

The Case Concerning the Investment in the State of Rambald

1 Akiras is a developed country, and Rambald is an emerging country that has recently achieved significant economic growth. The overall relationship between the states is good, and financial investment by Akiras in Rambald is increasing. The two states concluded a bilateral investment treaty (the “2002 Treaty”), which entered into force on January 1, 2002. The sole authentic language of the 2002 Treaty is English; its relevant provisions are attached as Annex 1.

2 Rambald also entered into a bilateral investment treaty with the state of Tantalons on January 1, 2005. Article 15 of the Rambald–Tantalons bilateral investment treaty stipulates: “Each Party shall observe any written obligation it may have entered into with regard to a specific investment by an investor of the other Party.” Such a provision had not been included in any investment treaty Rambald had concluded. The provision was highly appreciated by the business society of Rambald as a “ground-breaking provision” at the time of its entry into force.

3 Rambald Minerals Development Organization (“RAMDO”) has an independent legal personality established by the government of Rambald by the Rambaldic law. *The Act establishing Rambald Minerals Development Organization* stipulates that RAMDO is responsible for the exploitation of minerals in the territory of Rambald. In fact, RAMDO holds the exclusive right to exploit all minerals that exist in the territory of Rambald, and a private company can only join a mineral exploitation project in Rambald by entering into a contract with RAMDO.

4 Amand Minerals is an enterprise established under the law of Akiras. In 2009, Amand Minerals and RAMDO signed a contract regarding mining at tantalum mines in Rambald. The contract provided:

- (1) Amand Minerals shall provide mining services for RAMDO at tantalum mines in Rambald starting January 1, 2010;
- (2) RAMDO shall pay 10 million US dollars to Amand Minerals for said mining services. The payment shall be made in lump sum in January 2012; and
- (3) The contract shall be effective until December 31, 2012, and Amand Minerals and RAMDO shall negotiate the renewal of the contract by July 2012.

5 In July 2011, a new government came into power in Rambald in July 2011. The new

government had included “pursuance of international public interest” in its manifesto. At the time of its inauguration, the administration declared:

“(1) the Rambaldic government does not enter into any contract with an enterprise which engages in an activity inconsistent with international public interest;
(2) the Rambaldic government refuses to implement any existing contract with an enterprise which engages in an activity inconsistent with international public interest;
and
(3) the Rambaldic government expects that the organization affiliated with the government will also comply with the abovementioned policy.”

6 In October 2011, an international NGO, the Best Interests of the Children (“BIC”) published a report concluding that Amand Minerals engaged in illegal child labor in its mining activities. Amand Minerals confirmed that the report had a factual basis after an internal corporate survey, and officially made apologies, with the CEO promising to take preventive measures at a press conference. Amand Minerals also replaced its board members and paid compensation to the victims (the children working at the mines). The BIC report also expressed a concern that domestic small and medium enterprises were often found to engage in illegal child labors in Rambald.

7 After the publication of the BIC report, RAMDO issued the statements that:
“(1) the activities of Amand Minerals were explicitly inconsistent with the international public interest in “the protection of the children’s rights” and;
(2) in this regard, RAMDO would refuse to implement the contract signed with Amand Minerals in 2009 and to make payment to Amand Minerals.”

RAMDO subsequently did not make payment to Amand Minerals, even after January 2012, when the payment became due under the aforementioned contract.

8 Amand Minerals expressed strong objection to these statements by RAMDO and suggested that negotiation be undertaken for the renewal of the contract, as stipulated therein. RAMDO declared, “Rambald Minerals Development Organization, as the body responsible for the mineral development in Rambald, is expected to ensure consistency with the government’s policy. Therefore, we will not negotiate with an enterprise that impairs international public interest.” Accordingly, RAMDO refused to undertake any negotiation with Amand Minerals.

9 In the absence of any negotiation between Amand Minerals and RAMDO, the

mining contract expired on December 31, 2012.

10 In March 2013, Akiras released the statement that: “We express strong apprehension that our investor, Amand Minerals, is not accorded appropriate treatment in Rambald. Such treatment is inconsistent with the investment treaty between the countries and thus, we demand that Rambald redress it.”

11 Achil Chemical, another enterprise of Akiras, manages factories of chemical products in several countries, including Rambald. International media have reported that Achil Chemical has committed waste dumping from its factories in several developing countries in a manner inconsistent with respective domestic laws. In fact, an Achil Chemical’s factory located in the State of Domile, a developing country, was subject to an administrative sanction due to its illegal dumping of environmental pollutants.

12 In April 2013, a leading newspaper in Rambald reported an interview with the environment minister of that state. In the interview, the minister said that the Achil Chemical’s factory in Rambald discharged environmental pollutants to their neighborhoods, according to the information from his own channels.

