



## International Commercial Arbitration Court

### **INTERIM AWARD on affirmation of the facts of legal significance**

upon the claims filed with the ICAC at the ICPP  
by Mr. A.I. Shmidt, citizen of Russia,  
and Dastin Handelshaus AG (Luxembourg).

**Case ICAC No. ru07-04/2014**

Made on August 04, 2014  
Arbitrator Y. Golik

in Larnaca, Republic of Cyprus

The International Commercial Arbitration Court (ICAC) at the International Committee for Property Protection (ICPP), Larnaca, Republic of Cyprus, admitted the claim of July 4th, 2014 filed by Mr. A.I. Shmidt, citizen of Russia (address: ul. Mendeleyeva 6, kv. 137, Nizhnevartovsk, Russia) and Dastin Handelshaus AG (registered address: 24, av. Monterey, Luxembourg) represented by Mr. Vladislav Reger, member of the board of directors and director.

Courts may admit claims for affirmation of facts if they cause legal consequences according to the law (emergence, change or termination of personal or property rights of citizens or organisations). Thus, the fact affirmed must have legal consequences for the claimant.

The case was submitted by the presiding arbitrator of the ICAC to a sole arbitrator, Mr. Y. Golik, for consideration with the concurrence of Claimants in Republic of Cyprus, the city of Larnaca, in Russian.

Having considered the claim filed by Mr. A. Shmidt and the subsequent one filed by Mr. V. Reger, director of Dastin Handelshaus AG, the court considers them arbitrable and falling under jurisdiction of the ICAC at the ICPP (Republic of Cyprus) on the basis of the Statute of the ICPP, Arbitration rules of the ICAC, Regulation on the ICAC and Law of Cyprus "[On international commercial arbitration](#)":

1. Dastin Handelshaus AG (registered address: 24, av. Monterey, Luxembourg) is a member of the ICPP that corresponds to Point 2 Regulation on the ICAC at the ICPP, approved by the Decision No. K14/03 of the Board of directors of the ICPP of April 04, 2014;
2. An arbitration agreement on consideration of these claims by the ICAC in Republic of Cyprus was concluded between Dastin Handelshaus AG (registered address: 24, av. Monterey, Luxembourg) and Mr. A. Shmidt on April 05, 2014.
3. According to Article 45 Constitution of the Russian Federation, everyone may protect rights and freedoms by all means which are not forbidden by the law.

Besides, the court takes into consideration that for ten years Alexey Shmidt has not managed to find legal protection in various law-enforcement bodies and judicial system of the Russian Federation, which refused to him without reason to carry out an examination of these facts that is considered a violation of Article 46 (1) and therefore (3) Constitution of the Russian Federation that directly defines that «... Everyone has the right according to the international agreements of the Russian Federation to refer to interstate bodies for the protection of human rights and freedoms if all available interstate remedies at law have been exhausted".



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Arbitrator Y. Golik, having considered in an open hearing in the time period between July 25, 2014 and August 04, 2014 the claim of the citizen of the Russian Federation Mr. Alexey Shmidt and director of the Luxembourg company Dastin Handelshaus AG Mr. V. Reger on affirmation of the facts of legal significance

### **DETERMINED:**

The citizen of the Russian Federation, Mr. Alexey Shmidt, and the Luxembourg company Dastin Handelshaus AG addressed the International Commercial Arbitration Court at the ICAC on July 04, 2014 filing a claim for recognition of the facts of legal significance - legal relationships arising out of and belonging of copies of receipts (Supplement to the Claims), submitted by the citizen of Russia Mr. V.V. Kvassov to the Central district court of Tyumen of the Russian Federation (case No. 2-1649/2004, judge V. Agafonova) allegedly in confirmation of the loan agreement on cash received from citizens of the Russian Federation Mr. V. Kvassov and Mr. V. Mits between Mr. V.V. Kvassov and Mr. A.I. Shmidt, and affirmation of the fact of affiliation (participation in the share capital) of citizens of Russia Mr. V. Kvassov and Mr. V. Mits with the company Dastin GmbH (Bahamas) and with the management of Dastin Handelshaus AG (Luxembourg).

