealing interview in June 2012 in the magazine Mehrnameh, Asadollah Asgaroladi, a highly influential businessman in Tehran dealing in the export and import of items such as pistachios, fruit, caviar and sugar, said: "We chose China because of the way America treated us."

Asgaroladi even advocates an Iran-US Chamber of Commerce. "My own pistachios are being sold on the streets of Tel Aviv; they import via third parties," he said. "We already have told the Chinese not to have any doubt – the day sanctions against Iran are lifted, our cushy relationship will be over. The Iranian taste and temperament is close to that of the western countries. I do not believe the sanctions will be permanent; one day they have to be lifted. However, the side that resists the longer will emerge as the victor."

By Gareth Smyth, October 2012, Additional reporting by Golnoush Niknejad. This article has been previously published in the print edition of Emerging Markets, which was distributed at the IMF/World Bank meeting in Tokyo.

How are banks in the Gulf dealing with large-scale financial defaults?

Following the financial crisis of 2008-2009 and the collapse of the construction sector in the Gulf (with some exceptions), regional banks have a growing volume of non-performing loans. The majority of these loans were extended to private companies based in the region to finance large-scale projects, with credit facilities secured against either personal guarantees or equity in unquoted companies. Difficult market conditions and, in some cases, poor investment decisions by executives, have left banks in the Gulf exposed to significant liabilities.

The key is to develop and implement an asset search and litigation support program that supports the bank's overall strategy

The immediate default response has been to launch legal proceedings against the borrower. Once banks act quickly and demonstrate their willingness to pursue local assets, this can be an effective first step towards debt recoveries (and at times this can be achieved through a settlement). This strategy applies the right amount of pressure on the debtor and communicates the bank's determination and seriousness to pursue assets.

In some cases, however, local assets may not satisfy the exposure, and this will weaken the bank's ability to reach a settlement. This is either because the exposure is higher than the aggregate value of recoverable assets, or the assets to which attachment can be made have been liquidated or sold before the default occurred – a practice we have seen in the region. Although this complicates the bank's effort to make recoveries, there is an opportunity to search for assets in foreign jurisdictions to which liability can be extended, at times taking us to other countries in the Gulf, Europe or the United States, depending on the business profile and modus operandi of the debtor.

Asset search programs are often complex and involve undertaking work in multiple jurisdictions, and this requires a unique blend of investigative skills and

EAST-WEST DEBT
Specialist in defaulted debt and antitrust damages claims

forensic capabilities as well as knowledge of and access to markets – and some banks in the region require external support to implement a successful asset search program.

Debtors sometimes employ various schemes to shield assets from creditors and we have seen evidence of transfer of assets to third parties fronting for debtors as well as the use of sophisticated schemes to obscure ownership through off-shore vehicles and complex corporate structures. This is precisely the reason why a detailed review of available materials, including financial statements, transactional documentation as well as targeted market intelligence, are all necessary to produce an accurate chain of events to reverse engineer the transfer or concealment of assets and to pierce the corporate veil.

As banks work through the most effective strategy to pursue assets, external and independent support becomes necessary. The provision of accurate evidence and third party expert reports will only facilitate attachment orders and seizure of assets. Once assets are identified and profiled, (profiling is necessary to understand their status and value), banks will also require advice on how to obtain freezing orders against these assets in foreign jurisdictions – and some jurisdictions in the Gulf, for example, are more difficult to penetrate than others.

Our experience suggests there are numerous examples of successful international asset search programs launched by banks in the Gulf. From the outset, the key is to develop and implement an asset search and litigation support program that supports the bank's overall strategy.

Article by Yaser Dajani, Associate Managing Director, Kroll Advisory Solutions.
Kroll Advisory Solutions, Nexus Place, 25 Farringdon Street, London EC4A 4AB, UK
Tel: +44 (0) 20 7029 5313, ydajani@kroll.com, www.krolladvisory.com

EU Commission can bring follow-on actions for damages on behalf of the European Union in cartel cases

On 6 November 2012, the Court of Justice of the European Union (CJEU) ruled that the European Commission was entitled to represent the European Union in an action for damages before national courts. The CJEU ruled that the Charter of Fundamental Rights of the European Union did not prevent the Commission from taking an action for damages against the cartel participants for harm suffered bythe European Union as a result of anti-competitive behavior that the Commission had already sanctioned by rendering an infringement decision. Companies should therefore bear in mind that the Commission is no longer just the investigator, prosecutor and judge of a cartel, but also a potential damages claimant.

