# THE GUIDE TO TELECOMS ARBITRATIONS

Editor
Wesley Pydiamah

# The Guide to Telecoms Arbitrations

**Editor**
Wesley Pydiamah

Reproduced with permission from Law Business Research Ltd
This article was first published in August 2022
For further information please contact insight@globalarbitrationreview.com

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34-35 Farringdon Street, London, EC4A 4HL, UK

www.globalarbitrationreview.com





Enquiries concerning reproduction should be sent to: insight@globalinvestigationsreview.com.
Enquiries concerning editorial content should be directed to the Publisher –
david.samuels@lbresearch.com

ISBN 978-1-83862-873-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

# Acknowledgements

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

AlixPartners GmbH

Aluko & Oyebode

Brattle

Boies Schiller Flexner (UK) LLP

Dechert LLP

Eversheds Sutherland LLP

Hanotiau & van den Berg

McDermott Will & Emery

Pallas Partners LLP

Paul Werné

Space Arbitration Association

Three Crowns LLP

Vieira de Almeida e Associados

Winston & Strawn LLP

# Publisher's Note

Global Arbitration Review is delighted to publish *The Guide to Telecoms Arbitrations*.

For newcomers, GAR is the online home for the international arbitration specialists everywhere. We tell them all they need to know about everything that matters in their chosen niche.

GAR is perhaps best known for our daily news. But we also have a growing range of other output, including our technical library (our Guides series); our retrospective annual regional reviews; our GAR Live events; workflow tools such as our Arbitrator Research Tool (ART), which maps the connections of 30,000-plus names, and Primary Sources, which connects you to the original texts of decisions and judgments from GAR's unique archive; and (coming soon) our new GAR online Academy where newcomers can learn advocacy and other IA ringcraft at the foot of various masters. Please visit www.globalarbitrationreview.com if you are interested in finding out more.

As the unofficial 'official journal' of international arbitration, we occasionally become aware of gaps in the literature before others. This guide to telecoms arbitrations is a prime example. Few industries seek the counsel of arbitration specialists so regularly. And yet there has been no definitive book for either counsel or client on some of the practicalities of those disputes – until now.

On this occasion, however, the joy of accomplishment is tempered with pretty serious embarrassment. GAR has been writing about telecoms disputes since our inception in 2006. In fact, if I had to pick one industry that regularly produces large shareholder disputes, it would be telecoms. We should have thought of this one long ago.

Still, better late than never. And the timing may in fact be apposite. As editor Wesley Pydiamah notes in his introduction, demand for international arbitration from telecoms clients is only likely to increase as the industry goes through a series of technology releases and system upgrades.

As with most of our other sector-specific guides, this is not a complete toolbox (the exception here is our guide to IP arbitration); rather, it assumes a certain knowledge of the process on the part of the reader and jumps you straight to the practical points that are current and pertinent for telecoms.

We trust you will find it a useful addition to your library. If so, you may be interested the other books in the GAR Guides series. They cover energy, construction, IP disputes, mining, M&A, challenging and enforcing awards, investor-state arbitration and the use of evidence in the same practical way. We also have a book on advocacy in arbitration and one on how to become better at thinking about damages – as well as a handy citation manual (*Universal Citation in International Arbitration* (*UCIA*)).

We're delighted to have worked with so many leading names in creating *The Guide to Telecoms Arbitrations*. My thanks to all of them. And last, special thanks to Wesley Pydiamah for spotting not only the gap in the literature but also in GAR's own foresight, and for his elan in developing the vision. And as always to my Law Business Research colleagues in production for creating such a polished work.

**David Samuels**
July 2022

# Contents

# Introduction

**Wesley Pydiamah**[1]

The idea of this guide, *The Guide to Telecoms Arbitrations,* came about during the covid-19 pandemic. With the world entering a new paradigm of lockdowns and working from home policies, the need for enhanced telecommunication services has never been so acute. This is undoubtedly true of mobile and data services, both of which are core services offered by any telecoms operator, and demand for these services is unlikely to slow down. Coupled with the advent of new technologies such as 5G, the telecoms sector is undergoing radical changes and is expected to revolutionise ways in which we live, work and interact in society. It has already impacted arbitration usages, with the ever-increasing reliance on technology for legal research, document management and virtual hearings.

Predictably, a rise in arbitrations could result from this new paradigm and the changing landscape. As telecoms operators embark on their development spree, states will also want to regulate the sector to preserve their essential interests. Frictions between telecoms operators and foreign governments are inevitable in light of the massive investments involved in existing and new roll-out projects. Both domestic and international legal frameworks will naturally evolve to keep track of developments in the sector.

This guide is not intended to be a comprehensive toolbox for any kind of arbitration that arises in the telecoms sector. But since we must start somewhere, this first edition will cover both general and specific themes that will hopefully bring more insight to the arbitration community.

It may sound trite, but is arbitration really the preferred option to resolve telecoms disputes? The first port of call is to see what the end users of arbitration think. The guide therefore starts with an in-house perspective from Paul Werné,

1 Wesley Pydiamah is a partner at Eversheds Sutherland.

the former general counsel at one of the most prominent telecoms operators.[2] A chapter on the suitability of arbitration to new technologies by Nasser Ali Khasawneh, Maria Mazzawi and Ricardo Christie of Eversheds Sutherland LLP then follows.[3]

However, even when arbitration is preferred, the nature of the telecoms sector and its far-reaching and overlapping effects on a whole range of matters may give rise to issues of arbitrability, which may become important and relevant in the context of enforcement of arbitral awards.[4] This is addressed in a chapter by Emily Hay of Hanotiau & van den Berg.

When it comes to commercial arbitration in the telecoms sector, it is fair to say that this has been primarily driven by M&A disputes that can arise in a variety of scenarios.[5] While the governing law to these arbitrations will be subject to what the parties agreed to in their contract, a chapter by Will Hooker, Rosalind Axbey, Rachel Ong and James Newton of Pallas Partners LLP also looks at whether there is a different approach under common law as compared to civil law. Equally important are the valuation approaches most predominantly used in commercial arbitrations to assess damages, and this is explored by Kai F Schumacher and Christoph Wilmsmeier of AlixPartners.[6]

As for oil, gas and other natural resources, spectrum is the new scarce resource, one may say. Most of the telecoms infrastructure in use, such as towers, can be found on land. However, undersea cables have proliferated in recent times, which is not without posing difficulties when it comes to disputed maritime zones, as Michael J Stepek of Winston & Strawn LLP explains.[7] Further, the terrestrial nature of that infrastructure is by no means the end of the story. The satellite industry has now emerged as a direct competitor to telecoms operators, and this is likely to entail a rise of satellite disputes that may be subject to arbitration.[8] This is covered in detail by Laura Yvonne Zielinski, president of the Space Arbitration Association.

