

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>Joint Stock Company State Savings Bank of Ukraine (a/k/a JSC Oschadbank),</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>The Russian Federation,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">CIVIL ACTION</p> <p style="text-align: center;">NO. 1:23-cv-00764 (ACR)</p>
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RESPONDENT RUSSIAN FEDERATION’S RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY (ECF 53) OF JOINT STOCK COMPANY STATE SAVINGS BANK OF UKRAINE (OSCHADBANK)¹

Oschadbank’s Notice of Supplemental Authority (ECF 53) misstates the application of *Zhongshan Fucheng Indus. Inv. Co. v. Fed. Republic of Nigeria*, No. 23-7016, 2024 U.S. App. LEXIS 20094 (D.C. Cir. Aug. 9, 2024) to this case. In addition, the RF wishes to preserve the point raised in the *Zhongshan* dissent for appeal.

First, contrary to the Notice, *Zhongshan* does not preclude the argument that there is no FSIA, §1605(a)(6) jurisdiction because there is no “legal relationship ... which is considered as commercial” under the N.Y. Convention. *Zhongshan* merely held that investments by a *private* investor under an investment treaty meet the “commercial” requirement and no transactional relationship between the investor and foreign state is required under the Convention. *Id.*, at 18-19. In contrast, the RF argues that it has no relationship, let alone a legal relationship, with Oschadbank, MTD, ECF 38, at 34-36, MTD Reply, ECF 51 at 22-23, because the BIT does not apply to Crimea, because, *inter alia*, Crimea wasn’t RF territory when the BIT was signed in 1998.

¹ Unless otherwise stated, all emphases are added, and all citations, quotation marks, footnotes, ellipses and brackets omitted. Abbreviated citations and defined terms are those used in the MTD.

See MTD, at 12-29. Oschadbank is well aware of each of these arguments, listing them in its Response, ECF 43 at 11, fn. 2.

Zhongshan does not discuss whether there is a “legal relationship” when the matter in dispute does not fall within the sovereign’s offer to arbitrate, and, thus, is not covered by the arbitration agreement. As a FSIA jurisdictional matter, this Court must decide whether the BIT created a legal relationship between the RF and Oschadbank, which it did not. In addition, *Zhongshan* does not discuss whether the “commercial” requirement applies to disputes between foreign states. As explained in the MTD, 34-35, Oschadbank’s is a 100% owned “agency or instrumentality” of Ukraine pursuant to FSIA §1603(b) and, therefore, its dispute with the RF is a controversy of a public international law character not covered by the Convention. *Zhongshan* distinguished the dispute in question from arbitration between states, as in this case. *Id.*, at 38-39.

Second, the Notice improperly conflates terms “person” under the Convention and “private party” under FSIA. *Zhongshan* only decided that the term “person” in the Convention includes foreign states acting in their sovereign (regulatory) capacity, and not just private commercial activity. *Id.*, at 23-24. This is a different issue from the meaning of the term “private party” in FSIA. The meaning of “person” in the Convention, a treaty, is irrelevant to the meaning of “private party” in FSIA, a statute. Indeed, the terms are not even the same. As explained in the MTD, 30, Oschadbank is not a “private party” because its 100% owned by Ukraine. Notwithstanding the fact that Oschadbank is a “separate legal person”, it is still an “agency or instrumentality” of Ukraine under FSIA §1603(b) and, therefore, is itself a foreign state. See MTD Reply, at 20.

Third, the *Zhongshan* dissent concluded the term “person” in the Convention does not include foreign states. *Id.*, at 57. The RF adopts this position and preserves it for appeal.

Dated: August 29, 2024

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