

ARBITRATION

Expert Analysis

## District Court Stays U.S. Case Seeking to Enforce a Foreign Arbitral Award

In 2015, an arbitration panel in Paris, France found the Republic of Uzbekistan liable to Oxus Gold PLC for approximately \$13 million, due to its expropriation of two gold mines. Oxus's expenses in the arbitration were funded by Gretton Ltd., a litigation funder, and Oxus had assigned the proceeds of an arbitration award to Gretton in 2012. Although Oxus obtained recognition of the award from a Parisian court, in 2016 it appealed to a French appellate court to set aside the arbitration award to the extent it denied Oxus's claims. Uzbekistan opposed the appeal, and sought to vacate the entire award.



By  
**Samuel  
Estreicher**



And  
**Holly H.  
Weiss**

In 2018, while the French appeal was pending, Gretton filed a petition against Uzbekistan in the U.S. District Court for the District of Columbia, to enforce the previously recognized award. In response, Uzbekistan moved to dismiss the case, or in the alternative, for a stay of the case pending the decision of the French appellate court. The district court issued the requested stay of the U.S. proceeding in *Gretton Ltd. v. Republic of Uzbekistan*, No. 18-cv-01755 (D.D.C. Feb. 6, 2019).

The Federal Arbitration Act, 9 U.S.C. §§201-208, codifies the Con-

vention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Under the New York Convention, district courts have discretion to stay U.S. proceedings if “an application for the setting aside or suspension of the award has been made to a competent authority.” New York Convention art. VI. Accordingly, the district court noted that it “*can* stay the case” under the New York Convention, but that the question presented was whether it *should* do so. To answer this question, the court looked to the Second Circuit’s seminal decision in *Europcar Italia, S.p.A. v. Maielano Tours*, 156 F.3d 310, 317 (2d Cir. 1998). In *Europcar*, the court of appeals held that, because “the adjournment of enforcement proceedings impedes the goals

SAMUEL ESTREICHER is the Dwight D. Opperman Professor and Director of the Center for Labor and Employment Law at New York University School of Law. HOLLY H. WEISS is a partner at Schulte Roth & Zabel.

of arbitration—the expeditious resolution of disputes and the avoidance of protracted and expensive litigation”—“[a] stay of confirmation should not be lightly granted.” *Europcar* lists six factors for courts to consider (156 F.3d at 317-18):

- (1) the general objectives of arbitration—the expeditious resolution of disputes and the avoidance of protracted and expensive litigation;
- (2) the status of the foreign proceedings and the estimated time for those proceedings to be resolved;
- (3) whether the award sought to be enforced will receive greater scrutiny in the foreign proceedings under a less deferential standard of review;
- (4) the characteristics of the foreign proceedings, such as whether they were brought to enforce or to set aside an award;
- (5) a balance of the possible hardships to the parties; and
- (6) any other circumstances that could tend to shift the balance in favor of or against adjournment.

Applying the *Europcar* factors, the district court first determined that a stay would avoid unnecessary and expensive piecemeal litigation given the centrality of the French appeal. Second, because a decision on the French appeal was expected within a few months, the stay would not unduly lengthen

---

This case is a good example of sound U.S. judicial discretion in dealing with foreign arbitration awards.

the proceedings. Third, because there was no overlap between the foreign and U.S. proceedings, the level of scrutiny of the award in the foreign proceeding was irrelevant. Fourth, the district court found that the characteristics of the foreign proceedings weighed in favor of a stay, including that the party requesting the stay did not do so to delay a resolution. Fifth, the court found that Gretton would not suffer from the delay caused by the stay. Finally, the district court considered “other circumstances that might shift the balance,” including the likely outcome of the French appeal, and

determined those to be insufficient to tip the scales in favor of denying the stay request.

As expected, in May 2019, the French appellate court issued its decision: It dismissed Oxus’s request to set aside, partially, the award. Oxus informed the district court that it will not appeal that decision. This case is a good example of sound U.S. judicial discretion in dealing with foreign arbitration awards.

## Schulte Roth & Zabel

Schulte Roth & Zabel LLP  
 919 Third Avenue, New York, NY 10022  
 212.756.2000 tel | 212.593.5955 fax | www.srz.com  
 New York | Washington DC | London