---

2 See Chapter 1, 'An In-House Perspective on Telecoms Arbitrations'.
3 See Chapter 2, 'Arbitration and the Advent of New Technologies'.
4 See Chapter 3, 'Issues of Arbitrability in Telecoms Arbitrations'.
5 See Chapter 4, 'M&A Arbitrations in the Telecoms Sector'.
6 See Chapter 5, 'Valuation Approaches in Telecoms Arbitrations: Commercial Arbitrations'.
7 See Chapter 6, 'Claims in Disputed Maritime Areas: Resolving International Disputes Arising from Activities Relating to Submarine Cables in Disputed Maritime Areas'.
8 See Chapter 7, 'The Rise of Satellite Arbitrations'.

Part II of the guide is devoted to investment treaty arbitration in the telecoms sector. There is self-evidently a tension between the state's sovereign right to regulate and the protection of the investor's rights. The chapters in this part of the guide, authored by Reza Mohtashami QC, Leilah Bruton and Farouk El-Hosseny at Three Crowns LLP, and Babatunde Fagbohunlu and Inyene Robert of Aluko & Oyebode respectively, revisit the jurisprudence of the right to regulate and its limits[9] and also look more closely at the obligations of the investor and how these obligations have been revamped in more recent investment treaties.[10]

There are then two chapters that focus on recent developments. The Huawei saga has brought a new light to the defence of necessity,[11] as explored by David Hunt and Ben Love at Boies Schiller Flexner (UK) LLP, whereas armed conflict and civil unrest in different parts of the world have posed further challenges to the sector, as Michael Darowski and Romilly Holland of McDermott Will & Emery set out.[12] The final chapter, by Lucrezio Figurelli and Richard Caldwell of Brattle, deals with issues of compensation and the approach taken by investment treaty tribunals in recent cases.[13]

The final part of the guide gives a geographical perspective to telecoms arbitrations, with an overview of telecoms arbitrations in Africa by Magda Cocco, Tiago Bessa, Carla Gonçalves Borges, Marília Frias and Catarina Carvalho Cunha, and Bernardo Kahn at Vieira de Almeida,[14] and an overview of Latin America by Eduardo Silva Romero, José Manuel García Represa and Catalina Echeverri Gallego of Dechert LLP.[15] Other regions will be covered in the online edition.

This guide brings together leading arbitration practitioners who have a wealth of experience in telecoms arbitrations. It is hoped that, by focusing on a sector that will be impacting the world of arbitration in the coming years, this guide will be helpful for the arbitration community.

9 See Chapter 8, 'Standards of Protection: The State's Sovereign Right to Regulate and its Limits'.

10 See Chapter 9, 'Standards of Protection and the Obligations of the Investor'.

11 See Chapter 10, 'Is the People's Good the Highest Law? The Concept of Necessity in Investor-State Protections'.

12 See Chapter 11, 'Civil Unrest and Investor–State Claims in the Telecommunications Sector'.

13 See Chapter 12, 'Valuation Approaches: Investment Treaty Arbitrations'.

14 See Chapter 13, 'A Look at the Future: the Growth of Telecoms Arbitrations in Africa'.

15 See Chapter 14, 'Telecommunications Arbitration in Latin America'.

I would like to warmly thank all the persons who have made this project a reality, starting, of course, with the contributors and the teams that have assisted them. I also express gratitude to the team at Global Arbitration Review including David Samuels, Mahnaz Arta, Hannah Higgins, Jack Levy and Georgia Goldberg.

**Wesley Pydiamah**
July 2022

# Part II

## Investment Treaty Arbitration

CHAPTER 11

# Civil Unrest and Investor–State Claims in the Telecommunications Sector

**Michael Darowski and Romilly Holland**[1]

The rise in recent years in the number of investor-state disputes in the telecommunications sector has been well documented.[2] The growth in disputes reflects the universal and critical nature of the sector – a functioning telecommunications

1 Michael Darowski is a partner and Romilly Holland is a senior associate at McDermott Will & Emery. The authors are grateful to David Pusztai for his assistance in preparing this chapter.

2 See, e.g., Romilly Holland, 'Is Spectrum the New Oil? Trends in Investor-State Disputes in the Telecommunications Sector' (2018) *Dispute Resolution International* Vol. 12, No. 2 131; Tiago Duarte-Silva and Milinda Muttiah, 'Mobile telecoms arbitrations: keeping pace with industry growth' (2019) *Global Arbitration Review*, available at https://globalarbitrationreview.com/mobile-telecoms-arbitrations-keeping-pace-industry-growth; Herbert Smith Freehills, '2020 SURVEY OF TMT SECTOR INVESTOR-STATE ARBITRATION' (24 December 2020), available at https://hsfnotes.com/arbitration/2020/12/24/2020-survey-of-tmt-sector-investor-state-arbitration/.

sector is an essential pre-condition to economic development[3] – as well as its burgeoning value[4] (the global telecommunications market size is expected to reach 2.47 trillion by 2028[5]).

Greater demand for cloud-based technology and higher-speed connectivity, as well as the proliferation of consumer-generated multimedia content and the widespread adoption of smartphone devices all fuel such growth.

The competition to capture a share of this lucrative market is fierce, with several key players 'aggressively investing'[6] in next-generation (5G) network infrastructure, with some commentators dubbing 5G as the driver of the fourth industrial revolution.[7]

While it is anticipated that 5G will chiefly be deployed in South Korea, the United States, Japan, China and Europe in the immediate future, the availability of affordable handsets and high-speed networks will follow in Latin America, the Commonwealth of Independent States (CIS), the Middle East and North

3 GSMA Intelligence, 'The Mobile Economy 2019', available at https://data.gsmaintelligence.com/api-web/v2/research-file-download?id=39256194&file=2712-250219-ME-Global.pdf, 30-31; James Alleman, Carl Hunt, Donald Michaels and others, 'Telecommunications and Economic Development: Empirical Evidence from Southern Africa' (1994) International Telecommunications Society, 6. See also 'The Missing Link – Report of the Independent Commission for World-Wide Telecommunications Development' (1985) *Telecommunication Journal* 52 No. 2, 10.

4 'Global Telecom Services Market Analysis Report 2021-2028: Focus on Mobile Data Services, Machine-To-Machine Services – ResearchAndMarkets.com' (Business Wire, 14 September 2021), available at https://www.businesswire.com/news/home/20210914005664/en/Global-Telecom-Services-Market-Analysis-Report-2021-2028-Focus-on-Mobile-Data-Services-Machine-To-Machine-Services--ResearchAndMarkets.com.