The background to the case is an investigation by the Commission into a cartel for the sale, installation, maintenance and renewal of elevators and escalators in Belgium, Germany, Luxembourg and the Netherlands. In February 2007, the Commission imposed a fine of almost € 1 billion on four companies for their participation in this cartel. The EU General Court upheld the fines against three of the companies and reduced the fine against the fourth. Appeals against the General Court's judgments are pending currently.

In June 2008, the Commission began an action for damages in the Brussels Commercial Court against all four companies, claiming damages for harm suffered by EU institutions as customers of the cartel.
The Brussels Commercial Court referred the following questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling:

- Was the EU Commission the proper plaintiff to represent the European Union in an action before a national court in the specific context of this case?
- Does the Charter of Fundamental Rights of the European Union (the Charter) preclude the Commission from taking an action for damages as a result of harm allegedly suffered by EU institutions in the context where an EU Commission finding of EU competition law infringement by the defendants forms part of the plaintiff's case?

The Commission can represent EU Institutions in civil actions

The CJEU ruled that the Commission could represent validly EU institutions in civil actions before national courts under Article 282 of the EC Treaty, which was applicable at the time the Commission initiated its action for damages. Indeed, according to Article 282, the Community shall be considered as any other legal person in each of the Member States, including when it is a party to legal proceedings, and shall be represented by the Commission to this end.

Interestingly, the revised Article 335 of the Treaty on the functioning of the European Union, which replaces Article 282 EC, says that each EU institution will now represent itself in matters relating to their activities.

The charter does not preclude the Commission from seeking compensation in cases involving its own decisions.

The reasoning of the CJEU is that any party suffering injury as a result of a cartel should be able to claim compensation where a causal link between the injury and the infringing behavior or agreement is established before the national court. In other words, EU institutions must be treated the same as other cartel victims. Nevertheless, the right of EU institutions to seek compensation must be exercised in accordance with the rights of the defendants protected by Article 47 of the Charter, such as the right of access to a tribunal and the principle of equality of arms.

In relation to the right of access to a tribunal, the CJEU said the fact that a national court—in this case the Brussels Commercial Court—is bound by the Commission's decision finding an infringement of competition law does not amount to a denial of the defendant's right of access to a tribunal. Indeed, the defendant still has the right to appeal the Commission's decision before the General Court and, further, before the ECJ, which will therefore always have the last word.

In relation to the principle of equality of arms, the CJEU noted that each party must be afforded a reasonable opportunity to present its case under conditions that do not place it at a disadvantage vis-à-vis the other parties. The main issue was, therefore, whether or not the Commission had access to more information than the cartelists when preparing its submissions before the national court. The CJEU ruled that as the Commission department initiating the action for damages did not have access to the confidential file that resulted in the infringement decision, a breach of the principle of equality of arms was precluded. In other words, there is apparently sufficient separation between the different branches of the Commission for the Commission and the defendants to be considered as being in the same position before national courts.

Pursuant to this judgment, companies should now bear in mind that the Commission is no longer just the investigator, prosecutor and judge of a cartel, but also a potential damages claimant. An infringement decision by the Commission for anti-competitive behavior can now result in damages actions—not only by companies and consumers, but also by the Commission and/or other EU institutions themselves, including the Parliament and the Council—when they suffer directly as a result of the anticompetitive behavior at issue. This judgment is therefore particularly relevant to those companies that cater to the needs of EU institutions, or any suppliers to EU institutions such as stationers, IT companies, software suppliers, etcetera.

Article by Louise-Astrid Aberg (laberg@mwe.com), associate, McDermott Will & Emery (Paris); Mr. Lionel Lesur (llesur@mwe.com), partner, McDermott Will & Emery (Paris) and Mr. Philipp Werner (pwerner@mwe.com), partner, McDermott Will & Emery (Brussels). This article was previously published on the website of McDermott Will & Emery, www.mwe.com.

Ukraine: The enforcement of foreign court rulings

In February 2010, Viktor Yanukovych won the Ukrainian presidential election. He announced an ambitious and comprehensive economic reform program. While some key measures, such as a new anticorruption campaign and judiciary reform, were not included in the initial agenda, there was hope that, with the reforms, the new administration would be able to overcome the devastating blow that the global economic crisis delivered in 2008–2009, when Ukraine's GDP fell by 15 percent.

