

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GRETTON LIMITED,
PO Box 656, East Wing, Trafalgar Court, Les
Banques, St Peter Port, Guernsey GY1 3PP,

Petitioner,

v.

THE REPUBLIC OF UZBEKISTAN,
c/o Minister Abdulaziz Khafizovich Kamilov
Ministry of Foreign Affairs of the Republic of
Uzbekistan, 9, Islam Karimov street, Tashkent,
100029, UZBEKISTAN

Respondent.

18-CV-1755

**COMPLAINT / PETITION TO CONFIRM, RECOGNIZE,
AND ENFORCE FOREIGN ARBITRAL AWARD**

1. Petitioner Gretton Limited (“Gretton”), as assignee of Oxus Gold plc (“Oxus Gold”), by its undersigned attorneys, hereby petitions this Court pursuant to Section 207 of the Federal Arbitration Act, 9 U.S.C. § 207, and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the “New York Convention”) for an Order: (a) confirming, recognizing, and enforcing the final award (the “Award”) rendered by a validly constituted arbitral tribunal (the “Tribunal”) on 17 December 2015, in an arbitration (the “Arbitration”) commenced by Oxus Gold against The Republic of Uzbekistan (“Uzbekistan”); (b) entering judgment in Gretton’s favor against Uzbekistan for \$13,026,908.12 (the “Award Amount”), plus prejudgment interest accruing from the date of the Award until the date of entry of judgment, plus post-judgment interest, plus the costs of this proceeding; and (c) awarding Gretton such other and further relief as this Court may find just and proper.

2. The Award is subject to the New York Convention because the place of arbitration was in Paris, France, and both France and the United States are signatories to the New York Convention. Article III of the New York Convention provides that each contracting state “shall recognize arbitral awards as binding and enforce them in accordance with the rules of the procedure of the territory where the award is relied upon”

3. In support of the Petition, Gretton also filed simultaneously herewith a Statement of Points and Authorities, dated July 27, 2018; a Declaration of Matthew Horton, executed July 26, 2018 (“Horton Declaration”); a Declaration of Dr. Hamid Gharavi, executed July 11, 2018 (“Gharavi Declaration”); and a Declaration of Kevin N. Ainsworth, executed July 27, 2018 (“Ainsworth Declaration”).

4. A duly certified copy of the Award is attached as to the Gharavi Declaration as Gretton Exhibit 1.

5. A duly certified copy of the agreement pursuant to which Oxus Gold and Uzbekistan arbitrated their dispute is attached to the Gharavi Declaration as Gretton Exhibit 2.

THE PARTIES

6. Gretton is a company organized in Guernsey with number 53724 and has its registered office at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey, GY1 6HJ. Gretton asserts its rights herein as assignee from Oxus Gold, which was the claimant in the Arbitration, and which was a company registered in England and Wales and having its registered office at 52 Charles Street, London W1J 5EU, with company registration number 04056219. Pursuant to a Mortgage Over Proceeds, dated June 26, 2012 (“Mortgage”), Oxus Gold has assigned to Gretton all right, title, and interest in “Proceeds” (as that term is used in the

Mortgage), which includes the rights to enforce the Award and to collect from Uzbekistan all amounts owed under the Award. (*See* Horton Decl. ¶¶4-6 and Gretton Exh. 5.)

7. Uzbekistan is a foreign state for purposes of the Foreign Sovereign Immunities Act, 28 U.S.C. §1603 (“FSIA”). Uzbekistan was a respondent in the Arbitration.

JURISDICTION AND VENUE

8. This Court has original jurisdiction over this action under 9 U.S.C. §§ 203 and 207, because this is a civil action seeking recognition and enforcement of an award rendered in an arbitration subject to the New York Convention. The Award is governed by the laws implementing the New York Convention because it arises out of a legal relationship that is commercial and because it is not entirely between citizens of the United States. 9 U.S.C. § 202.

9. Original jurisdiction also exists under 28 U.S.C. ¶1330(a) because Uzbekistan is a foreign state as defined in Section 1603(a) of the Foreign Sovereign Immunities Act of 1976 (“FSIA”), and is not entitled to immunity. 28 U.S.C. §1603(a).

10. Uzbekistan is not entitled to sovereign immunity because immunity under the FSIA does not extend to proceedings to confirm arbitration awards that are subject to the New York Convention. *See* 28 U.S.C. §1605(a)(6).

11. Because Gretton seeks enforcement of a foreign arbitral Award made in Paris, France, this Court sits in its secondary jurisdiction with regard to the Award. *See CBF Industria de Gusa S/A v. AMCI Holdings, Inc.*, 846 F.3d 35, 48, 52 (2d. Cir. 2017).

12. This Court has personal jurisdiction over Uzbekistan pursuant to 28 U.S.C. §1330(b), which provides that personal jurisdiction exists over a foreign state in an action in which the foreign state is not entitled to sovereign immunity under 28 U.S.C. §§1605-1607,

where service has been made under 28 U.S.C. §1608. Service of process will be effected pursuant to 28 U.S.C. §1608.

13. Venue is proper in this Court pursuant to 28 U.S.C. §1391(f)(4) because Uzbekistan is a foreign state.

THE ARBITRATION

14. Oxus Gold commenced the Arbitration asserting claims for breach of the Agreement for the Promotion and Protection of Investments, concluded on 24 November 1993, by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Uzbekistan (the “Bilateral Investment Treaty” or “BIT”). (Award ¶123.)

15. Article 8 of the BIT provides, in part: “Disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall, after a period of three months from written notification to a claim, be submitted to international arbitration if the national or company concerned so wishes.” (Gretton Exh. 2 (attached to Gharavi Decl.).)