5 'Global Telecom Services Market Analysis Report 2021-2028: Focus on Mobile Data Services, Machine-To-Machine Services – ResearchAndMarkets.com' (Business Wire, 14 September 2021), available at https://www.businesswire.com/news/home/20210914005664/en/Global-Telecom-Services-Market-Analysis-Report-2021-2028-Focus-on-Mobile-Data-Services-Machine-To-Machine-Services--ResearchAndMarkets.com.

6 'Global Telecom Services Market Analysis Report 2021-2028: Focus on Mobile Data Services, Machine-To-Machine Services – ResearchAndMarkets.com' (Business Wire, 14 September 2021), available at https://www.businesswire.com/news/home/20210914005664/en/Global-Telecom-Services-Market-Analysis-Report-2021-2028-Focus-on-Mobile-Data-Services-Machine-To-Machine-Services--ResearchAndMarkets.com.

7 KPMG, 'Encouraging 5G Investment: Lessons learnt from around the world (December 2019), available at https://assets.kpmg/content/dam/kpmg/uk/pdf/2019/12/encouraging-5g-investment.pdf.

Africa, and Sub-Saharan Africa.[8] China, Indonesia and India are earmarked to become 'smartphone superpowers' by 2025, and countries including Brazil, Russia, Pakistan, Nigeria and Bangladesh are in hot pursuit.[9]

Aside from the sheer value of the global mobile telecommunications ecosystem (60 per cent of which is accounted for by mobile operators[10]), a number of factors explain why it lends itself to disputes between investors and states.

First, national telecommunications operators tend to be highly regulated (in particular in developing economies), meaning a high degree of interaction between the investor and host state and therefore a high degree of sensitivity on the part of the investor to the states' actions or omissions.

Second, and in keeping with its high-regulated nature, state-owned enterprises (or former state-owned enterprises) often compete with foreign mobile network investors, raising the prospect of discriminatory treatment by the host state in favour of its domestic operator.[11]

Third, the evolution of mobile technology rests upon the availability of a scarce resource, namely spectrum (i.e., radio frequencies used for communication over the airwaves). States increasingly consider spectrum should be allocated in accordance with (national) public interest principles, which again militates against equality of treatment towards foreign investors.[12]

---

8 KPMG, 'Encouraging 5G Investment: Lessons learnt from around the world (December 2019), available at https://assets.kpmg/content/dam/kpmg/uk/pdf/2019/12/encouraging-5g-investment.pdf, 3.

9 GSMA Intelligence, 'The Mobile Economy 2019', available at https://data.gsmaintelligence.com/api-web/v2/research-file-download?id=39256194&file=2712-250219-ME-Global.pdf, 16.

10 GSMA Intelligence, 'The Mobile Economy 2019', available at https://data.gsmaintelligence.com/api-web/v2/research-file-download?id=39256194&file=2712-250219-ME-Global.pdf, 20.

11 See, e.g., *MTN (Dubai) Limited and MTN Yemen for Mobile Telephones v. Republic of Yemen* (ICSID Case No. ARB/09/7); *Mobile-Telephony Saba fon v. Republic of Yemen* (UNCITRAL); *Orange SA v. Hashemite Kingdom of Jordan* (ICSID Case No. ARB/15/10); *Public Joint Stock Company Mobile TeleSystems v. Turkmenistan* (II) (ICSID Case No. ARB(AF)/18/4).

12 See, e.g., Transcript of the Speech of the Honourable Prime Minister of Belize, Dean Barrow, to the House of Representatives (24 August 2009), cited in *Dunkeld International Investment Limited v. The Government of Belize* (I) (PCA Case No. 2010-13), Paragraph 137: 'Telecommunications uses the airwaves as its medium. But these airwaves constitute a God-given natural resource of Belize, just like our sun, our sea, our rivers, our forests. These things together help to make up the patrimony of the Belizean people, and the exploitation of that patrimony must always be consistent with the interests of Belizeans. When those that come to partner with us demonstrate beyond all doubt that they will upend equitability, upend reasonableness, that they will, infamy upon infamy, beat us about our heads with our own inheritance, the very blood coursing through our Belizean veins obliges us to act.'

Fourth, many long-term telecommunications operating licences and concession agreements were entered into between states and foreign investors following the liberalisation of markets in the 1990s, when the sector was in its nascent stages and its potential value was not apparent. A belated realisation of the profit opportunities in the sector has prompted certain states to adopt unlawful measures to regain control of operators held by investors or claw back greater value from foreign investors.[13]

Accordingly, in the past couple of decades, investor–state disputes in the telecommunications sector have concerned, *inter alia*, the adoption of nationalisation measures (*Dunkeld v. Belize*;[14] *Telecom Italia v. Bolivia*;[15] *Brandes v. Venezuela*[16]) forced transactions at an undervalue (*Rumeli v. Kazakhstan*[17]), changes in legislation and regulations (*GTH v. Canada*[18]), licence or concession renewal negotiations (*Orange v. Jordan*;[19] *Neustar v. Colombia*;[20] *Millicom v. Senegal*[21]), the imposition of fines and taxes (*Vodafone v. India*;[22] *Fouad Alghanim v. Jordan*[23]), harassment campaigns waged against foreign operators (*MTS v. Uzbekistan*;[24] *Orascom v. Egypt*[25]) and allegedly discriminatory exclusion of mobile network operators from frequency auctions (*Huawei v. Sweden*).[26]

13 Romilly Holland, 'Is Spectrum the New Oil? Trends in Investor-State Disputes in the Telecommunications Sector' (2018) *Dispute Resolution International* Vol. 12 No. 2 131, 138.

14 *Dunkeld International Investment Limited v. The Government of Belize* (I) (PCA Case No. 2010-13).

15 *E.T.I Euro Telecom International N.V. v. Plurinational State of Bolivia* (ICSID Case No. ARB/07/28).

16 *Brandes Investment Partners, LP v. The Bolivarian Republic of Venezuela* (ICSID Case No. ARB/08/3).

17 *Rumeli Telecom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan* (ICSID Case No. ARB/05/16).

18 *Global Telecom Holding S.A.E. v. Canada* (ICSID Case No. ARB/16/16).

19 *Orange SA v. Hashemite Kingdom of Jordan* (ICSID Case No. ARB/15/10).

20 *Neustar, Inc. v. Republic of Columbia* (ICSID Case No. ARB/20/7).

21 *Millicom International Operations B.V. and Sentel GSM SA v. The Republic of Senegal* (ICSID Case No. ARB/08/20).

