The Hague Court of Appeal
Hearing 24 September 2019
Case-list number: 200.197.079/01

ORAL ARGUMENTS RE JURISDICTION

GROUND 2 (NO PROTECTION UNDER ECT)

PROF. *MR.* A.J. VAN DEN BERG

in the matter of:

the **Russian Federation**, respondent,
originally claimant in the setting aside proceedings and defendant in the arbitrations

v.

Hulley Enterprises Limited, **Veteran Petroleum Limited** and **Yukos Universal Limited**, appellants, claimants in the arbitrations (hereinafter: "**HVY**")
counsel: M.A. Leijten and A.W.P. Marsman

Table of Contents

DISTINGUISHED MEMBERS OF THE COURT OF APPEAL,

I. INTRODUCTION

1. Every ground for setting aside put forward in these proceedings is in itself sufficient for the complete setting aside of the Yukos Awards. You have what is called an *embarras du choix*. Today, we will discuss a number of grounds for setting aside that were not reviewed in the first instance.

A. Jurisdiction Ground 2: overview

2. I will first discuss Jurisdiction Ground 2. The essence of Jurisdiction Ground 2 is that HVY's claims do not fall within the scope of the arbitration clause in Article 26 ECT. The scope of this clause is limited. It only concerns: "*Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former (...)*" (emphasis added). HVY are not "*Investors*" within the meaning of Article 1(7)(a) ECT and they have not made an "*Investment*" within the meaning of Article 1(6) ECT.

3. Jurisdiction Ground 2 contains various partial arguments. These are summarized in your interim judgment of 25 September 2018.[1] I will address two here:

   - The Russian Oligarchs "invested" Russian money into a Russian company. This is not a true international case but an internal Russian dispute between Russian nationals and the Russian Federation. Such domestic "investments" are not protected, not even if they are diverted

---

[1] Interim Judgment 25 September 2018, para. 6.3 and paras. 4.1.2 and 4.1.3.

via a Cypriot and Isle of Man letterbox company – the so-called "roundtripping" or A-B-A.[2]

- HVY's alleged investments are their shares in Yukos. These shares were acquired through manipulation of auctions in 1995 and 1996 and through corruption (so-called "Red Directors"). The ECT does not protect such purported investments, as these are made in violation of the law. HVY are themselves letterbox companies that were incorporated for several illegal purposes. Only *bona fide* "investors" and "investments" are protected, which is why HVY cannot invoke investment protection.[3]

4. The legal aspects are dealt with in chapter V. Before the legal analysis, I will first discuss the facts in detail.

- **First** this introduction will provide a brief description of the principal persons and companies. This applies in particular to the main characters in these proceedings, who in the written submissions are referred to as the Russian Oligarchs.

- **Second** I will discuss a large number of illegal acts of HVY and the Russian Oligarchs. The relevant facts are set out in the Arbitrations, in the first instance and in these appeal proceedings.[4] These illegal acts are classified into 28 instances. The Tribunal has subdivided these 28 instances into 4 categories.[5] That division will roughly be adhered to.

---

2 See also the summary in the Interim Judgment of 25 September 2018, para. 6.3.

3 See also the summary in the Interim Judgment of 25 September 2018, paras. 4.1.1 and 4.1.2.

4 See Summons, paras. 30-60, Reply, paras. 26-33, Defence on Appeal, paras. 515-616, RF's Submission, paras. 149-250.

5 Final Awards, margin numbers 1283-1309 (**Exhibit RF-02 = iPad-2.g**).

Chapter II will address the first category of illegal acts: the auctions of the Yukos shares in 1995 and 1996 and the bribery of the Red Directors. This is important to demonstrate that HVY's Yukos shares were illegally acquired (the "Tainted Shares").

In Chapter III, the other categories are discussed. I will focus in particular on the abuse of the Cypriot-Russia Tax Treaty. This is because HVY were incorporated in order to evade taxes and to carry out other illegal acts.

- **Third** I will discuss the question as to who effectively controlled HVY (Chapter IV). This is important to show that the Russian Oligarchs are not "separate from" HVY, as the Tribunal wrongly assumed.[6] That chapter also deals with the Trusts founded by the Russian Oligarchs in 2003, which they try, in vain, to hide behind.

5. For HVY, the history begins in 2003 when the Russian authorities denounced the massive tax fraud of Yukos. That is like reading a book and starting at Chapter 4. However, Chapter 4 and the following chapters cannot be understood without having read Chapters 1-3. This is another reason why I would like to speak about the first three chapters today as well.