The Claimants declare that money received from the specified persons (Mr. V.Mits and Mr. V.Kvassov) in the territory of the Russian Federation in Tyumen in 1999-2001 was contributed by the official representative of the Bahama company Dastin GmbH in the territory of Russia under power of attorney, Mr. A.I. Shmidt, on behalf of the specified persons as a payment for shares of the company Dastin GmbH (Bahamas) to the accounts department of the company Dastin GmbH, the registry holder of which was Dastin Handelshaus AG (Luxembourg), but the copies of receipts were used consequently by Mr. V. Kvassov with a view of collection of money from Mr. A. Shmidt under the loan agreement that was allegedly received by him in confirmation of loan that led to the institution of a criminal case against Mr. A. Shmidt in Russia and recovery proceedings against him as he didn't recognise that fictitious loan to Mr. Kvassov. The Claimants ask the ICAC to affirm the fact of acquisition of shares of the company Dastin GmbH for cash by instalments by Mr. V. Kvassov and Mr. V. Mits and their participation in the share capital of this company.

So, in particular, Mr. A. Shmidt claims that the copies of receipts (not originals) used by Mr. V. Kvassov in the territory of Russia, were handed personally by him (A. Shmidt) as a person acting under power of attorney issued by Dastin GmbH in the territory of Russia, and by the director of Dastin GmbH, Mr. Franc Smidt, to the director of the Tyumen branch of Bank of Khanty-Mansiysk OJSC, Mr. V. Mits and his deputy Mr. V. Kvassov as co-shareholders of the Bahama company Dastin GmbH in confirmation of the contribution of cash money by them to for the acquisition of the block of shares of this company by instalments according to the decision of a general meeting of Dastin GmbH (Supplement to Applications).

From the documents presented by A. Shmidt follows that he filed motions with investigation bodies 19 times (Department of Internal Affairs of Tyumen and Tyumen region) for examination of materials of the civil case No. 2-1649/2004 (judge V. Agafonova) under the claim of V. Kvassov in order to determine the existence of the loan agreement in materials of the case and to secure evidences under the case, and each time the investigator unreasonably refused it to him that is a major violation of Article 159 (2) Criminal Procedure Code of the Russian Federation and constitutional rights of the accused. As a result Mr. A. Shmidt repeatedly filed similar motions during the court hearing of this criminal case No. 201124559/74 and received the unmotivated refusals.



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Consequently, Dastin Handelshaus AG files a motion with the ICAC for discovery of copies of necessary documents from materials of the executive proceedings of the court bailiff service of Tyumen and for affirmation of ownership and destiny of the shares withdrawn from Mr. A.Shmidt.

Recognising the jurisdiction concerning Mr. A.Shmidt's and the company's Dastin Handelshaus AG claims, the International Commercial Arbitration Court assumes also that according to the Constitution of the Russian Federation in the Russian Federation as a law-based state, a person, his or her rights and freedoms are the supreme value, including the right to free economic activity, and recognition, observance and protection of the rights and freedoms of a person and citizen - a state duty; rights and freedoms of a person and a citizen in the Russian Federation are recognized and guaranteed according to the conventional principles and norms of international law and, according to the Constitution of the Russian Federation, they define sense, contents and application of laws and are provided with justice (Articles 1, 2, 17 and 18); thus the right to judicial protection belongs to the basic inalienable rights and freedoms of a person, acting at the same time as a guarantee of all other rights and freedoms (Article 46 (1), (2)).

From the mentioned provisions of the Constitution of the Russian Federation and corresponding provisions of the Universal Declaration of Human Rights (Articles 7, 8 and 10), as well as the International Covenant on Civil and Political Rights (Article 14) and European Convention on Human Rights (Article 6 as well as Article 3 and Article 4 (2) of Protocol No. 7 to the Convention as amended in Protocol No. 11) which taking into account Article 15 (4) of the Constitution of the Russian Federation are a component of the legal system of Russia, follows that justice in essence can be considered as such only on condition that it meets the requirements of justice and guarantees effective restoration of rights. Based on provisions mentioned, a judgement is subject to revision if any new or newly opened circumstance or revealed essential violations allowed during the previous trial without controversy testify of existence of a miscarriage of justice because such a decision does not meet the requirements of justice.