22 *Vodafone International Holdings BV v. Government of India* [I] (PCA Case No. 2016-35).

23 *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Fouad Mohammed Thunyan Alghanim v. Hashemite Kingdom of Jordan* (ICSID Case No. ARB/13/38).

24 *Mobile TeleSystems OJSC v. Turkmenistan* (I) (ICSID Case No. ARB(AF)/11/4).

25 *Orascom Telecom Holding v. Algeria* (UNCITRAL).

26 *Huawei Technologies Co., Ltd. v. Kingdom of Sweden* (ICSID Case No. ARB/22/2)

As with other industries and sectors, civil or military conflict has been the backdrop to a number of disputes in the telecommunications sector. In such instances, the foreign investor is not necessarily the target of a state's unlawful actions, but may suffer collateral damage as a result of the prevailing political circumstances.

For instance, a consortium of investors in Iraq, led by Jordanian investor Itisaluna, were awarded a licence to launch voice data and internet services in 2006, which included the right to operate international gateways. However, from 2008 onwards, amid an increasingly hostile security situation, Iraq adopted a series of measures that made operations impossible, including demanding that Itisaluna should cease operating the gateway and laying optical fibre cables, and directing an internet shutdown. Itisaluna *et al.* claimed that Iraq had breached (*inter alia*) its obligation to protect investors (although the ICSID tribunal declined jurisdiction to hear the claims).[27]

In 2009, the Seychelles-based operator, Global Voice Group, signed a contract with the Guinean Postal and Telecommunications Regulatory Authority to monitor international calls and determine operator fees and taxes owed to the State. Guinea subsequently alleged that the contract was entered into at a time of profound political instability when there was a military government in place, in violation of principles of international public policy.[28]

In 2010, Penwell Business Limited's holding in Kyrgyzstan mobile operator, Megacom, was forcibly transferred to the Kyrgyz State Property Management Fund, following the ousting of President Bakiyev in Kyrgyzstan's April 2010 revolution, leading to Penwell filing a US$300 million claim for alleged expropriation.[29]

Crucially, political insecurity and military conflict can not only give rise to the adoption of measures by governments that in turn trigger disputes with investors in the telecommunications sector, but also render the resolution of those disputes more complex if such resolution is sought prior to political stability being achieved (whether for commercial or legal reasons).

---

27 *Itisaluna Iraq LLC and Others v. Republic of Iraq* (ICSID Case No. ARB/17/10).

28 *Global Voice Group SA v. Republic of Guinea and Guinean Postal and Telecommunications Regulatory Authority* (ICC Case No. 22467/DDA).

29 *Penwell Business Limited (by MegaCom) v. Kyrgyz Republic* (PCA Case No. 2017-31) Final Award, 8 October 2021. See also Sebastian Perry, 'Kyrgyzstan trounces telecoms claim' (*Global Arbitration Review*, 12 October 2021), available at https://globalarbitrationreview.com/kyrgyzstan-trounces-telecoms-claim.

This therefore requires the allegedly wronged telecommunications investor to carefully consider the challenges of bringing a claim against a politically unstable state.

On a purely practical level, such challenges may include a counter-party's failure to participate in the arbitral proceedings (or inability to participate in a timely fashion), which will not necessarily hinder the arbitration from proceeding up to the issuance of a final award but will undoubtedly have consequences for the claimant party (including costs consequences).[30] For instance, tribunals will need to guarantee the non-participating party's due process rights,[31] and will consequently be highly cautious in their approach to the conduct of the proceedings (not least in light of multiple possible grounds for annulling or resisting enforcement of the resultant award in the absence of one party's participation).[32]

Conflict and instability could equally hinder a claimant party's ability to access documents, witnesses and other evidence, and also to have claims adjudicated before local courts (which might be a pre-condition to bringing a claim against the state before an international arbitral tribunal).

Similarly, any attempts at settling a dispute against a state are rendered harder if the state is in political turmoil. In normal circumstances, by contrast, there is a relatively high rate of settlement of investor–state disputes in the telecommunications sector because of the long-term nature of the investor's investment (e.g., a 30-year operating licence) and the fact that operational networks are essential to the everyday functioning of civil society.[33]

For instance, political unrest in Sudan complicated the resolution of a dispute between regarding local network operator Jet Net, which was building a country-wide wireless communications network under a licence issued to Michael Dagher by the Ministry of Communications. Following the state's alleged failure to provide the promised network frequencies, in 2014 Mr Dagher brought the first ever ICSID[34] case registered against Sudan. Proceedings were suspended in

30 See, in this regard, 'The Chartered Institute of Arbitrators' Guidelines on Party Non-Participation'.

31 Claudia T Salomon and Florian Loibl, 'How to Respond to Respondents' Non-Participation in International Arbitration' (2020) *New York Law Journal* Vol. 264 No. 28.

32 Samantha Lord Hill, 'Arbitration of Disputes Arising in Conflict and Post Conflict Zones: Managing the Risks' in Jean Kalicki and Mohamed Abdel Raouf, *Evolution and Adaptation: The Future of International Arbitration* (Kluwer Law International, 2020).

33 See, Tiago Duarte-Silva and Milinda Muttiah, 'Mobile telecoms arbitrations: keeping pace with industry growth' (*Global Arbitration Review*, 27 November 2019), available at https://globalarbitrationreview.com/mobile-telecoms-arbitrations-keeping-pace-industry-growth.

34 International Centre for the Settlement of Investment Disputes.

December 2017, and finally discontinued in August 2020, with extended dialogue between the parties coming amid political unrest in Sudan, which led to the overthrow of the country's former president Omar al-Bashir in 2019.[35]

A more academic consideration concerns the extent to which the protections afforded telecommunications investors by bilateral or multilateral investment treaties may be affected by armed conflicts. While the dominant narrative suggests that treaties dealing with the protection of foreign investment continue to apply following the outbreak of armed hostilities,[36] certain commentators opine that it may be possible to lawfully suspend the provisions of such treaties once an extensive armed conflict emerges.[37] More specifically, the International Law Commission's Draft Articles on the Effects of Armed Conflicts on Treaties[38] are considered a possible source of relief for states suffering the consequences of war from the obligation to provide compensation for breach of treaty provisions.[39] States might also seek to invoke internal laws to repudiate commercial arbitration agreements, or exercise police powers to interfere with the arbitration process in periods of crisis.[40]

---

35 Javier Echeverri, 'Parties Agree to Discontinue First Arbitration Against Sudan at ICSID' (IA Reporter, 3 August 2020).

