ARBITRATION IN CIS COUNTRIES: CURRENT ISSUES
Brussels, June 21, 2012
SCC INVESTMENT ARBITRATIONS INVOLVING CIS PARTIES

Natalia Petrik
SCC Legal Counsel
SCC is a dispute resolution option

- Energy Charter Treaty (Part III, art. 26)
- 61 BITs
- 64 BITs (appointing authority)
Protection of foreign investments

- Multilateral treaties (ECT)
- Bilateral Investment Treaties (BITs)
- National laws
- Investor-Host State Agreement
Investment arbitration

- State as a respondent party;
- Treaty-based, as a rule;
- Claimant asserts breach of protections guaranteed by the Host State (e.g. non-discriminatory treatment)
Investment Disputes at the SCC 2001-2011

- BIT (29)
- ECT (7)
- Direct Agreement (2)
SCC as Appointing Authority in Investment Arbitrations
CIS-related investment arbitrations

- **Procedural complexity**
  - 100% jurisdictional objection
  - 30% bifurcation
  - 30% multiple claimants

- **High disputed value**
  - EUR 50 000 000 at an average

- **Settlements are rare** (10%)

- **Failure to participate or to appoint an arbitrator** – 20%

The majority of cases are between West – East parties and concern exploration and/or purchase of oil, gas, gold. A number of disputes concerned co-operation with respect to supplies of electricity.
SCC investment disputes: average length

- Award in a one-stage proceeding: 21 months
- Award in bifurcated proceedings: 30 months
- Appointment in ad hoc/UNCITRAL: 3 – 4 weeks
- Decision on challenge in ad hoc/UNCITRAL: 8 weeks
SCC investment disputes: average costs

- Arbitration costs (excl. legal representation) – 330 000 EUR
  - Chairperson – 131 000 EUR
  - Co-arbitrator – 78 540 EUR
  - SCC – 29 985 EUR
Average claim vs average amount of the award

- Average recovery rate in a “won” case is 30%
  - Full jurisdictional dismissal – 1 case
  - Failure on the merits – ca 50% of the cases
The SCC Arbitration Rules (2010) efficiently apply both to commercial and investment disputes;

Chairperson of neutral nationality is appointed by the SCC. Special attention is paid to the experience, specialization and language skills while choosing a Chairman;

The fees are value-based for the claims up to 100 mln. EUR;

The SCC administrative fee has a ceiling of 60 000 EUR.
THANK YOU

Natalia Petrik

Тел. + 46 8 555 100 58
Natalia.petrik@chamber.se