Assuming that the affirmation of the legal fact of emergence of a legal relationship between Mr. V.V. Kvassov and Mr. A.I. Shmidt based on the receipts presented by Mr. V. V. Kvassov, matters for finding truth under cases which have been and are being considered in courts of the Russian Federation, the ICAC considers that according to Article 7 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (resolution 40/34) of the General Assembly of the United Nations of November 29, 1985) in this case it is necessary to use alternative and independent of the law-enforcement system of Russia mechanisms of settlement of disputes and claims, including the International arbitration to promote an opportunity of compensation to the victims whose rights were violated by representatives of the state system of justice of Russia.

Moreover, all aforesaid corresponds to Article 1 (2), (3) Agreement between the USSR and the Republic of Cyprus on legal aid in civil and criminal cases of January 19, 1984.

Thus, Mr. A.I. Shmidt has every right to go to the international bodies on protection of rights and freedoms of a person as all available domestic remedies have been exhausted.

Having learned the testimonies of claimants - Mr. A.I. Shmidt, Mr. V. Reger, having studied both oral and written statements of witnesses and having examined the documents filed with the court session, the court determined the following actual circumstances of the case:

On September 28, 1999 in Moscow (Russian Federation) a general meeting of shareholders of Dastin GmbH (minutes No. 2 of September 28, 1999 in the Supplement to claims) took place which was attended by F. Smidt (Luxembourg), V. Reger (Germany), A. Shmidt (Russia, Tyumen Region), Andrey Fedyushin (Russia, Moscow Region), Ivan Alekseevich Fedyushin (Russia, Moscow Region), S. Shtoyk



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(Russia), I. Shtoyk (Russia), V. Mits (Russia, Tyumen region), V. Kvassov (Russia, Tyumen region. Mr. V. Kvassov was represented by V. Mits under power of attorney). During the meeting only one item of agenda was considered - formation of the charter capital and distribution of blocks of shares of the company Dastin GmbH.

According to the decision of the general meeting of shareholders, the shares to the tune of 100 thousand US dollars were taken over by Mr. V.A. Mits and Mr. V. V. Kvassov.

Based on the decision of the general meeting of shareholders of the company Dastin Handelshaus AG (Luxembourg) a notary, Edmon Schröder, amended the charter documents of the company on October 25, 1999, which were registered in the state register of the Grand Duchy of Luxembourg with regard to purposes of the company and composition of its board of directors. Franc Smidt, Alexey Shmidt, Vladimir Mits and Vladislav Kvassov became members of the board of directors (extract issued by the Register of Luxembourg is attached).

Subsequently Mr. Mits was excluded from the board of directors on his request as he had been appointed the vice governor of the Khanty-Mansi autonomous region in Russia.

From testimonies of Claimants as well as witnesses, F. Smidt, A.I Fedyushin, I.A. Fedyushin follows that Mr. Kvassov and Mr. Mits were heads of the Tyumen branch of the Bank of Khanty-Mansiysk. The controlling block of the bank's shares belonged to the state in the person of the Government of the Khanty-Mansi autonomous region. The Board of directors of the bank was headed by the Governor of the Khanty-Mansi autonomous region, Mr. Filipenko. They didn't want to appear officially as shareholders of Dastin GmbH, a foreign firm, and, consequently, the decision was made that they would pay their share in cash by instalments via a representative of the company acting under power of attorney in Russia, Mr. Alexey Shmidt, and that money was to be used in Russia for needs of a subsidiary – a joint venture Enterprise with foreign investments DastinMarket CJSC established in Tyumen. It was a shopping centre where Alexey Shmidt was a director. In coordination with all shareholders of Dastin GmbH Mr. Kvassov and Mr. Mits contributed cash money through Mr. A. Shmidt or Mr. F. Smidt, but this procedure was executed by issue of receipts where the sum was specified in dollars, besides in two receipts, namely, in a receipt of January 24, 2001, it was specified that Mr. A. Shmidt received from Mr. Kvassov 32407,88 (thirty two thousand four hundred seven dollars and 88 US cents) and in the receipt of April 11, 2001, written personally by Mr. Franc Smidt, it was specified that he received from Mr. Kvassov 54152,32 US dollars (fifty four thousand hundred fifty two dollars and 32 US cents). The indication in the text of receipts of a sum received not only in dollars, but also in US cents is considered by the court as a proof that receiving money under this receipt was not of a loan nature.