B. Cast of Characters

6. The cast of characters in this case consists of a large number of persons and entities. They have been identified in a "*Dramatis Personae*" list.[7] For a

---

[6] Final Awards, margin number 1370: "*... the alleged illegalities connected to the acquisition of Yukos through the loans-for-shares program occurred in 1995 and 1996, at the time of Yukos' privatization. They involved Bank Menatep and the Oligarchs, an entity and persons separate from Claimants, one of which – Veteran - had not even come into existence*." (**Exhibit RF-02 = iPad-2.g**).

[7] **Exhibit RF-511 = iPad-118.a** (submitted on 26 August 2019).

proper understanding of the body of facts that I will present below, I will mention a number of key players.

7. **Bank Menatep** was part of the Menatep Group, which was incorporated in 1989. Mr Mikhail Khodorkovsky was at the helm. Mr Platon Lebedev was in charge of finance. Mr Leonid Nevzlin had PR and security in his portfolio. Other members of the Board of Directors were Messrs Mikhail Brudno and Vladimir Dubov.[8] They were joined later on by Messrs Alexey Golubovich and Vasily Shaknovsky. These persons are also referred to as the **Russian Oligarchs** – a name coined by Khodorkovsky's Bank Menatep in 1992.[9] The Russian Oligarchs are the main characters in this case.

8. Four persons who were already directors of Yukos before the privatisation in 1993 and the auction in 1995-1996 were Messrs Muravlenko, Golubev, Kazakov and Ivanenko. At that time, they still had the status of civil servants. Muravlenko was appointed to his position as the President of Yukos by the Prime Minister Viktor Chernomyrdin himself.[10] They are also referred to as the "**Red Directors**". As will be explained below, the Red Directors were instrumental in the acquisition of the Yukos shares by the Russian Oligarchs. The Russian Oligarchs paid them the unimaginable amount of at least **USD 613.5 million** in bribes to do so – through the bank accounts of YUL, one of

---

[8] List of Members of the Board of Directors of Bank Menatep dated 1 Nov. 1996, Expert Report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-033 = iPad-66.a**).

[9] Mark Hollingsworth and Stewart Langsley, LONDONGRAD—FROM RUSSIA WITH CASH—THE INSIDE STORY OF THE OLIGARCHS (2009), p. 31. "*The word 'oligarch' was first used in Russia on 13 October 1992, when Khodorkovsky's Bank Menatep announced plans to provide banking services for what it called 'the financial and industrial oligarchy.' This was for clients with private means of at least $ 10 million*." RF Submission, para. 447.

[10] Appendix MP-009 to Expert Report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-009 = iPad-66.a**).

the appellants in this litigation (the "Y" from HVY).[11] That payment is not disputed.

9. Russian Bank Menatep and its Swiss affiliate Menatep SA incorporated SP Russian Trust and Trade ("RTT") in 1992. First, Mr Lebedev was head of RTT. Mr Anilionis was in charge of RTT from 1995 until 2003. In December 2015, Mr Anilionis issued a witness statement in the enforcement proceedings concerning the Yukos Awards before the United States District Court for the District of Columbia.[12] In his statement, he reveals in detail how the Russian Oligarchs, through Menatep and RTT, manipulated the auctions of Russian state property, evaded taxes, and set up a network of 450 companies in regions of the Russian Federation and of 100 companies in tax havens including Cyprus, Isle of Man, Gibraltar and the British Virgin Islands: "*None of these companies created any products, provided any services, or conducted any business of their own (...) They had no independent existence of their own (...) [T]he offshore structure (...) was created to conceal the actual ownership of companies and other assets obtained by Bank Menatep (...)*".[13] Three of these offshore companies constitute **HVY**. This structure also includes Group Menatep Limited ("**GML**"), the Gibraltar company which holds the shares in HVY.

10. RTT worked closely with foreign service providers to establish the offshore companies. This concerns in particular **Peter Bond** (Isle of Man) and

---

[11] Bank Statements of Yukos Limited, Expert Report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-066 = iPad-66.a)**; Schedule of Payments to Original Agreement between Group Menatep Limited, Benieficiaries, and Tempo Finance Ltd, Expert Report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-068 = iPad-66.a**).

[12] Anilionis's witness statement of 16 Oktober 2015 (**Exhibit RF-200 = iPad-21.b**), See further Defence on Appeal, paras. 515 et seq. See also the verbatim report of his "cross-examination" in a parallel arbitration, Exhibit HVY-565 = iPad-117.a.

