

The Hague arbitration

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Several former private shareholders challenged the repurchase. Some of them, among them the investment fund First Eagle and individual shareholders, brought proceedings before the Commercial Court of Paris, which first accepted jurisdiction, although the Paris Court of Appeal later deferred to the arbitral process. Others turned to the arbitral tribunal provided for in the Hague Agreement of 1930. The proceedings before that tribunal, administered by the Permanent Court of Arbitration in The Hague, were brought by Dr Horst Reineccius, First Eagle SoGen Funds, Pierre Mathieu and the Société de Concours Hippique de la Châtre. The case became known as *Reineccius et al. v. Bank for International Settlements*. The tribunal was chaired by W. Michael Reisman and included other arbitrators of international reputation.¹

In its partial award of 22 November 2002, the tribunal held that the recall of the private shares was lawful. Since the BIS was an international organisation of central banks, it could legitimately decide that private persons should no longer hold its shares. The amendment of the Statutes had also been validly adopted. The tribunal found, however, that the compensation offered was inadequate. The appropriate measure was a proportionate share of the net asset value of the bank, which the tribunal assessed with a discount of 30 per cent, comparable to the discount that the BIS itself had applied in earlier repurchases among central banks. The tribunal rejected the bank's argument that the market price of the shares should be decisive, because that price had been depressed by the restrictions attached to private shareholding.²

The final award of 19 September 2003 fixed the additional compensation that the BIS had to pay to the former private shareholders, together with interest. According to the commentary on the case, the resulting total compensation per share was roughly double the amount originally offered. The BIS extended the higher compensation to all former private

shareholders, including those who had not taken part in the arbitration, which put an end to the dispute. The case has become a reference in the law of international organisations, because it is one of the few decisions in which an arbitral tribunal applied international law to the internal corporate relations of an international organisation and examined the protection of private property rights within such an organisation.³

1 Notes

1. Dr Horst Reineccius, First Eagle SoGen Funds, Inc., Mr Pierre Mathieu and La Société de Concours Hippique de la Châtre v. Bank for International Settlements, Permanent Court of Arbitration; on the parallel French proceedings before the Tribunal de commerce de Paris and the Cour d'appel de Paris, see the literature on the case. Composition of the tribunal and the French decisions to be verified. ↩
2. Partial Award of 22 November 2002, Reineccius et al. v. BIS, on the lawfulness of the recall and the standard of compensation (net asset value with a 30 per cent discount). The award is published by the Permanent Court of Arbitration and reproduced in Reports of International Arbitral Awards, vol. XXIII. Holdings, discount and citation to be verified. ↩
3. Final Award of 19 September 2003, Reineccius et al. v. BIS; on the amount of additional compensation (reported as about CHF 9,000 per share plus interest), on its extension to all former private shareholders, and on the significance of the case, see the BIS Annual Report 2003/04 and the commentary in the law of international organisations. Figures to be verified. ↩

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