President Yanukovych prioritized investment and economic growth in his Economic Reform Plan and emphasized he wanted to make Ukraine more attractive to foreign investors. However, conditions for doing business and the overall investment climate remain very difficult: main problems are the inadequate rule of law, a lack of fair and impartial dispute resolution mechanisms, official corruption, and poor enforcement of domestic court and international (arbitration) decisions. Although commercial contracts may permit the parties to use international arbitration or specified foreign courts to settle disputes, in practice such decisions could be very difficult to enforce in Ukraine. In the beginning of 2010, the Ukrainian parliament adapted a law on amendments to certain legislative acts of Ukraine regarding settlement of issues of private international law. Consequently, the Civil Procedure Code and several other legal acts have been amended. This was done in order to improve the set of rules which concern the recognition and enforcement of foreign court awards in Ukraine. What is the current situation on these matters?

How to get recognition...
The procedure for recognizing and enforcing foreign court decisions is regulated by Section 8 of the Code of Civil Procedure of Ukraine and applicable bilateral or multilateral treaties. In the case of inconsistency between the provisions of an applicable treaty and the Code of Civil Procedure, the treaty should prevail. In cases where there are two or more relevant treaties, the one that entered into force more recently should apply. There are two grounds on which to recognize a foreign judgment: under an international agreement or under the reciprocity principle. The existence of reciprocity is presumed. Thus, at least in theory, a decision issued within any foreign jurisdiction may be recognized in Ukraine, unless the opposing party proves the non-existence of reciprocity.

This means a potentially significant extension of the scope of recognition. Before this principle was introduced, a signed international treaty of acceptance and enforcement was required. However, the recognition of a foreign judgment on the basis of reciprocity proves to be problematic in practice. A decision should be recognized first, only after such recognition it may be enforced. Furthermore the foreign award must have entered into full force and effect in its domestic jurisdiction. According to Article 394 of the Code of Civil Procedure the application for recognition of foreign court decisions shall be in writing and must contain:

1) the name of the recipient or his representative (if the petition is filed by the representative), an indication of their place of residence (stay) or location;

2) the name (names) of the debtor, an indication of his place of residence (stay), its location or the location of his property in Ukraine;

3) reasons for application.

Moreover, a petition for permission to enforcement of foreign court decisions should be attached with documents provided by international treaties, ratified by the parliament of Ukraine. These documents are for instance a copy of the decision of a foreign court or an official document that the foreign court decision gained legal force.

... and how to enforce
If a Ukrainian court issues its final decision on granting recognition and enforcement, it will issue an executive order. This order must be submitted to the State Enforcement Service. From thereon, a bailiff commences the enforcement proceedings giving the defendant seven days for voluntary execution. If not, the bailiff commences the involuntary enforcement. This process will take up to six months, often even longer, depending on the defendant's actions.

Outlook
It is undisputedly true that Ukraine have made significant improvements in many laws concerning international private law. However, the Ukrainian courts are still not used to dealing with cases that involve foreign companies. This is probably a start-up problem which will have completely vanished in a couple of years, now that the legal circumstances have been changed dramatically. It is up to the Ukrainian administration to show solid results as a proof of successful adaptation of the economic and judicial reform program, bringing down the barriers for foreign investors to become active in Ukraine.

Antitrust in 2012: Few decisions, high fines

For the European Commission, the year 2012 was one with only four concluded cases. Nevertheless, the total amount of fines imposed by the European Commission in those four cartel cases is impressive: cartel participants have been ordered to pay a total of €1.74 billion in penalties. As hown below, the TV and monitor tube cartel (the so-called CRT cartel) accounts for a huge part of the imposed fines, being the highest fine ever imposed by the European Commission in a single investigation.

Cartel	Fine in €
producers of TV and computer monitor tubes	1.470.000.000
water management products	13.000.000
freight forwarding	169.000.000
window mountings	86.000.000

In 2011, the European Commission took four decisions and imposed a total of €614 million in fines. This was considered a low amount compared to 2010, when seven decisions were taken for a total of €2.9 billion in fines. It seems that increased cooperation between competition enforcement authorities is starting to show results.

Together with increased criminalization of cartel offenses, proliferation of leniency programs and more aggressive enforcement policies, greater cooperation amongst authorities have led to the globalization of the practice of cartel enforcement and defence.