[13] Anilionis's witness statement of 16 Oktober 2015 (**Exhibit RF-200 = iPad-21.b**), para. 9.

Stephen Curtis (London). Bond and Curtis are notorious money launderers. Peter Bond has been found guilty of money laundering and is no longer allowed to practice his profession.[14] In the *Berezovsky v. Abramovich* case, the English High Court found that Steven Curtis used sham schemes to launder money.[15] Steven Curtis acted as *Il Consigliere* to the Russian Oligarchs and Mr Khodorkovsky in particular. This dubious figure operated "*in the murky offshore world where billions of pounds are regularly moved and hidden across multiple continents*". He had been hired to hide the assets of the Russian Oligarchs.[16] Until his death in 2004 he was also the director

---

[14] Expert Report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a)**, paras. 143-147. RF Submission, para. 232; Government of Isle of Man Disqualification Orders dated 19 November 2004 (**Exhibit RF-D13, Appendix MP-083 = iPad-66.a**).

[15] See *Berezovsky v. Abramovich*, paras. 878 and 1145 (**Arbitration Exhibit RME-4654**). The London High Court described Curtis's conduct as follows in that case (paras. 878 and 1145):

"Mr. Curtis's description of the proposed transaction clearly demonstrated that he was planning a sham transaction which was designed to provide a misleading explanation of the origin of the payments expected to be made by Mr. Abramovich. (…)

"I would not have difficulty in holding that Mr. Curtis was indeed dishonest in this respect, despite the fact that he was, to use Mr. Rabinowitz's words, 'an English solicitor'. His conduct in relation to the Spectrum and Devonia transactions demonstrated, as Mr. Abramovich's closing submissions somewhat euphemistically put it:

> '… a track record of recording meetings so as to create a desirable, rather than necessarily truthful, version of events.'" (emphasis added)

See further, among other things, Expert Report of Professor Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), paras. 143-147. Expert Report of Professor Pieth of 10 Oktober 2017 (**Exhibit RF-D14 = iPad-66.a**), paras. 46-48 and RF's Submission, para. 232.

[16] See for example the first chapter of the book by the investigative journalist, Mark Hollingsworth, "Londongrad—From Russia with Cash—The Inside Story of the Oligarchs" (2009). On 3 March 2004, Curtis died when his helicopter crashed in England under unexplained circumstances. Hollingsworth describes the reaction to his death: "*The news of Curtis's dramatic death was not only deeply traumatic to his wife and daughter, it also sent shockwaves through the sinister world of the Russian oligarchs, the Kremlin, and a group of bankers and accountants working in the murky offshore world where billions of pounds are regularly moved and hidden across multiple continents. That was not all. Alarm bells were also ringing in the offices of Britain's intelligence and law enforcement agencies, for Stephen Curtis was no ordinary lawyer. Since the 1990s he had been the covert custodian of some of the vast personal fortunes made from the controversial privatization of the country's giant state enterprises. Two of his billionaire clients – Mikhail Khodorkovsky and Boris Berezovsky – had entrusted Curtis to protect and firewall their wealth from scrutiny by the Russian authorities."*

of GML. Stephen Curtis allegedly intended to cooperate with the British authorities investigating money laundering when he was killed in a crash of his brand-new helicopter.

11. In closing, we would like to make a few remarks about: **Prof. Mark Pieth**. This Swiss professor is one of the world's leading experts in the field of bribery and corruption. His expert opinions about the privatisation of Yukos contain an analysis of the documentary evidence from the period 1995-2003.[17] Much of what will be briefly discussed in what follows has been described in detail in his opinions.

II. ILLEGAL ACTS (AUCTIONS AND BRIBERY) 1995-1996[18]

A. Auctions of Yukos shares in 1995 and 1996[19]

(a) Introduction

12. Economically and socially, the 1990s were the most vulnerable period in the modern history of the Russian Federation. The dissolution of the Soviet Union in 1991 caused serious economic problems for a period of ten years. This economic and social crisis of the Russian people contrasts sharply with the Russian Oligarchs who, through the privatisation of Yukos, became multi-billionaires overnight.

13. The state-owned company Yukos was founded in April 1993. Yukos was hugely valuable, with an annual turnover of approximately USD 5 billion and

---

[17] Expert Reports of Prof. Pieth of 27 January 2017, 10 Oktober 2017, 12 August 2019 (**Exhibits RF-D13, D14 and D27 = iPad-66.a and iPad-114.b)**.