The receipt cash orders were written out on money received from Mr. Kvassov in the accounts department of the company Dastin GmbH. In particular, the claimants presented the following cash orders (Cash receipt) in the court session: of 23/05/2000 to the tune \$ 6500, of 20/06/2000 to the tune of \$40000, of 10/09/2000 to the tune of \$35000, of 12/11/2000 to the tune of \$25000, of 27/1/2000 to the tune of \$70000, of 28/01/2001 to the tune of \$32407,88, of 27/11/2001 to the tune of \$3000, of 25/03/2001 to the tune of \$3456,76, of 25/04/2001 to the tune of \$38000, of 14/07/2001 to the tune of \$20000.

One more document, the minutes No. 3 of 21/01/2000 relating to money receipt from shareholders, was filed with the court. On January 21, 2000 in Luxembourg the general meeting of shareholders of Dastin GmbH was held during which the decision about the creation of temporary fund amounting to 800 thousand dollars, means of which were supposed to be spent for purchase of the trading equipment and further development of Enterprise with foreign investments DastinMarket CJSC was made. From the text of those minutes follows that 18 % per annum which will be compensated to shareholders from means of profit of the enterprise from the moment of achievement of a recoupment will be charged on money, which was temporarily contributed to the fund of development of the enterprise by shareholders. In copies of two receipts submitted by Mr. Kvassov to the court is specified: in the first one



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– “I (Translator’s comment: there is no pronoun in the sentence, so instead “I” the words he, she, or it may be used) took \$40000 (forty thousand US dollars) on June 19, 2000. Of July 1st under 18 % per annum. 19/06/2000”, in the second one - « I (Translator’s comment: there is no pronoun in the sentence, so instead “I” the words he, she, or it may be used) \$25000, under 18 % per annum. 09/11/2000» that confirms the fact of money receipt on the terms of creation of the temporary fund for financing of the company DastinMarket. From testimonies of the above-mentioned witnesses it follows that the sum of 800 thousand dollars was paid off with necessity of contribution of 100 thousand dollars by each of 8 shareholders. Thus, Mr. Mits and Mr. Kvassov had to pay in aggregate 200 thousand dollars, and taking into account a share value, they had to contribute 400 thousand dollars, under these sums the receipts had been issued by Mr. A. Shmidt and Mr. F. Smidt to Mr. Kvassov. The court notices the issue of receipts to Mr. Kvassov by two persons – Mr. A. Shmidt and Mr. F. Smidt that prejudices Mr. A. Shmidt's loan received from Mr. Kvassov and confirms the falsification of evidences by Mr. Kvassov in the civil court.

When comparing the dates on receipts and on receipt cash orders of the company Dastin GmbH, it is visible that almost all sums received against these receipts have been entered into records in the cash desk of Dastin GmbH within 2-3 days that testifies of money receipt not in the form of a loan, but as a contribution to the share capital.

Similar data are present in the original of the register of shareholders of the company Dastin GmbH provided to the court by a registry holder, Dastin Handelshaus AG (Luxembourg).

After payment of all shares an extract from the register of shareholders and a certificate on data entry to the register of shareholders in favour of Mr. V. Kvassov and Mr. V. Mits were submitted from the registry holder to Mr. A. Shmidt from Luxembourg.

After the cash money contribution Mr. Kvassov and Mr. Mits received the nominal share certificates of the company Dastin GmbH for 100 thousand shares to each one (B0-01 008 of 01/08/2001 and B-01-009 of 01/08/2001) to the face value of \$1 per share from Luxembourg. Data from the register and copies of nominal share certificates are provided to the court by the registry holder, Dastin Handelshaus AG.