36 See, Christoph H Schreuer, 'The Protection of Investments in Armed Conflict' (2012) 3 *Transatlantic Dispute Management Journal*; Freya Baetens, 'When International Rules Interact: International Investment Law and the Law of Armed Conflict' (2011) 3(1) Invest Treaty News 1, 11; Meriam Al-Rashid, Ulyana Bardyn and Levon Golendukhin, 'Investment Claims Amid Civil Unrest: Questions of Attribution and Responsibility' (2016) *International Arbitration Review* 3 No. 2 181, 197. See also Gleider I Hernández, 'The Interaction Between Investment Law and the Law of Armed Conflict in the Interpretation of Full Protection and Security Clauses' in Freya Baetens (ed), *Investment Law Within International Law: Integrationist Perspectives* (CUP 2013), 21; Ofilio Mayorga, 'Arbitrating War: Military Necessity as a Defense to the Breach of Investment Treaty Obligations', Harvard University Program on Humanitarian Policy and Conflict, Policy Brief (August 2013).

37 See, e.g., Josef Ostřanský, 'The Termination and Suspension of Bilateral Investment Treaties due to an Armed Conflict (2015) *Journal of International Dispute Settlement* Vol. 6 Issue 1 136.

38 Draft articles on the effects of armed conflicts on treaties, with commentaries (2011), in *Yearbook of the International Law Commission* (2011) Vol. II (Part Two), available at https://legal.un.org/ilc/texts/instruments/english/commentaries/1_10_2011.pdf.

39 Josef Ostřanský, 'The Termination and Suspension of Bilateral Investment Treaties due to an Armed Conflict (2015) *Journal of International Dispute Settlement* Vol. 6 Issue 1 136.

40 Reza Mohtashami, 'Protecting the Legitimacy of the Arbitral Process: Jurisdictional and Procedural Challenges in Public-Private Disputes', in Jean Kalicki and Mohamed Abdel Raouf, *Evolution and Adaptation: The Future of International Arbitration* (Kluwer Law International, 2020).

Three key legal questions merit particularly close analysis by investors when contemplating bringing a claim against a state that is in civil conflict, or has been subject to an insurrection, or indeed where competing factions claim to represent the state.

First, who bears responsibility for the damage incurred related to the civil unrest? Second, what claims may be available to investors in the event of losses incurred during civil unrest? Third, which regime legitimately represents the state and is therefore the right party against whom to bring the investor's claims?

Each of these questions is examined in turn below.

## Attribution of conduct during civil unrest

International law on state responsibility is codified in the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (the ILC Articles).[41]

Article 4 of the ILC Articles provides that states are responsible for the acts of their organs, including any person or entity that has that status in accordance with the internal law of the state. States are equally responsible for persons or entities exercising 'elements of the governmental authority' (Article 5 of the ILC Articles), for those acting on the instructions of, or under the direction or control of, the state (Article 8 of the ILC Articles), and for conduct adopted by the state as its own (Article 11 of the ILC Articles)

Thus, in line with the foregoing and in keeping with the principle of continuity (whereby a state's existence and international rights and obligations remain constant despite political and governmental changes), in the normal course of events, a nation is responsible for the actions of its past and present governments.[42] However, internal political or civil unrest can lead to a battle for control for power of sovereignty and the consequent establishment of a *de facto* government displacing the *de jure* government.[43]

---

41 'Responsibility of States for Internationally Wrongful Acts' (2001), in *Yearbook of the International Law Commission* (2001) Vol. II (Part Two), available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

42 Meriam Al-Rashid, Ulyana Bardyn and Levon Golendukhin, 'Investment Claims Amid Civil Unrest: Questions of Attribution and Responsibility' (2016) *International Arbitration Review* 3 No. 2 181, 184.

43 In the English case *Luther v. Sagor*, the Court of Appeal held that Wheaton's citation of Montague Bernard correctly encapsulates the distinction between a *de jure* and a *de facto* government as follows: 'A de jure government is one which . . . ought to possess the powers of sovereignty, though at the time may be deprived of them. A de facto government is one which is really in possession of them, although the possession may be wrongful or

Of greater relevance, however, in this context of civil unrest, is Article 10 of the ILC Articles, which provides for the state's responsibility for the actions of an insurrectional movement during civil war:

> *1. The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law.*
> *2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.*

Article 10 thus contemplates scenarios where the acts of non-state organs can exceptionally be attributed to a state.[44]

Professor Dumberry adduces the following principles in his seminal analysis of Article 10.[45]

First, he examines the scenario whereby the rebels succeed in establishing a new government and determines that (1) the new government is responsible for acts committed by the previous government, and (2) the acts committed by the rebels during the civil conflict are attributable to the state after their victory.[46]

Second, he considers the consequences of an unsuccessful rebellion and determines that the acts committed by rebels are not generally attributable to the state except where: (1) the rebels have succeeded in establishing a local *de facto*

---

precarious' – *Aksionairnoye Obschestvo Dlia Mechaniches-Koyi Obrabotky Diereva A.M. Luther (Company for Mechanical Woodworking A.M. Luther) v. James Sagor and Company* [1921] 3 KB 532, [544].

44 While the issue is not addressed within the confines of this article, we note that Article 9 of the ILC Articles may well also be relevant in assessing how attributable the conduct of insurrectional movements is. Article 9 provides that '[t]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority'. Insofar as insurrectional movements ***de facto*** 'substitute' the regular state authorities in the absence of the latter, Article 9 may allow the attribution of breaches of investment treaty standards committed by insurrectional movements to the state.

45 Patrick Dumberry, *Rebellions and Civil Wars: State Responsibility for the Conduct of Insurgents* (CUP 2022).

46 Patrick Dumberry, *Rebellions and Civil Wars: State Responsibility for the Conduct of Insurgents* (CUP 2022), 30–31.

government (i.e., exercising effective control over part of a state's territory); (2) the rebels are responsible for an expropriation that benefits the state; or (3) the state fails to discharge its duties of due diligence obligations to protect foreign investors.[47]

Third, Professor Dumberry considers the scenario whereby the rebels succeed in establishing a new state and determines that (1) the acts committed by the rebels are attributable to the new state, but that (2) the new state is not responsible for the acts committed by its predecessor state in fighting the rebels during the civil conflict.[48]

Fourth, he examines the scenario whereby the rebels do not succeed in establishing a new state and concludes that (1) the rebels' acts are not attributable to the state, and (2) the state is responsible for its failure to discharge due diligence to protect foreign investors.[49]

The foregoing analysis rests upon a definitive determination of whether an insurrection has led to the successful establishment of a new government or state. Accordingly, the effect of the acts of a revolutionary group will be deemed suspended until it emerges as a new government or state. An investor should therefore be aware that if it enters into a contract with an insurrectional force, such contract might well not in fact bind the *de jure* government.[50]