This is being reflected by the nationality of the 30 companies who have been fined in 2012: 18 being European, 9 Asian-Pacific, and 3 incorporated in the United States. European companies account for 43% of the total fine amount (mostly Dutch, German and Swiss companies).

Many investigations are still on-going. The Commission initiated eight cartel investigations in 2011 and conducted dawn raids in at least six of those investigations. The Commission sent Statements of Objections to suspected conspirators in another four cartel cases in 2012.The results of some of them are awaited with particular interest, such as the investigation that focuses on alleged collusion concerning euro interest rate derivatives. Interesting results are also expected in the Auto Parts and Food Sector investigations.

We detect a slight increase in awareness amongst consumers and enterprises of possibilities to claim damages as a result of antitrust behaviour. According to the European Court of Justice, any citizen or business which suffers harm as a result of a breach of the EU antitrust rules (Articles 101 and 102 Treaty on the Functioning of the European Union, TFEU) should be entitled to reparation by the party who caused it. However, despite this requirement under European law to establish an effective legal

framework enabling victims to exercise their right to compensation, victims of antitrust infringements to date very often do not obtain anything for the harm suffered. The amount of compensation these victims forego is in the range of several billion Euros a year.

The European Commission has stated that the lack of an effective legal framework for antitrust damage actions, hinders full enforcement of the antitrust rules and negatively impacts active competition in an open internal market. A combination of measures at both EU and national level is being prepared in order to address the current inefficiency of antitrust damage actions. These measures should ensure minimum protection of the victims' right to damages under Articles 101 and 102 in every Member State, create a more level playing field and provide greater legal certainty across the EU.

At East-West Debt we carefully monitor all developments concerning antitrust regulations, competition infringements and private damages actions. We are of the opinion that convicted cartel members should pay for breaching competition rules. We are willing and able to undertake the challenge of complex multi-jurisdictional litigation.

If you believe to be a victim of a competition law infringement, do not hesitate to contact us. Antitrust specialists of our office in The Hague, The Netherlands, are ready to assess your case.

You can reach us by dialling +31 (0)70 3604466, or by sending us an e-mail: info@eastwestdebt.nl.

Update of The Arab Spring

It has been over two years since the Tunisian street vendor Mohammed Bouazizi set himself alight in the town of Sidi Bouzid in despair at his treatment by officialdom. His act of defiance catalysed the Tunisian revolution and the end of nearly 55 years of authoritarian rule over the country.

The revolutionary wind hit on to countries such as Egypt, Libya and Syria, and later what no one ever thought possible happened: dictators like Mubarak and Gaddafi were, in the case of Libya with military support from NATO, put aside by the people.

East-West Debt is your partner in the recovery of defaulted sovereign debts. We are to provide a variety of solutions:

- **Debt equity swaps**
- **Debt for counter trade**
- **Debt for debt swaps**
- **Amicable settlements**
- **International litigation**

What is the current situation and what might we expect for the future?
On January 14, 2011 the long-standing Tunisian dictator Ben Ali fled the country after four weeks of anti-regime demonstrations. Tunisia held its first free election and is building a new political system. The country seems to be on the way to becoming a prime example of democratisation in the Arab world. Egypt has also held elections, but the old military establishment has proven to be very resistant to political change and is attempting to obstruct democratic processes. Libya and Yemen are struggling to re-establish order after civil war-like conditions and the fall of longstanding dictators.

Morocco, Jordan and Oman began with a program of cautious reforms to stabilize their political system. In Morocco, King Mohammed VI introduced a new constitution that made the country more democratic. In these monarchies the call for change by peaceful means remains sound. Although socio-economic levels are different, Saudi Arabia and Algeria continue to buy off their citizens' political demands with economic benefits. In Kuwait however, these measures do not seem to prevent the people from protesting against government corruption and nepotism.

EAST-WEST DEBT
Specialist in defaulted debt and antitrust damages claims

Bahrain has yet to overcome the legacy of human rights violations emerging from the government's crackdown on the protest movement. In Syria, the Assad regime uses unrestrained force and intimidation tactics to suppress the public uprising that has spread across the country. The massive use of force by the Syrian government led to a radicalization of the opposition resulting in a situation of civil war with many civilian casualties.

Conclusion
The Arab states suffer from an unstable economic situation: youth unemployment, unsteady educational systems, corruption and bureaucracy are challenges yet to be overcome.