Besides the court studied the copies of receipts presented by Mr. A. Shmidt from a civil case No. 2-1649/2004 (judge V. Agafonova). The court states that according to standards of the Civil Code of the Russian Federation these copies cannot be documents confirming the presence of the loan agreement between Mr. V. Kvassov and Mr. A. Shmidt. A receipt is not a loan agreement as in order to "transform" it into an agreement of full value, not only an amount of debt, but also its term, obligations to the creditor about return and some other important provisions should be specified in the document. So, according to provisions of Article 810 Civil Code of the Russian Federation the borrower is obliged to return the received sum of a loan to the creditor within the time limit and in a manner stipulated by the loan agreement.

According to Article 432 (1) Civil Code of the Russian Federation an agreement is considered to be concluded if the agreement is reached between the parties on all essential agreement provisions in a form required in specific cases. According to the International Commercial Arbitration Court the receipts submitted by Mr. Kvassov to the case No. 2-1649/2004 (judge of the Central district court of Tyumen V. Agafonova) aren't of consequence like a written form of the loan agreement between the parties (essential agreement provisions of a loan are not observed), do not contain data about obligations of the respondent towards the claimant concerning the terms of payment of money specified in the receipt and do not confirm the conclusion of a loan agreement by the parties.

Having studied the presented copies of a civil case under the claim of Mr. V. Kvassov against Mr. A. Shmidt the court states that in the minutes of a court session a fact of presentation by Mr. Kvassov of originals of receipts in a court session to judge Agafonova of the Central district court of Tyumen was not reflected, it was not reflected when exactly a certifying record “true copy” on a receipt



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was made by judge Agafonova that actually Mr. Kvassov gave false evidences having claimed that he was not a shareholder of the company Dastin GmbH and member of the board of directors of Dastin Handelshaus AG, giving evidences in essence of the claim filed by him. In aggregate, the specified circumstances can be the basis for reconsideration of the case on newly discovered facts.

On the basis of stated above, being guided by the Rules, the International Commercial Arbitration Court at the International Committee for Property Protection (Larnaca, the Republic Cyprus) has come to a conclusion to pass an **INTERIM AWARD** on found facts:

1. Recognise as a legal fact that Mr. Vladislav Kvassov and Mr. Vladimir Mits since September 28, 1999, have been shareholders of the company Dastin GmbH that is confirmed by nominal certificates of this company at the cost of 100 000 (hundred thousand) US dollars, issued in favour of them and registered in the register of shareholders by the registry holder, Dastin Handelshaus AG (Luxembourg).
2. Recognise as a legal fact that the receipts submitted by Mr. Kvassov to the Central district court of Tyumen of the Russian Federation under the case No. 2-1649/2004 (judge V. Agafonova) presented legal relationship between Mr. Vladislav Kvassov, Mr. Vladimir Mits and company Dastin GmbH in the person of Mr. Alexey Shmidt and Mr. Franc Smidt that arose in connection with their corporate agreements concerning share in capital of the company Dastin GmbH with a view of financing of a subsidiary in Russia, Enterprise with foreign investments DastinMarket CJSC.
3. For passing the FINAL AWARD under this case and finding truth concerning the nature of allegedly a loan of Mr. V. Kvassov given to Mr. A. Shmidt, the ICAC will officially make a request to the Central district court of Tyumen (chairman Ogoreltsev) for granting a copy of the loan agreement between Mr. V. Kvassov and Mr. A. Shmidt from the case No. 2-1649/2004 the presence of which was confirmed by judge V. Agafonova in her judgment. Besides it directed a request to Investigation department of the MIA of Tyumen for granting a copy of allegedly a loan agreement which formed the basis of the criminal case No. 201124559/74, being present in testimonies of Mr. V. Kvassov during the questioning by the inspector Voronin of the Investigation unit of Investigation department of the MIA.
4. For passing a fair FINAL DECISION under this case and finding truth, the court will officially make a request to the prosecutor's office of the Tyumen region, Court bailiff service of the Tyumen region, Department of the Federal Tax Service in the Tyumen region and Investigation department of the MIA of the Tyumen region for granting data and certified copies of documents:
  - Resolution on institution of executive proceedings of March 3<sup>rd</sup>, 2005 of the court bailiff-executor Ms. O. G. Chernogortseva of the Lenin regional department of court bailiffs of Tyumen concerning a court order - writ of execution under the case 2-1649/2004 of October 4, 2004, of the Central district court of Tyumen about recovery (other obligation): 13 284 724 roubles from the debtor, Mr. A. Shmidt in favour of claimant: Mr. V.V. Kvassov (8 March str., house 2, apt. 12);
  - Executive proceedings No. 7053/14/06 under the writ of execution of December 21, 2004 on debt recovery from Mr. A.I. Shmidt in favour of Mr. V.V. Kvassov from the Resolution on institution of the criminal case and initiation of proceedings of September 28, 2011 by the investigator of the regional department of the court bailiff service of the Central district of Tyumen A.N. Bukina;
  - Resolution No. 4152 on termination of executive proceedings of February 26, 2006, on executive proceedings No. 4152 on the basis of the enforcement document– writ of execution under the case 2-1649/2004 of December 21, 2004, on transfer of executive proceedings to the