Article 10 of the ILC Articles has been little-considered in practice by international investment treaty tribunals. Until recently, *AAPL v. Sri Lanka* (discussed further below) was one of the few cases in which a tribunal had considered state attribution and responsibility in the context of armed conflict. Recent unrest in the Middle East, has prompted other tribunals to examine the

47 Patrick Dumberry, *Rebellions and Civil Wars: State Responsibility for the Conduct of Insurgents* (CUP 2022), 31.

48 Patrick Dumberry, *Rebellions and Civil Wars: State Responsibility for the Conduct of Insurgents* (CUP 2022), 31.

49 Patrick Dumberry, *Rebellions and Civil Wars: State Responsibility for the Conduct of Insurgents* (CUP 2022), 32.

50 Meriam Al-Rashid, Ulyana Bardyn and Levon Golendukhin, 'Investment Claims Amid Civil Unrest: Questions of Attribution and Responsibility' (2016) *International Arbitration Review* 3 No. 2 181, 187. Note that the conceptual issue of whether the rules of attribution under the law of state responsibility may properly be relied upon to assess whether the conduct of non-state entities (such as insurrectional movements) made the state party to obligations is a matter of some controversy. See, e.g., Martina Magnarelli and Andreas R Ziegler, 'Irreconcilable perspectives like in an Escher's drawing? Extension of an arbitration agreement to a non-signatory state and attribution of state entities' conduct: privity of contract in Swiss and investment arbitral tribunals' case law' (2020) *Arbitration International* 36, Issue 4, 509.

issue (although not necessarily through the prism of Article 10) (e.g., in *Strabag v. Libya* and *Cengiz v. Libya*).[51] In both of these cases, the reasoning of the tribunals has been called into question.[52] It remains to be seen how future tribunals will approach the subject in light of such criticism and given the growing number of conflicts that require an analysis of attribution and responsibility in the context of armed conflict.

## International responsibility for conduct during civil unrest

Naturally, a distinction is to be drawn between attribution and responsibility: it does not automatically follow that just because the conduct of an insurrectional force is attributable to the state, that state incurs international responsibility for the acts of the insurrectional force. A separate enquiry must be conducted in order to examine the state's substantive liability as a matter of international law.

The most common claims arising out of civil unrest brought by investors against states include breach of the 'full protection and security' (FPS) standard, breach of the prohibition against expropriation, and breach of what are known as 'war clauses' (found in only certain international investment treaties).

The FPS standard is considered to impose a dual obligation on the state. First, the obligation to abstain from engaging in actions that jeopardise an investor's security, and second, the obligation to protect investors from harmful activities carried out by third parties. This latter obligation is sometimes referred to as an obligation of due diligence.[53]

The contours of the FPS obligation were examined in the case of *AAPL v. Sri Lanka*, in which an investor's shrimp farm was demolished, and the 21 employees lost their lives, when the territory in which it was located came under the control of Tamil Tiger rebels. In the event, the tribunal held that FPS could

51 *Strabag SE v. Libya* (ICSID Case No. ARB(AF)/15/1) Award, 29 June 2020; *Cengiz Inşaat Sanayi ve Ticaret A.S. v. Libya* (ICC Case No. 21537/ZF/AYZ) Final Award, 7 November 2018.

52 See, e.g., Patrick Dumberry, 'Dazed and Confused: The Cengiz v. Libya Award on State Responsibility for Conduct of Rebels in Situations of Civil Wars' (Kulwer Arbitration Blog, 26 December 2021), available at http://arbitrationblog.kluwerarbitration.com/2021/12/26/dazed-and-confused-the-cengiz-v-libya-award-on-state-responsibility-for-conduct-of-rebels-in-situations-of-civil-wars/.

53 Meriam Al-Rashid, Ulyana Bardyn and Levon Golendukhin, 'Investment Claims Amid Civil Unrest: Questions of Attribution and Responsibility' (2016) *International Arbitration Review* 3 No. 2 181, 198.

not be construed as providing investors with an absolute guarantee of protection and security and thus did not entail the state's strict liability (following long-established arbitral precedent[54]), as alleged by the investor.[55]

In *AMT v. Zaire*, soldiers of the Zairian armed forces were alleged to have looted and stolen the investor's property (including batteries and consumer goods). The investor did not allege strict liability, but instead succeeded in arguing that Zaire had failed to comply with its obligation of vigilance and care by failing to take every necessary measure to protect and secure AMT's investment.[56] The case concerned two major attacks against AMT, the first of which was unforeseeable (so the tribunal determined) but the second of which Zaire should have anticipated and taken measures to prevent.[57]

More recently, the tribunal in *Ampal v. Egypt* held that Egypt had failed to protect the physical security of a pipeline from the attacks of saboteurs, in a case arising out of the Arab Spring. The tribunal took the specific circumstances in which the damage occurred into account and determined, following the decision in *Pantechniki v. Albania*,[58] that the state's ability to provide FPS in respect of the first attack was inhibited by the prevailing 'political instability, security deterioration and general lawlessness'.[59] However, the state was held liable for subsequent attacks, as they demonstrated the state's failure to implement protection measures, as it had planned, in violation of its obligation of due diligence.[60]

Similarly, in *Strabag v. Libya*, the tribunal held that FPS must be assessed taking into account the specific circumstances of the case, namely 'weak and uncertain state authority, recurring armed conflict, and widespread breakdown of the law in wide areas of the country'.[61] The tribunal concludes that 'it was not

54 See, *Italy v. Venezuela* (1903) 10 R.I.A.A and Elettronica Sicula S.p.A. (ELSI) (*United States of America v. Italy*).

55 *Asian Agricultural Products Ltd. v. Republic of Sri Lanka* (ICSID Case No. ARB/87/3).

56 *American Manufacturing & Trading Inc. v. Republic of Zaire* (ICSID Case No. ARB/93/1) Award, 21 February 1997.

57 *American Manufacturing & Trading Inc. v. Republic of Zaire* (ICSID Case No. ARB/93/1).

58 *Pantechniki S.A. Contractors & Engineers (Greece) v. The Republic of Albania* (ICSID Case No. ARB/07/21).

59 *Ampal-American Israel Corporation and Others v. Arab Republic of Egypt* (ICSID Case No. ARB/12/11) Decision on Liability and Heads of Loss, 21 February 2017, Paras. 284–285.

60 *Ampal-American Israel Corporation and Others v. Arab Republic of Egypt* (ICSID Case No. ARB/12/11) Decision on Liability and Heads of Loss, 21 February 2017.