The opinion in the West is not always very optimistic. Most old concepts about the Arab world have disappeared and need to be rethought. Certain old customs have disappeared. Trade ties have to be rebuilt. Are the new regimes willing to honour their obligations and pay the debts the old regimes made? Are they able and willing to lead the countries to a stable democracy with an improved socio-economic situation? And maybe the most important question, what positions will the new regimes take towards Western Society?

The call for change, an end to corruption, and the exercise of greater freedom for ordinary citizens is now being heard in every Middle Eastern country and beyond. All these countries in transformation will have to learn what it means to have a democracy. Stable democracy requires more than ust a shift in political regime; it also involves eliminating the antidemocratic social, cultural, and economic legacies of the old regimes. Such a process takes lots of time and effort. The process of democratization in European countries took generations. It is yet to be seen how soon, if at all, the new regimes will cope with their great new responsibilities.

Regimes uninfluenced	Kuwait, Qatar
Regimes anticipating	UAE, Saudi Arabia
Regimes modified	Jordan, Morocco, Oman
Regimes evading	Algeria, Iraq, Lebanon, Palestine
Regimes struggling	Bahrain, Syria
Regimes removed	Egypt, Libya, Tunisia, Yemen

Challenges for Venezuela

Venezuela's President Hugo Chávez has died aged 58, after 14 years in power. Mr Chávez had been seriously ill with cancer for more than a year, undergoing several operations in Cuba.

Especially in this post Chávez era, the Bolivarian Republic of Venezuela faces some severe economic challenges. Pressured by the growing gap between expenditure and income, on the 8th of February 2013, the Venezuelan government was forced to concede to economic reality by cutting the price of the national currency. The bolivar dropped by a stunning 32%.
The downfall of the bolivar is perhaps the most illustrative example of Venezuela's economic slump. The late Mr. Chávez's economic reforms re-established the role of the state in the economy, especially in strategic sectors, which had been outsourced to foreign corporations

during the 1990s. Over the past years, the Venezuelan government has carried out a wave of nationalizations of domestic-and foreign-owned assets in petroleum, steel, agribusiness, construction, tourism, telecommunications, banking and some other industries. Venezuela, contrary to its friendly neighbor Ecuador, does provide these investors "fair" compensation. However, this compensation is based on the value of investment rather than the market value.

The latter will often be significantly higher than the former, especially, if an enterprise has good business prospects. For this reason issues have arisen whether the amount of compensation offered by the government is sufficient.

Consequently, in 2012, Venezuela withdrew from the World Bank tribunal (ICSID) for investment disputes where it faced billions of dollars in claims including cases filed by U.S. oil majors. From a legal point of view, withdrawal from ICSID does not offer any immediate benefits to Venezuela. Pending cases are not affected by Venezuela's exit. Also, there are several Bilateral Investment Treaties currently in force between Venezuela and other countries which provide alternative dispute resolution mechanisms.

If an exit from ICSID does not solve Venezuela's problem with foreigners bringing international claims against it, what is its main purpose? By denouncing the ICSID, the government seems to be sending a political message about the lack of fairness of the system and the refusal to cooperate with it in the future. So any damages presented to ICSID concerning Venezuela for nationalizations to come, will be set aside. However, the greatest impact of leaving the ICSID will be on new investments for Venezuela.

It's becoming increasingly difficult for the Venezuelan people to remain confident in a sustainable Venezuelan economy. Due to Chávez's extensive social programs, poorer Venezuelans have benefited from the country's oil wealth more than they did under the elites that used to be in charge. However, the nation is affected by crumbling infrastructure and an underperforming industry. This ongoing misbalance is perhaps best illustrated by high inflation and a huge trade deficit. How this is going to end remains to be seen. What is painfully clear however, is that the new government quickly needs to create conditions that will prevent Venezuela's economy to hit rock bottom.

EAST-WEST DEBT
Specialist in defaulted debt and antitrust damages claims

Argentina: Repsol files $10.5 billion ICSID claim

If Argentina flat-out refuses to pay ICSID awards, why do companies continue to file claims at the World Bank's arbitration court?

When it filed a whopping $10.5 billion ICSID suit, on Monday 3 December, Spanish energy firm Repsol became just another statistic in the Argentine arbitral saga. Repsol is suing Argentina for expropriating 51% of Repsol's subsidiary YPF, the country's largest energy company.