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Court Bailiffs District Office of the Central administrative district of Tyumen, court bailiff-executor Mr. M.S. Egorov of the Court Bailiffs District Office of the Lenin district of Tyumen;

- Documents determining the transmission of 1% of shares of Enterprise with foreign investments DastinMarket CJSC, taken over from Mr. A. Shmidt through attachment of property by the court bailiff service of Tyumen under the judicial act of the judge of the Central district court of Tyumen V. Agafonova in favour of Mr. V. Kvassov, its disappearance (embezzlement) or transfer to Mr. V. Kvassov.
- Extract from the USRLE concerning Enterprise with foreign investments DastinMarket CJSC as of August 3, 2004. from Interdistrict Inspectorate of the Federal Tax Service No. 14 in the Tyumen region, a copy of all data from the USRLE relating to Enterprise with foreign investments DastinMarket CJSC;
- Interim balance sheet of Enterprise with foreign investments DastinMarket CJSC presented by the bankruptcy trustee, Mr. Y.G. Shabalin, and received by the Federal Tax Service No. 4 in Tyumen for 2004;
- Liquidation balance sheet of Enterprise with foreign investments DastinMarket CJSC presented by the bankruptcy trustee, Mr. Y.G. Shabalin, and received by the Inspectorate of the Federal Tax Service No. 4 in Tyumen for (in) 2004;
- Liquidation balance sheet of Enterprise with foreign investments DastinMarket CJSC presented by the bankruptcy trustee, Mr. Y.G. Shabalin, and received by the Inspectorate of the Federal Tax Service No. 4 in Tyumen for (in) 2007.

The court will send a copy of this INTERIM AWARD to the citizen of Russia V. Kvassov to give him an opportunity to bring objections to the Award made or to provide the written loan agreement between Mr. A. Shmidt and him before passing the FINAL DECISION.

The court will send a copy of this INTERIM AWARD to the citizen of Russia Mr. V. Mits to give him an opportunity to bring objections to the Award made or to provide other essential facts before passing the FINAL DECISION.

The INTERIM AWARD comes into force immediately, is admitted and enforced in the territory of all countries which signed the New York Convention 1958, including Russia.

The court informs Mr. A. Shmidt about his right to refer in connection with facts affirmed to the law enforcement bodies and court authorities of the Russian Federation upon newly discovered evidence and in order to protect his rights. He also may file with Russian and international court instances a claim for defence of honour, dignity and business reputation and compensation for material and moral damage.

This decision is made in Russian, and will be published on the website of the ICAC at the instance of Claimants

Number of the issued copies of the INTERIM AWARD – three copies to each Claimant.

Arbitrator of the ICAC at the ICPP  
Y.Golik