61 *Strabag SE v. Libya* (ICSID Case No. ARB(AF)/15/1) Award, 29 June 2020, Para. 234.

reasonably possible for the Libyan authorities to take consistent and effective measures to protect the claimant's investment' (although certain reflective losses could be recovered in the event).[62]

In *Cengiz v. Libya*, the investor entered into a series of construction and infrastructure contracts with a Libyan state entity. Following various acts of violence, destruction and robbery that arose in the context of Libya's civil war in 2011 and 2014, the Tribunal awarded some US$50 million to the investor on the grounds that Libya breached its FPS obligation under the Libya–Turkey BIT.[63]

Documented unlawful expropriations of investors' assets are perhaps less common than breaches of the FPS standard, but the risk of such an expropriation is nonetheless augmented during a period of civil unrest, not least as a fight to gain control of a state will often entail a bid to establish to control of certain key infrastructure.

In *Wena Hotels v. Egypt*, the tribunal held that the state permitted a government-owned hotel company to seize the investor's hotels and strip them of furniture and assets without prompt, adequate and effective compensation (as required by law).[64] Egypt was also found liable for expropriation in the *Ampal* case (referred to above), in circumstances where the state terminated a contract with the investor at a time when strong public criticism of a project that supplied gas to Israel was voiced.[65] In *Olin v. Libya*, a Cypriot investor's investment in a dairy and juice factory in Libya was the subject of a direct expropriation order, without prompt or effective compensation.[66]

Finally, 'war clauses' contained in certain investment treaties expressly provide for compensation to be awarded to qualifying foreign investors for losses arising from civil unrest or armed conflict. A 'simple' war clause creates an even playing field by providing that foreign investors are treated on a par with national investors in relation to state measures such as restitution and compensation. For instance, Article 7 of the Libya–Portugal bilateral investment treatment provides as follows:

---

62 *Strabag SE v. Libya* (ICSID Case No. ARB(AF)/15/1) Award, 29 June 2020, Para. 236.

63 *Cengiz Inşaat Sanayi ve Ticaret A.S. v. Libya* (ICC Case No. 21537/ZF/AYZ) Final Award, 7 November 2018.

64 *Wena Hotels Ltd. v. Arab Republic of Egypt* (ICSID Case No. ARB/98/4) Award, 8 December 2000.

65 *Ampal-American Israel Corporation and Others v. Arab Republic of Egypt* (ICSID Case No. ARB/12/11) Decision on Liability and Heads of Loss, 21 February 2017.

66 *Olin Holdings Limited v. State of Libya*, ICC Case No. 20355/MCP.

> *Each Party shall provide to investors of the other Party, whose investments suffer losses in the territory of the first Party owing to war or armed conflict, revolution, a state of national emergency, disobedience or disturbances or any other event considered as such, treatment that restitutes the conditions of these investments that existed before the damage had occurred, or compensation, or any other settlement that is no less favourable than that Party accords to the investments of its own investors, or of any third State, whichever is more favourable. Any payment made under this article shall be, without delay, freely transferable in convertible currency.*

'Extended' war clauses can create additional substantive rights, in that they provide that losses suffered by an investor during a period of civil conflict through requisitioning or destruction of property shall be considered in the same light as losses arising from expropriation where the state's acts are not excused by the defence of necessity.[67]

Extended war clauses have been described as containing 'stringent'[68] requirements, and in neither AAPL[69] nor AMT[70] were the necessary conditions for an award under the relevant extended war clause met. Nonetheless, they remain an important potential source of protection for investors in jurisdictions where armed conflict has affected their investment.

## The government's standing to represent the state

The third key question that arises in the context of civil unrest concerns the legitimacy of the regime purporting to bind the state and therefore a consideration of the standing of the respondent. This issue is particularly pertinent in situations where different regimes present competing claims to represent the state.

This issue was addressed head on in the case of *Sabafon v. Yemen*, in which the tribunal was tasked with establishing which of two 'governments' had standing to represent Yemen in UNCITRAL[71] arbitration proceedings brought by an

67 An examination of defences available to states (including the defence of necessity) under treaties or international customary law that preclude liability for otherwise wrongful acts exceeds the scope of this article.

68 Christoph H Schreuer, 'The Protection of Investments in Armed Conflict' (2012) 3 *Transatlantic Dispute Management Journal*, 14.

69 *Asian Agricultural Products Ltd. v. Republic of Sri Lanka* (ICSID Case No. ARB/87/3) Award, 27 June 1990, Paras. 54–60.

70 *American Manufacturing & Trading Inc. v. Republic of Zaire* (ICSID Case No. ARB/93/1) Award, 21 February 1997, Paras. 7.08–7.09.

71 United Nations Commission on International Trade Law.

investor in the telecommunications sector under Yemen's investment law – the 'Sana'a' government associated with the Houthi movement and backed by Iran, or the Hadi government, backed by Saudi Arabia, among others.[72]

Notwithstanding the Houthis' effective territorial control over the country, the tribunal concluded that the international community's recognition of the Hadi regime was determinative of the question as to which regime represented the State.

> *[T]here can be no question that the Houthis exercise effective control over the entire territory of Yemen. Accordingly, the Tribunal finds that the facts on the ground do not support the application of the effective control doctrine, or, in other terms, the facts on the ground are not sufficient to disregard the recognition by the international community of the Hadi Government. The Tribunal therefore concludes that the Hadi Government is the legitimate government both as a matter of Yemeni law and international law. The Tribunal is bound to take note of this state of affairs and to draw the necessary conclusions for the present case.*[73]

The case (along with a very similar decision adopted by the tribunal in *BUCG v. Yemen*) emphasises that *de jure* recognition trumps a competing administration's *de facto* control – a notion at odds with the practice of determining the attribution of acts to a state (where international recognition has not been a factor taken into consideration).[74] Professor Dumberry observes that there is a practical rationale to adopting this approach:

---

72 *Yemen Company for Mobile Telephony-Sabafon v. The Government of the Republic of Yemen* (UNCITRAL) (PCA Case No. 2010-03).

73 *Yemen Company for Mobile Telephony-Sabafon v. The Government of the Republic of Yemen* (PCA Case No. 2010-03), Procedural Order No. 11, 2 May 2018, Para. 80; cited in Reza Mohtashami, 'Protecting the Legitimacy of the Arbitral Process: Jurisdictional and Procedural Challenges in Public-Private Disputes', in Jean Kalicki and Mohamed Abdel Raouf, Evolution and Adaptation: *The Future of International Arbitration* (Kluwer Law International, 2020), 627 see also *Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen* (ICSID Case No. ARB/14/30).

