

# Session III - The Hidden Ally: State Courts' Support in M&A Arbitration

## State Courts' Support with Information and Evidence

Bénédict Thomann

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## Case Study 1: Use of Information Disclosed Under a Norwich Pharmacal Order by the English High Court in a Swiss seated Arbitration -

### Factual and Procedural Background

- Shareholder dispute regarding a joint venture
- Arbitration clause in shareholders' agreement, tribunal seated in Geneva, Switzerland
  - Claimants initiate arbitral proceedings in Switzerland
  - Claimants seek to join additional party located in England
  - Additional party refuses to produce documents in document production phase
  - Claimants apply for Norwich Pharmacal Order before the High Court in London and request stay of the arbitration
  - Submission of evidence obtained under NPO in arbitration

### Requirements for Norwich Pharmacal Order

- disclosure from an involved third party mixed up in wrongdoing (not innocent bystander)
- Identification of wrongdoer / obtaining further information about the wrongful act
- Necessity of relief (no circumvention of rules on mutual legal assistance)

Claimant *"will not use any of the documents disclosed under this order for any other purpose than the obtaining of lawful redress for the wrongdoing (...)namely in arbitration proceedings in Switzerland (...)"*

## Case Study 2: Use of Information and Evidence Obtained Under an Order of the Hong Kong High Court In a Swiss-seated Arbitration

*"The Plaintiff do have leave to use the documents and records obtained under this Order in support of such further actions and/or arbitration, whether civil or criminal, and whether in Hong Kong, Switzerland, or elsewhere (...)"*

Dispute relating to transfer of shares in a company listed at the Hong Kong stock exchange

Agreement governed by Swiss law, arbitration clause providing for Swiss seated arbitration

Seller requests re-transfer of shares based on fundamental error / fraud

Buyer starts disposing of shares to frustrate restitution

Both parties initiate arbitral proceedings

Seller requests and obtains order from the Hong Kong High Court for the disclosure of evidence and information from Buyer and third parties to be used in arbitral proceedings

# Session II - The Hidden Ally: State Courts' Support in M&A Arbitration

Piotr Bytnerowicz, FCI Arb

21 May 2026

# Case Study 3: Document Production by Third Parties

## Factual and Procedural Background

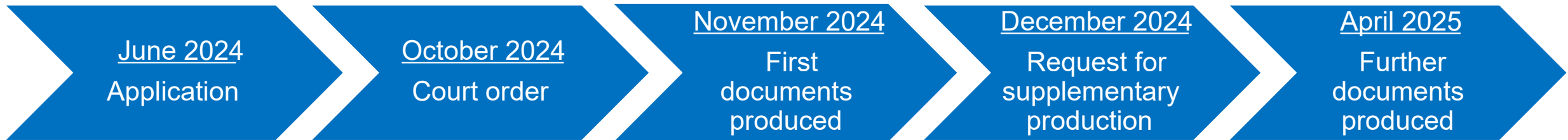
- Acquisition of a company in the rail sector
- Purchase price subject to increase if within 2 years from closing the target collected its overdue debts
- ICC EPP provisions, sole arbitrator, seated in Warsaw
- Dispute over the price increase

## Legal Framework

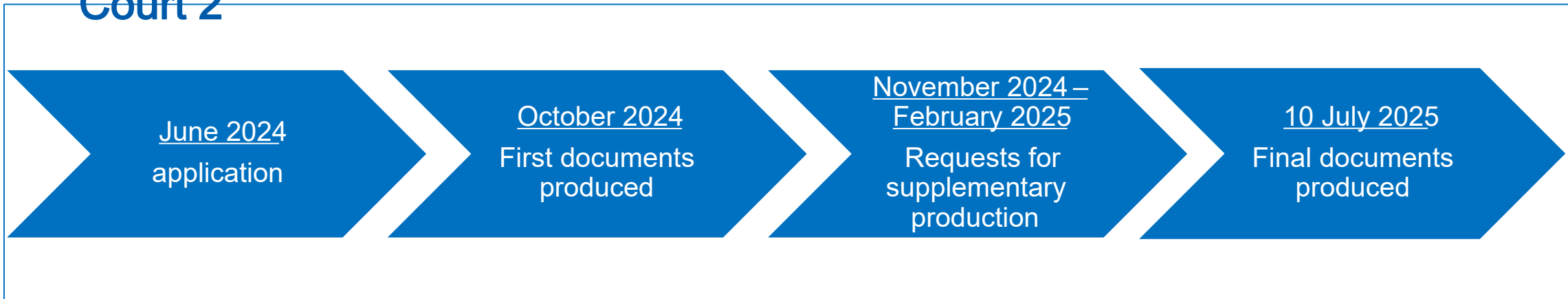
- UNCITRAL Model Law (Article 27)
- KPQ Article 1192
  - An arbitral tribunal may request a Polish court to take evidence which the arbitration tribunal is unable to take itself
  - Parties and arbitrators may participate (with the right to ask questions)
  - Applicable also if the arbitration is not seated in Poland

# Case Study 3: Timeline

## Court 1



## Court 2





# Case Study 4: Examination of Witnesses

## Factual and Procedural Background

- The same as Case Study 3
- Claimant's case was that Respondent agreed with the debtor that it would pay new debts, while the old would remain unpaid
- Claimant sought to cross-examine representatives of the target and the debtor

# CaseStudy4: Timeline

Court 1

June 2024  
Application

November 2024  
Examination of  
3 witnesses

5 months

Court 2

June 2024  
Application

September 2024  
Witness  
examination (VC)

3 months

Court 3

June 2024  
Application

February 2025  
Written  
witness  
testimony

8 months



## Case Study 5: State Court Support With Respect to Examination of Non-Cooperative Witnesses

- Post M&A-arbitration relating to sale of a bank (target)
- Compliance issues lead to withdrawal of banking license shortly after closing
- Dispute regarding breaches of R&W / disclosure
- CEO of target is Knowledge Person under the SPA
- CEO (located in Asia) refuses to testify as a witness
  
- Application to Tribunal for assistance with witness examination of target CEO
- Tribunal refuses request to apply for state court support to facilitate witness examination of former CEO