

Attribution

1. Although the JV Agreement was concluded between Claimant and Beritech, obligations assumed by Beritech may be attributed to Respondent by the general international rule of attribution as recognized in Articles 4 and 8 of ILC Draft articles on Responsibility of States for Internationally Wrongful Acts.
2. Due to attribution rule, the tribunal in *Nykomb v Latvia* acknowledged as covered by the umbrella clause a contract between the investor and a wholly owned state enterprise. In *Eureko v Poland*, independent legal personality of Polish State Treasury did not preclude liability of the host state for the breach of the umbrella clause. The way in which each state chooses to divide the work between its subdivisions is without relevance (see also *SwemBalt v Latvia*). These tribunals interpreted the umbrella clause without any limitations.
3. Claimant encourages the tribunal to follow the example given in *Nykomb* and *Eureko*. Broad interpretation fits as most convenient to the purpose of the BIT and may be simply justified by the rules of attribution, relevant also to other treaty standards (*EnCana v Ecuador*).
4. Claimant may also rely on other awards which applied more restricted attitude to the issue of attribution. According to *SGS v Pakistan*, obligation may be assumed by the host state or its subdivisions or legal representative thereof, if their acts are attributable to the host state. Respondent owns 70 % of shares of Beritech which renders him a controlling entity which may determine actions of controlled Beritech independently from fragmented minority.
5. As stated in *Conorzio Groupement L.E.S.I.-DIPENTA v Algeria*, a contract may be attributed to the host state where the government exercises important influence over the entity and was to some extent involved in the contract negotiations. Respondent guarantees compliance of Beritech with the JV Agreement. It is hardly probable that respondent did not influence the negotiations of the JV Agreement.
6. The tribunal in *Noble Ventures v Romania* recognized an obligation assumed by state ownership fund as covered by umbrella clause in view of the grant of of governmentals power.