74 Reza Mohtashami, 'Protecting the Legitimacy of the Arbitral Process: Jurisdictional and Procedural Challenges in Public-Private Disputes', in Jean Kalicki and Mohamed Abdel Raouf, *Evolution and Adaptation: The Future of International Arbitration* (Kluwer Law International, 2020), 627.

> *Relying on effective control in this context may not be realistic and could create uncertainty given that the answers to the question as to who actually controls what part of the territory may change during the proceedings. In other words, there may be good reasons not to rely on effectiveness in this specific and unique context.*[75]

In *Solerec v. Libya*, a French construction company entered into a settlement agreement with the Tobruk-based government, elected to power in 2014, only for Libya to subsequently argue that the agreement should have been entered into with the Tripoli-based government, formed in 2015. The Tribunal held that the investor was led to believe that it was dealing with the legitimate government, but did not determine which was in fact the legitimate government.[76]

Naturally, any investor bringing a claim against a state that is at war should carefully consider whether it is pursuing the government that is recognised by the international community, rather than any other 'government' that asserts its legitimacy on the international stage by virtue of its effective control of a state or a part or parts thereof. Indeed, it might be worthwhile considering whether it is appropriate to bring a claim against more than one party purporting to represent the state, and allow the adjudicating tribunal to determine the correct state party as a preliminary matter in the proceedings (not least where the investor has had dealings with, for instance, different regulatory bodies or tax authorities).

## Conclusion

This chapter has examined the vulnerability of the telecommunications sector to the complex consequences of investing in politically unstable regions, where war or civil strife may harm the investment, be it through the actions of the state or third parties. Such vulnerability is in part the logical corollary of the depth and breadth of the sector's market penetration, and a reflection of the sector's critical nature, both during and following periods of conflict. With geopolitical instability and telecommunications technology growing in parallel, we are bound to see many more disputes in this sector. Despite (or perhaps because of) the high returns available, investors would do well to carefully assess the implications of investing in unstable states prior to committing extensive resources. Naturally,

75 Patrick Dumberry, *Rebellions and Civil Wars: State Responsibility for the Conduct of Insurgents* (CUP 2022), 107.

76 The dispute was subject to ICC proceedings, but the tribunals' awards were subsequently set aside on the grounds that the underlying settlement agreement was fraudulent.

political instability is not necessarily foreseeable, and therefore a sound awareness of the telecommunications investor's obligations, protections, risk exposure and risk mitigation options is all the more important.

## APPENDIX 1

# About the Authors

### Michael Darowski

Michael Darowski focuses his practice on international commercial and investment disputes resolved through arbitration. He handles cases under English and other governing laws, and under the rules of all of the main arbitral institutions. Michael has substantial experience of acting in national court proceedings in various jurisdictions relating to all aspects of the arbitration process.

Michael has particular skill in advising clients in the telecoms, natural resources, oil and gas, energy, life sciences and financial sectors. He has arbitrated disputes all around the world, but has a wealth of experience of disputes from the CIS and Central Europe, the Middle East and Africa, and the Far East. Michael's client base is fully international, ranging from multinational corporations and financial institutions, to governments and wealthy private individuals. Michael helps clients to avoid disputes or resolve them at an early stage, including through negotiation, mediation and expert determination.

### Romilly Holland

Romilly Holland focuses her practice on international commercial and investment arbitration and has significant experience in arbitrations before the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the International Centre for Settlement of Investment Disputes (ICSID), as well as before ad hoc tribunals. She has particular experience in the telecommunications and energy sectors and of disputes arising out of investments in Africa and Central and Eastern Europe. In addition to acting as counsel, Romilly has regularly been appointed as secretary to the arbitral tribunal in international commercial arbitration proceedings. Romilly is recognised as a Future Leader in International Arbitration by *Who's Who Legal* (2019, 2020 and 2021).

**Rosalind Axbey**
Pallas Partners LLP

Rosalind specialises in international arbitration and commercial litigation, with particular expertise in complex shareholder and joint venture disputes.

Rosalind has extensive experience in representing clients in high-value proceedings in commercial and investor-state arbitration, English High Court and DIFC Court proceedings. She regularly represents clients in derivative proceedings, unfair prejudice claims and high-value contractual shareholder disputes.

Rosalind's broad practice includes deep experience in telecoms, oil and gas, and banking disputes. Rosalind is a qualified solicitor advocate and has a growing advocacy practice.

Described in *The Legal 500* as 'very clever' and having 'experience and maturity far beyond her years', Rosalind has already been identified as a key lawyer in commercial and banking litigation.

**Tiago Bessa**
Vieira de Almeida e Associados

Tiago Bessa is a partner with the information, communication and technology practice group at VdA. His work focuses mainly on communications, media and entertainment, electronic commerce, online betting, copyright and consumer law, in Portugal and abroad. Over the last years, Tiago has worked in major operations (domestic and international) that raised complex and intricate issues across legal and regulatory areas, together with renowned organisations such as the ITU, the World Bank and the European Investment Bank.

He has expanded his activity in African countries (including Mozambique, Angola, Cabo Verde and São Tome e Príncipe), either by providing assistance to local governments, regulators or operators or by being involved in several capacity building formations concerning the regulation of the telecommunication market, among other relevant roles.

Tiago Bessa holds a postgraduate degree in competition law and regulation from the Faculty of Law of the University of Lisbon and has taken part in an advanced programme on law and the economics of regulation at the School of Economics and Business Administration of the Catholic University of Portugal. He has also completed a master's degree in business law at the Faculty of Law of the University of Lisbon, with a thesis focused on copyright and information society services, and holds a training certification from DGERT. He has also published several academic works on regulation, copyright and the information society.

McDermott Will & Emery
110 Bishopsgate
London, EC2N 4AY
United Kingdom
Tel: +44 20 7577 6900
raholland@mwe.com
mdarowski@mwe.com
www.mwe.com

Few clients seek arbitration counsel as often as those in telecoms, or have such high-stakes disputes when they do. And yet, to date, there has been no definitive book for either counsel or client on this fascinating genre of work.

GAR's *The Guide to Telecoms Arbitrations* aims to change that. Written by some of the world's leading names, it covers the most pressing conceptual and practical aspects of telecoms arbitrations, from questions of arbitrability to topics such as the idiosyncrasies of space and satellite disputes, problems of performance caused by sanctions regimes, and how to deal with armed conflict. It concludes with a series of regional overviews.

Visit globalarbitrationreview.com
Follow @GAR_alerts on Twitter
Find us on LinkedIn

ISBN 978-1-83862-873-4