16. The BIT is an agreement to arbitrate, within the meaning of the FSIA. *See, e.g., Chevron Corp. v. Republic of Ecuador*, 795 F.3d 200, 207 (D.C. Cir. 2015); *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, 244 F. Supp.3d 100, 109 (D. D.C. 2017).

17. On August 31, 2011, Oxus Gold commenced the Arbitration pursuant to Article 8 of the BIT, by filing a notice of arbitration against Uzbekistan, alleging breaches of the BIT. The notice named additional respondents, but Oxus Gold later withdrew its claims against the other respondents and pursued claims against only Uzbekistan.

18. On September 30, 2011, Uzbekistan filed its Response to the Notice of Arbitration.

19. The Tribunal determined that it had jurisdiction over the dispute.

20. The place of arbitration was Paris, France. A hearing was held there from April 28 to May 3, 2014.

21. The Arbitration proceeded under the United Nations Commission on International Trade Law Arbitration Rules (2010 version) (the “UNCITRAL Rules”).

22. The language of the Arbitration was English.

THE AWARD

23. On 17 December 2015, the Tribunal issued a Final Award, which is written in English and spans 397 pages.

24. The Award provides, in relevant part, as follows:

1. Respondent’s [(i.e., Uzbekistan’s)] jurisdictional and admissibility objections towards Claimant’s AGF [(i.e., Amantaytau Goldfields AO)] claims are unfounded and hereby rejected. Claimant’s AGF claims are admissible and the Tribunal has jurisdiction thereover.

2. Respondent [(i.e., Uzbekistan)] is liable for a breach of Article 2(2) of the BIT in connection with the tax regime changes implemented in 2006 and in 2009.

3. Respondent [(i.e., Uzbekistan)] owes an amount of USD 10,299,572 for the damage caused by Respondent’s violation of Article 2(2) of the BIT with regard to the tax law changes of 2006 and 2009.

4. Respondent [(i.e., Uzbekistan)] shall pay an interest of LIBOR + 2% to be compounded annually on the amount mentioned above. The interest rate shall be applied to the loss suffered by Claimant as of the 31 December of each corresponding year from 2004 to 2010.

5. The Arbitral Tribunal finds that it lacks jurisdiction over Respondent’s counter-claims.

(Award at 397.)

25. In determining the amount of interest included in the Award, the Award provides: “The Parties shall calculate each yearly loss on the basis of the numbers provided by Mr. Hart in ER-Hart III (10.07.2014).” A copy of that report of Mr. Hart is attached to the Gharavi Declaration as Gretton Exhibit 4.

26. The amount of interest included in the Award on 17 December 2015 was \$2,727,336.12.

27. Accordingly, the Award amount (including damages and interest) at the date it was made, *i.e.*, 17 December 2015, was \$13,026,908.12 (the “Award Amount”).

28. Article 34 of the UNCITRAL Rules provides: “All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.”

29. Uzbekistan has failed to pay any of the amount owed. (*See* Horton Decl. ¶2.)

30. Gretton also is entitled to prejudgment interest at the average daily prime rate, accruing from the date of the Award through the date of judgment.

31. Gretton also is entitled to post-judgment interest pursuant to 28 U.S.C. § 1961(a).

THE LEGAL STANDARD

32. Section 207 of Title 9, U.S. Code, provides: “Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.”

33. The term “confirm” as used in Section 207 of Title 9 refers to the process by which a District Court acts under its secondary jurisdiction to recognize and enforce a foreign arbitral award. *See CBF Industria*, 846 F.3d at 52.

34. Gretton has filed this Petition within three years after the Award was made on 17 December 2015.

35. The burden of proving grounds for refusal or deferral of recognition or enforcement of the Award rests on with the party resisting confirmation. *See, e.g., Balkan Energy Ltd. v. Republic of Ghana*, No. 17-cv-00584 (APM), 2018 U.S. Dist. LEXIS 47134 at *29 (D. D.C. Mar. 22, 2018); *BCB Holdings Ltd. v. Gov’t of Belize*, 110 F. Supp. 3d 233, 247 (D. D.C. 2015); *CBF Industria*, 846 F.3d at 53.

36. Confirmation proceedings under the Convention are summary in nature, and the court must grant the confirmation unless it finds that the arbitration suffers from one of the defects listed in the New York Convention. *See, e.g., BCB Holdings Ltd.*, 110 F. Supp. 3d at 247.

37. None of the New York Convention grounds for denying recognition and enforcement of an award have been proven by Uzbekistan.

REQUESTED RELIEF

WHEREFORE, Petitioner prays for entry of judgment:

- a) Confirming, recognizing, and enforcing the Award, and awarding Gretton no less than \$13,026,908.12, plus prejudgment interest at the average daily prime rate from 17 December, 2015, through the date of the judgment; and
- b) Awarding post-judgment interest;
- c) Awarding Gretton its costs, including attorneys' fees, in this action; and
- d) Awarding Gretton such other and further relief as the Court deems to be just and proper, including, as appropriate, the posting of security.

Dated: WASHINGTON, D.C.
July 27, 2018

Respectfully submitted,

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY & POPEO, P.C.

s/ David Barmak

David Barmak (dbarmak@mintz.com)
D.C. Bar No. 236752
701 Pennsylvania Ave, NW
Suite 900
Washington, D.C. 20004
Phone: 202.434.7300

Kevin N. Ainsworth (pro hac vice
forthcoming)
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY & POPEO, P.C.
666 Third Avenue
New York, NY 10017
(212) 692-6745
kainsworth@mintz.com

Attorneys for Petitioner Gretton Limited