The Latin state has 20-odd pending at ICSID. Unlike many sovereign states which - begrudgingly or otherwise - make good on judgments rendered against them, however, Argentina is thought never to have paid an ICSID award.

That stance - "we will not pay a penny" is a favourite phrase of President Cristina Fernandez - extends to foreign court judgments, too. Argentina recently told so-called hold out investors not to expect payment, despite a New York court's $1.3 billion order compelling Argentina to compensate a number of hedge funds which refused to accept what it says were unfavourable debt swaps.

"If you're holding a bond with Argentina, what can you say; they have a record of default. If you have an award with Argentina, what can you say; they have a record of not paying awards," says a Latin American disputes specialist, speaking on condition of anonymity.

"Do they have a record of losing every arbitration case ever brought against them? No. They've had several annulled and their 'win rate' is better than other Latin American defendants," the specialist adds.

"Argentina's standard defence, in past cases, was that it did within a national emergency had to do what it did to save the peso. What they did to investors was generally done for currency control."

But what of state actions that have little, if anything, to do with the country's spectacular debt default? Those that take place more than a decade later, say?

For its part, Repsol saw Argentina nationalise YPF after accusing the company of under-investment and excessive dividends in oil production. It claimed the nationalisation, which was subsequently approved by the country's Congress, was carried out to guarantee Argentina self-sufficiency in oil. "That claim had been threatened for some time," notes the Latin American practitioner.

Argentina is currently fighting the first class-action case – Abaclat and Ors – heard at ICSID at date. In August 2011, the tribunal hearing the case granted nearly 180,000 Italian bondholders jurisdiction in a dispute which arose from Argentina's $100 billion sovereign debt collapse. Buenos Aires argues that its BIT does not cover mass claims, while extending ICSID jurisdiction to sovereign bonds is a similarly contentious issue in investor-state jurisprudence.

Still, while Argentina's legion unpaid awards make it easy to caricature, one mustn't forget that it does compensate aggrieved investors – in behind-closed-doors settlements, for example. "An unsatisfied award can be a worthless piece of paper but a good settlement can have value. It depends what people want to get out of these procedures," the Latin specialist notes.

Some, such as the US, have taken a different approach to getting their money back. In a landmark action over a failure to pay arbitral awards, the Obama Administration in March 2012 suspended Argentina from the US Generalised System of Preferences due to its refusal to honour two longstanding ICSID judgments, worth $300 million.

Argentina is hardly alone as a Latin American rebel, however. Bolivia, Ecuador and Venezuela have all denounced the ICSID regime (in 2007, 2009 and 2012, respectively).

Those withdraws are "accompanied with rhetoric that is often directed at Western multinational companies," the Latin specialist says. "It is also done in a climate with a lot of left wing or liberal economists – part of a generalised hostility towards international trade and in a sort of rhetorical climate that is about states' rights. There are some 'usual suspects' in this rhetorical climate."

This article was first published by Commercial Dispute Resolution, by Sarah Downey.

NEWSLETTER

EAST-WEST DEBT

Specialist in defaulted debt and antitrust damages claims

How to contact us ?

Please contact us for more information about our company and a free assessment of your claims.

For the latest information on our company and news, please visit our website: www.eastwestdebt.com

East-West Debt N.V.
Meir 24
2000 Antwerp
Belgium
Tel: +32 3 231 4503
Fax: +32 3 231 9545
mail@eastwestdebt.com

East-West Debt B.V.
Nieuwe Schoolstraat 81
2514 HV The Hague
The Netherlands
Tel: +31 70 360 44 66
Fax: +31 70 780 17 08
Contact person: Michael Löwenthal
info@eastwestdebt.nl
m.lowenthal@eastwestdebt.nl

Debts on political risk countries

East-West Debt assists multinationals, banks, insurance companies and governments to solve their defaulted debts and claims on political risk countries. We have solved claims all over the world, even in extremely difficult jurisdictions such as the former USSR, Iran and Iraq.

East-West Debt will try to maximise the worth of every claim, even if these have remained unpaid for many years.

Antitrust litigation

Due to the high cost of international litigation, most companies are unable or unwilling to claim their damages. East-West Debt wants to purchase your company's claim and bear the expenses involved in the process of its recovery. This will allow your company to recover your claim without the risk of high litigation expenses.

East-West Debt never charges additional costs or expenses, however we will retain a minor percentage of the total amount recovered at highly competitive rate, to cover expenses and provided services.