[18] See Defence on Appeal, paras. 516-545 with references, and RF's Submission, paras. 122-201 with references.

[19] See Defence on Appeal, paras. 516-529 with references; RF's Submission, paras. 149-193 with references.

proven oil reserves of around **10 billion barrels of oil**.[20] This is similar to the proven reserves of States such as Norway or Algeria.[21]

14. The privatisation of state-owned company Yukos took place via two trajectories: Investment Tenders and Loans-for-Shares.

(b) Investment Tender

15. In December 1994, the Red Directors made a proposal for the "Regulation on Investment Tenders for the Sale of Shares of Yukos Oil Company", which was adopted by the Government on 15 December 1994.[22] This related to the sale of 33% of Yukos shares that were held by the State. Interested bidders also had to commit to investing a certain amount in Yukos. A five-member "Tender Commission" was to decide the winner. Two members of the Tender Commission were representatives of Yukos, and they were subordinates to the Red Directors. One of them (Mr. M.F. Yudin) was the secretary of the Tender Commission and of the Yukos Board.[23] All of this was to take place under the supervision of the Russian Fund of Federal Property, which was responsible for the privatisation of public enterprises.[24]

---

[20] Expert Report of Prof. Pieth of 10 October 2017 (**Exhibit RF-D14 = iPad-66.a**), paras. 10-12. Report on Yukos Oil Corporation, "*Yukos and Sibneft to Combine Operations Create World's Largest Oil Company Based on Reserves*" of 19 January 1998 under 3, expert report of Prof. Pieth of 10 Oktober 2017 (**Exhibit D-14, Appendix MP-156 = iPad-66.a**).

[21] Expert report of Prof. Pieth of 10 October 2017 (**Exhibit RF-D14 = iPad-66.a**), para. 11. OPEC Chart of Oil Reserves 1998, expert report of Prof. Pieth of 10 Oktober 2017 (**Exhibit D-14, Appendix MP-155 = iPad-66.a).**

[22] Regulation on Investment Tenders for the Sale of Shares of Yukos Oil Company of 15 December 1994, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-012 = iPad-66.a**).

[23] Minutes No. 3 Meeting of the Board of Directors of Yukos Oil Company, identifying Yudin as the Secretary of the YUKOS Board and Generalov as the head of the YUKOS Finance Department, Expert report Prof. Pieth 27 January 2017 (**Exhibit RF-D13, Appendix MP-011 = iPad-66.a**).

[24] Expert Report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a),** paras. 15-16.

(c) Loans-for-Shares (LFS) Programme

16. As the Russian State ran into increasing financial difficulties, President Boris Yeltsin issued Decree No. 889 on 31 August 1995. This created the so-called "***Loans-for-Shares"***("LFS") programme.[25] Lenders were asked to provide as large a loan as possible. The loan was secured by the pledge of shares in participating state-owned companies. At maturity, the Russian government could either repay the loan and recover the pledged shares or allow the lender to sell the shares. In the latter case, the government would receive 70% of the difference between the sales price and the amount of the loan and the lender would keep the balance.[26]

(d) The auctions of 1995 and 1996

(i) <u>The course of events</u>

17. One of the four "Red Directors" of Yukos, Mr Muravlenko, persuaded Deputy Prime Minister of the Russian Federation in a letter of 27 September 1995 to combine the Investment Tender and Loans-for-Shares auction so that the interest of a "serious strategic investor" for Yukos could be raised.[27]

18. Accordingly, the Russian government resolved to:

---

[25] Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge of 31 August 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-013 = iPad-66.a).** Expert Report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 18. See also David Hoffman, THE OLIGARCHS: WEALTH AND POWER IN THE NEW RUSSIA (2002), p. 309 (**Arbitration Exhibit RME-4**); Chrystia Freeland, SALE OF THE CENTURY: THE INSIDE STORY OF THE SECOND RUSSIAN REVOLUTION (2005), pp. 165-166 (**Arbitration Exhibit RME-5**); Ira W. Lieberman & Rogi Veimetra, *The Rush for State Shares in the "Klondyke" of Wild West Capitalism: Loans-for-Shares Transactions in Russia*, , in Geo. Wash. J. Int'l L. & Econ. (1996), Vol. 29, pp. 737-738, 743 (**Arbitration Exhibit RME-6**).

[26] Expert Report of Prof. Pieth of 27 January 2017 (**RF-D13 = iPad-66.a)**, para. 18.

