

The Yukos Saga Continues: English Court of Appeal Rejects Russian Plea of Sovereign Immunity

Client Alerts

February 25, 2025

By: James Rogers, Kenneth Beale, Elizabeth A. Edmondson, Ronan O'Reilly

As all eyes focus on peace talks and the future of the Russia/Ukraine conflict, Russia recently suffered another defeat in the long running Yukos saga, with the English Court of Appeal confirming that Russia could not invoke immunity against enforcement of the infamous Yukos award.

The Yukos arbitration

The Yukos award is in fact three awards in favour of the shareholders of the Russian oil and gas company Yukos that were rendered in 2014 in Hague-seated arbitration proceedings commenced under the Energy Charter Treaty (ECT). The tribunal in those arbitrations found that Yukos had been expropriated by the Russian State, which had retroactively applied multibillion-dollar tax demands against the company, leading to its bankruptcy in 2006 (circumstances which also led to the ten-year imprisonment of Russian billionaire Mikhail Khodorkovsky, the now exiled former owner of the company). The combined value of the awards, plus interest, now stands at approximately \$63 billion.

Various proceedings have since been commenced by the Russian State to challenge the awards and by the shareholders to enforce them. This included enforcement proceedings in the UK, commenced in 2015 but stayed pending proceedings brought by Russia in the Dutch courts to have the awards set aside.

The Dutch set-aside proceedings, commenced in 2014, have been protracted. The awards were initially set aside by the Hague District Court in 2016; however, they have since been reinstated by various decisions of the Dutch Court of Appeal and the Dutch Supreme Court. Most pertinently to the recent English Court of Appeal decision, in November 2021, the Dutch Supreme Court rejected Russia's argument that there was no binding arbitration agreement between the claimants and Russia despite Russia's argument that it was only provisionally bound by the ECT and had never agreed to the application of its arbitration provisions (the 'arbitration agreement argument').

The Court of Appeal decision

In the UK, pursuant to the State Immunity Act 1978, states are immune from the jurisdiction of the courts save where the state has agreed to arbitration, in which case the state has no immunity with respect to court proceedings related to the arbitration. In resisting enforcement of the awards in the UK, Russia therefore relied on its arbitration agreement argument once again to argue that the arbitration exception to state immunity did not apply because Russia had never agreed to arbitration.

However, section 31 of the Civil Jurisdiction and Judgments Act 1982 provides that a judgment of a foreign court against a state (such as the decision of the Dutch Supreme Court on the arbitration agreement argument) shall be recognised and enforced in the UK if (i) it would have been recognised and enforced if it had not been given against a state; and (ii) the foreign court would have had jurisdiction in the matter had it applied the State Immunity Act.

Moreover, the English common law doctrine of issue estoppel means that a party to proceedings is not entitled to make an assertion of fact or law if the same assertion was an essential element in prior proceedings between the same parties and was found by the prior court to be incorrect. The primary issue before the Court of Appeal was therefore whether and to what extent Russia was, by reason of the Dutch Supreme Court decision, precluded from again raising its arbitration agreement argument to assert that it was immune from the jurisdiction of the English courts.

The basis of Russia's argument was that the English Courts have an obligation under the State Immunity Act to give effect to a state's immunity from jurisdiction unless the English Courts themselves determine that one of the exceptions in that Act applied. Essentially, Russia argued that a conclusion based on an issue estoppel arising from a foreign judgment was not a determination and that the English Courts had to consider all the constituent elements of the question afresh.

The Court of Appeal disagreed. The decision of Lord Justice Males pointed out that there was nothing in the State Immunity Act which stipulates how the English Courts are to determine whether an exception to immunity applies. Instead, in reaching its decision on whether the arbitration exception to state immunity applied, 'the court must simply apply English law to that question, and that law includes the law relating to issue estoppel.'

Accordingly, given that the requirements of the Civil Jurisdiction and Judgments Act were met, the English Courts were obliged to give effect to the Dutch Supreme Court decision on the arbitration agreement argument. In doing so, the earlier Court 'did not decline to determine whether Russia had agreed in writing to submit the dispute in question to arbitration. On the contrary, [the court] determined that [Russia] had so agreed, applying the substantive principle of English law that when the requirements for an issue estoppel are satisfied, as they were in this case, the previous decision of a court of competent jurisdiction is conclusive on the issue in question.'

Significance of the decision

The decision of the Court of Appeal has real significance, given that more than £25 billion in Russian state assets are said to be frozen in the UK and potentially available for enforcement. However, whether those assets will ever be released to commercial claimants, such as the Yukos shareholders, is open to debate given the implications of the Ukrainian conflict and the clamour for reparations.

In any event, the decision reiterates the non-interventionist approach of the English Courts in arbitration related matters. The threshold for challenging awards and their enforcement in the UK remains high, a key reason why London remains one of the busiest arbitration venues in the world and a key jurisdiction for the enforcement of arbitral awards, including those against state entities.

Jenner & Block has an integrated team of dedicated international arbitration lawyers across our London and US offices, who combine top-tier legal analysis, skilful advocacy, and decades of experience representing clients in complex arbitrations and enforcement matters around the world. Please contact James Rogers (jrogers@jenner.com), Elizabeth A. Edmondson (eedmondson@jenner.com), Kenneth Beale (kbeale@jenner.com) and/or Ronan O'Reilly (ronan.oreilly@jenner.com) if you have any questions about our work in this area.

Footnotes

[1] *Hulley Enterprises Limited; Yukos Universal Limited; and Veteran Petroleum Limited v. the Russian Federation*, [2025] EWCA Civ 108

Related Attorneys



James Rogers

Partner

jrogers@jenner.com

+44 330 060 5463



Kenneth Beale

Partner

kbeale@jenner.com

+1 202 637 6380



Elizabeth A. Edmondson

Partner

eedmondson@jenner.com

+1 212 891 1606



Ronan O'Reilly

Special Counsel

ronan.oreilly@jenner.com

+44 330 060 5511

Related Capabilities

International Arbitration

Related Locations

London

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed

