



OSTERWALD RATHBONE & PARTNERS  
— FINANCE & STRATEGY —

ADVISING INVESTORS ON ECONOMIC LOSSES  
ARISING FROM OVERREACH BY GOVERNMENTS

# ADVISING INVESTORS ON ECONOMIC LOSSES ARISING FROM OVERREACH BY GOVERNMENTS

Osterwald Rathbone & Partners help defend clients from overreach by governments in the Former Soviet Union, as well as Central and Eastern Europe.

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In recent years we have noted a steady increase in cases where Governments, especially in the former Soviet Union, as well as Central and Eastern Europe and further afield, have made aggressive attempts to expropriate private investors' assets.

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Since Osterwald Rathbone & Partners has a rare ability to combine corporate finance, accounting and analytical skills with industry knowledge, we often act on behalf of investors in these regions. Indeed, we are frequently asked to value clients' assets which have been negatively impacted from overreach by Governments.

Interestingly, such projects are consistent with our firm's long-standing policy of never working for the Russian Federation or entities linked to it.



# REPRESENTATIVE EXPERIENCE

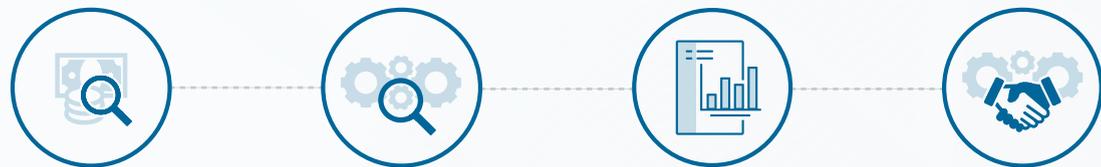
## RECENT EXPERIENCE

- Lead expert in an ICSID arbitration, on behalf of North American investors, in the alleged expropriation of an operating oilfield in Central Asia;
- Valuation expert on two separate Bilateral Investment Treaty expropriation claims against Central European Governments, both involving business start-ups that had not reached their full potential at the time of the alleged expropriation; and
- Advice to numerous clients on issues arising from oil price manipulation, most notably when a Russian-controlled oil trader was influencing the price of Russian Export Blend (“Urals”).

Representative examples of our expropriation and overreach experience appear below.

Osterwald Rathbone & Partners acts on behalf of clients in high-profile disputes, ranging from commercial damages to loss of profits and shareholder disputes. We assess both the question of financial and commercial liability as well as estimating the quantum of economic losses and regularly present our results to arbitration Tribunals.

Our industry knowledge, coupled with our valuation and due diligence capabilities, have proven to be invaluable in major litigation cases, both arbitrations and in court. Often actual operational experience is essential on such assignments, which when combined with financial, commercial and technical expertise can generate highly credible & defensible arguments that are easy for arbitrators or judges to understand, when they do not possess suitable technical or financial knowledge.



# CASE STUDY

## BILATERAL INVESTMENT TREATY EXPROPRIATION CLAIM

On behalf of investors in a Central European bank

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We acted as expert for a private equity fund on a Bilateral Investment Treaty expropriation claim for a newly merged banking entity in Central Europe, which was considered to be an effective start-up in that country.

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We assessed the potential of the business for the future and prepared an expert valuation based on strong and defensible assumptions for the business, which had not reached its full potential at the time of the alleged expropriation. The arbitral Tribunal found in favour of our client (*PL Holdings v Republic of Poland*).

# CASE STUDY

## VALUATION OF CRUDE OIL EXPORTS AND PRODUCT SALES

On behalf of four Ukrainian investors that had been sued by a Russian oil company (Tatneft)

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Our firm provided expert evidence and analytical support to Fieldfisher and two other law firms in the successful defence of a \$350 million claim by Tatneft against four Ukrainian individuals (*PJSC Tatneft v Bogolyubov & Others*).

Our work focused on examination of specific oil-pricing questions which had been identified by the Court as being important to the case, including the value of crude oil traded in the Caspian, Mediterranean and Russia.

One of OR&P's experts gave evidence in December 2020 in respect of these issues, as part of the 12-week trial in the Commercial Court.

A summary of *PJSC Tatneft v Bogolyubov & Others* appeared in a Fieldfisher press release on 25 February 2021:

**<https://www.fieldfisher.com/en/insights/fieldfisher-secure-win-commercial-litigation-high-court>**

# CASE STUDY

## EXPROPRIATION OF YUKOS ASSETS BY THE RUSSIAN FEDERATION

In *Quasar de Valores SICAV S.A. et al. versus The Russian Federation*, a group of Yukos shareholders alleged that the Russian Federation *unlawfully dispossessed the company of its assets and expropriated its shareholders*. We compared to the 2004 sale by auction of Yuganskneftgaz (a key oil producing asset of Yukos) to best practice in corporate finance.

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The arbitration Tribunal ruled in favour of the shareholders and repeatedly referenced the report in its conclusion that the auction had been rigged by the Russian Government.

Notably a similar report was also used in a separate action (*Wincanton Holding BV versus OAO Rosneft*).



# CASE STUDY

## GREASE MY PALM – LIBEL ACTION AGAINST THE ECONOMIST BY GUNVOR

*The Economist* newspaper was sued for libel in the UK by Gunvor, the world's third largest oil trading company, following publication of an article in the newspaper's November 2008 edition on alleged corruption in Russia, entitled *Grease My Palm*.

We were asked to review the claimant's activities in the international oil market and use public information to assess whether Gunvor behaved as a "normal commercial trader". What emerged, however, astonished *The Economist* and their lawyers:

- There was clear evidence, on the part of Gunvor to selectively enter Platts' *Market on Close Process* (i.e., "the MOC window") so as to lower the price of the subject commodity (in this case, exports of Russian Export Blend crude oil ("Urals")); and
- Our analysis showed that when Gunvor was trading, the price of Urals fell due to its practice of offering steadily lower prices. Gunvor then would exit the MOC window for several days or weeks. In the absence of the downward pressure exerted by Gunvor's presence, the price of Urals typically staged a recovery – until such time as Gunvor returned to the market and offer the price down again.

Although the lawsuit was settled prior to the first hearing, *The Economist* published portions of our report in a subsequent article:

<http://www.economist.com/node/21554185>

The implications of alleged manipulation of oil and gas prices are very relevant today; Osterwald Rathbone & Partners remains at the forefront the issue.



# OSTERWALD RATHBONE & PARTNERS

— FINANCE & STRATEGY —

## ED OSTERWALD

SENIOR PARTNER

**M:** +44 7770 584 696  
**T:** +44 20 3994 0133  
**E:** eosterwald@or.partners

## SALMAN NISSAN

PARTNER

**M:** +44 7771 973 076  
**T:** +44 20 3994 0133  
**E:** snissan@or.partners

## PAUL RATHBONE

SENIOR PARTNER

**M:** +44 7785 921 363  
**T:** +44 20 3994 0133  
**E:** prathbone@or.partners

## MATT BORRELLI

PARTNER | EMEA, ASIA PACIFIC, AMERICAS

**M:** +44 7909 682 455  
**T:** +44 20 3994 0133  
**E:** mfab@or.partners

## GET IN TOUCH

Engage with us today and see how our formidable team of skilled professionals with extensive hands-on experience and expertise can help you.

[www.or.partners](http://www.or.partners)

44 Southampton Buildings  
London WC2A 1AP  
United Kingdom