[27] Letter from S.V. Muravlenko of 27 September 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-015 = iPad-66.a**). Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), paras. 19-20.

(a) sell 33% of the shares in Yukos via an "Investment Tender", and

(b) use 45% of the shares in Yukos as collateral for the Loans-for-Shares programme by means of an auction.

All this would be done by means of a legally required competitive bidding procedure.

19. However, the Russian Oligarchs dictated the entire procedure. This rendered the Investment Tender and auction not only farcical, but also, through the actions of the Oligarchs, illegal.

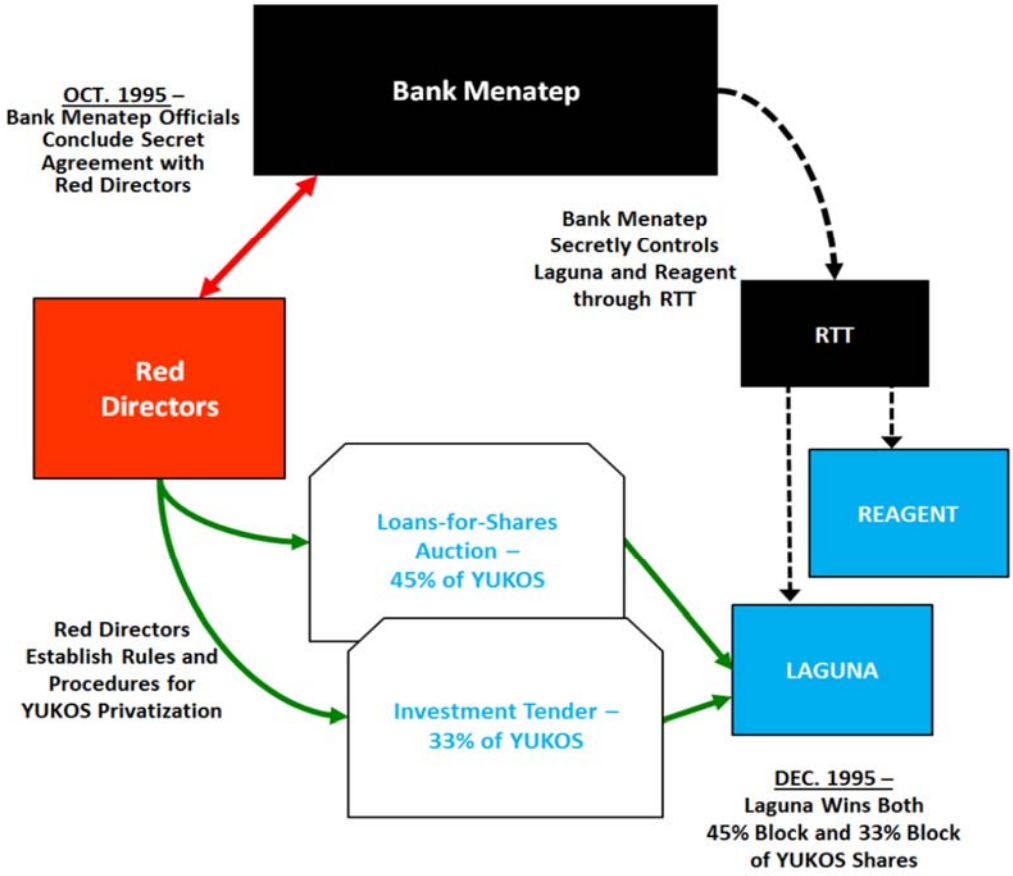
20. In a schematic overview, the 1995 auction was presented as follows in Prof. Pieth's expert opinion:[28]

1995

---

[28] Prof. Pieth's expert opinion of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 34.

Figure 1



- The Russian Oligarchs worked together with befriended oligarchs, including Mr Boris Berezovsky, to ensure that no other real bidders participated in the privatisation of Yukos. In exchange, the Russian Oligarchs in turn agreed not to submit competing bids during the privatisation of other massive State-owned enterprises (such as Sibneft). Such unlawful agreements are referred to as "bid-rotation", which will be discussed in more detail below (see §§ 41-45).

- Other Russian bidders were "warned" not to participate.[29]

---

[29] Paul Klebnikov, GODFATHER OF THE KREMLIN: THE DECLINE OF RUSSIA IN THE AGE OF GANGSTER CAPITALISM (2000), p. 204 (**Arbitration Exhibit RME-9**).