13 In response to the interview, a strong protest campaign against the Achil Chemical’s factory occurred among Rambald nationals. The Rambaldic consumers conducted boycott campaigns of Achil Chemical’s products. The major power companies cancelled power supply contracts with Achil Chemical’s factory, and a large number of enterprises refused to supply Achil Chemical’s factory with raw materials.

14 Achil Chemical requested the government of Rambald to make a factual investigation into whether its factory emitted pollutants or not, and to publish the result of the investigation. The government of Rambald did not respond to this request.

15 Failing to get assistance from the government of Rambald, Achil Chemical requested a group of internationally reputable environment scholars to investigate whether there had been emission of pollutants from the factory in question in Rambald. The group released the report of their investigation, in which they did not acknowledge any emission of pollutants from the factory. However, the media in Rambald barely broadcast the results of the investigation. “The Broadcasting Guideline” issued by the

Ministry of Broadcasting in Rambald in 2001 includes the provision that broadcasting entities shall endeavor to broadcast news objectively. On the other hand, there have been several cases since 2001 where broadcasting entities reporting opinions that differed from the government's official positions received warnings from the Ministry of Broadcasting that such reports of opinions breached the guideline. In each case, the broadcasting entity that received the warning ended up with the resignation of its board members.

16 Because the acceleration of the campaign against Achil Chemical in Rambald made it difficult for the enterprise to continue its business, it sold the factory to Ralfa, a state enterprise of Rambald. According to a leading newspaper, the selling price was significantly lower than the normal market value of the factory. After Ralfa purchased the factory, the campaign calmed down and the factory managed well.

17 The cases of Amand Minerals and Achil Chemical resulted in deterioration of the bilateral relationship between Akiras and Rambald. In response to the situation, the neighboring countries suggested that they refer their disputes to the International Court of Justice (the "Court"). The CEOs of Amand Minerals and Achil Chemical both expressed that each company would leave the settlement of their respective disputes to state-to-state dispute settlement procedures between Akiras and Rambald, from the perspective of avoiding expensive legal fees for investor-state dispute settlement procedures, and requested the government of Akiras to sue Rambald. In March 2014, Akiras brought claims against Rambald before the Court pursuant to Article 9 of the 2002 Treaty.

18 Akiras requests the Court to adjudge and declare that:

- (1) Rambald violated the 2002 Treaty with respect to its treatment of Amand Minerals;
and
- (2) Rambald violated the 2002 Treaty with respect to its treatment of Achil Chemical.

19 Rambald requests the Court to adjudge and declare that:

- (1) Rambald did not violate the 2002 Treaty with respect to its treatment of Amand Minerals; and
- (2) Rambald did not violate the 2002 Treaty with respect to its treatment of Achil Chemical.

20 Akiras and Rambald request the Court only to adjudge whether Rambald is in breach of the 2002 Treaty and agreed to consult, if necessary, about the compensation after the judgment. Rambald also expressed the intention not to dispute the jurisdiction of the Court and admissibility with respect to the claims in the present dispute.

21 Akiras and Rambald are both parties to the Vienna Convention on Law of the Treaties. Neither country has been a party to any treaty concerning child labor or the dumping of environment pollutants.

ANNEX I

Agreement for the Protection and Promotion of Investment between Akiras and Rambald (the “2002 Treaty”)

Article 1: Definitions

For the purposes of this Treaty:

“Covered investment” means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Treaty or established, acquired, or expanded thereafter.

“Enterprise” means any entity constituted or organized under applicable law.

“Investment” means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) claims to money; and
- (c) other tangible or intangible, movable or immovable property, and related property rights.

“Investor of a Party” means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party.

Article 2: Scope and Coverage

1. This Treaty applies to measures adopted or maintained by a Party relating to:

(a) investors of the other Party; and

(b) covered investments.

2. A Party's obligations under this Agreement shall apply:

(a) to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party; and

(b) to the political subdivisions of that Party.

3. For greater certainty, this Treaty does not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Treaty.

Article 3: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 4: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 5: Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 of this Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard

of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.

Article 6: Expropriation and Compensation

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (“expropriation”), except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate, and effective compensation; and
- (d) in accordance with due process of law.

Article 7: Investment and the Environment and Human Rights

The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections of environment or human rights.

Article 8: Investor-State Dispute Settlement

1. In the event that an investment dispute arises between an investor of a Party and the other Party, the investor may submit to arbitration a claim that the latter Party has breached an obligation under this Agreement.

2. (Omitted)

Article 9: State-State Dispute Settlement

Any dispute between the Parties concerning the interpretation or application of this Treaty shall be submitted on the request of either Party to the International Court of Justice.