- The Russian Oligarchs also got the incumbent board of Yukos (the Red Directors) to do what they wanted, offering them bribes (see §§ 37-48 below).

- The Oligarchs arranged for their Bank Menatep to organise the Loans-for-Shares auction for the government (see the green and red lines on the left side of the graph above).[30]

- Only two bidders participated: Laguna and Reagent (see the blue boxes on the right side of the graph above).[31]

- The two bidders, Laguna and Reagent, were incorporated on the same day (21 November 1995), a couple of weeks before the auction, and had the same address in Moscow.[32] Both of them were affiliated with Bank Menatep. This is an illegal technique known as "shadow bidding" (see the black dotted lines on the right side of the graph above).

---

[30] Auction Minutes No. 1 of 8 December 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-019 = iPad 66.a)**. Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 28. The Russian State Property Committee (which oversaw the privatisation) appointed Mr Kagalovsky, one of Bank Menatep's directors as "Representative of the State Property Committee of Russia" to lead the Loans-for-Shares auction. List of Members of the Board of Directors of Bank Menatep of 1 November 1996, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-13, Appendix MP-033 = iPad-66.a).**

[31] Auction Minutes No. 2 of 8 December 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-020 = iPad-66.a)**. Prof. Pieth's expert opinion of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 29. A third bidder, OAO Babayevsjiye, was disqualified. The disqualification was based specifically on the assessment of Muravlenko's subordinate, M.F. Yudin, and implemented by S.V. Generalov (both were Yukos representatives in the Tender Commission). See Auction Minutes No. 1 of 8 December 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-019 = iPad-66.a**). Expert report of Prof. Pieth of 27 January 2017, (**Exhibit RF-D13 = iPad-66.a**), para. 29. This was also done through the intervention of a subordinate of the Red Directors. **Exhibit RF-524 = iPad-125.a**.

[32] Auction Minutes No. 2 of 8 December 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-020 = iPad-66.a)**. Prof. Pieth's expert opinion of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 30.

- The representatives of Laguna and Reagent were both employees of RTT.[33] RTT was the organisation mentioned above that set up hundreds of letterbox companies. (As you can see with the black dotted line on the right hand corner on the top of the graph above, the companies were secretly controlled by Bank Menatep.)

- Laguna won both the Loans-for-Shares auction and the Investment Tender on 8 December 1995 (see bottom on the right side of the graph above).

    - The Loans-for-Shares auction conditions stipulated a starting price of USD 150 million.[34]

    - Reagent offered a loan of USD 150.1 million, which is effectively a "shadow bid" (see §§ 27-31 below).[35]

    - Laguna won by offering a USD 159 million loan in the Loans-for-Shares auction, along with a commitment to invest USD 200 million in Yukos. The USD 159 million loan was secured by 45% of the shares in Yukos.

---

[33] Auction Minutes No. 2 of 8 December 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-019 = iPad-66.a**). List of RTT Employees dated 1 September 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-014 = iPad-66.a**). Expert report of Prof. Pieth's expert opinion of 27 January 2017, (**Exhibit RF-D13 = iPad-66.a**), para. 31.

[34] State Property Committee Order No. 1458 dated 10 Oct. 1995, amended 31 Oct. 1995, Notice para. 1, expert report of Prof. Pieth of 27 January 2017 (**RF-D13, Appendix MP- 016 = iPad-66.a**) ("*The starting price of the auction is USD 150 million*"). Expert report of Prof. Pieth of 27 January 2017, (**Exhibit RF-D13 = iPad-66.a),** para. 32.

[35] Auction Minutes No. 2 dated 8 Dec. 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-020 = iPad-66.a**). Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a)**, para. 32.

- Laguna separately offered USD 9 million for the Investment Tender for 33% of the shares in Yukos. Laguna committed to invest USD 150 million in Yukos.

- On 24 January 1996, Laguna sold the shares to other companies affiliated with Bank Menatep. All agreements to this effect were signed by employees of RTT.[36]

21. In 1996, the Russian Government was unable to repay Laguna's USD 159 million loan. By Presidential Decree No. 889, Laguna was obliged to act as "Commission Agent" of the Government to sell the 45% pledged shares in Yukos to a third party at an auction.[37]

22. Laguna transferred that obligation to none other than Bank Menatep.[38] Bank Menatep then sold the 45% shares in Yukos at a second rigged auction in 1996.

23. In a schematic overview, the 1996 auction was presented as follows in Prof. Pieth's expert opinion:[39]

---

[36] Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 38; Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-030 = iPad-66.a**).

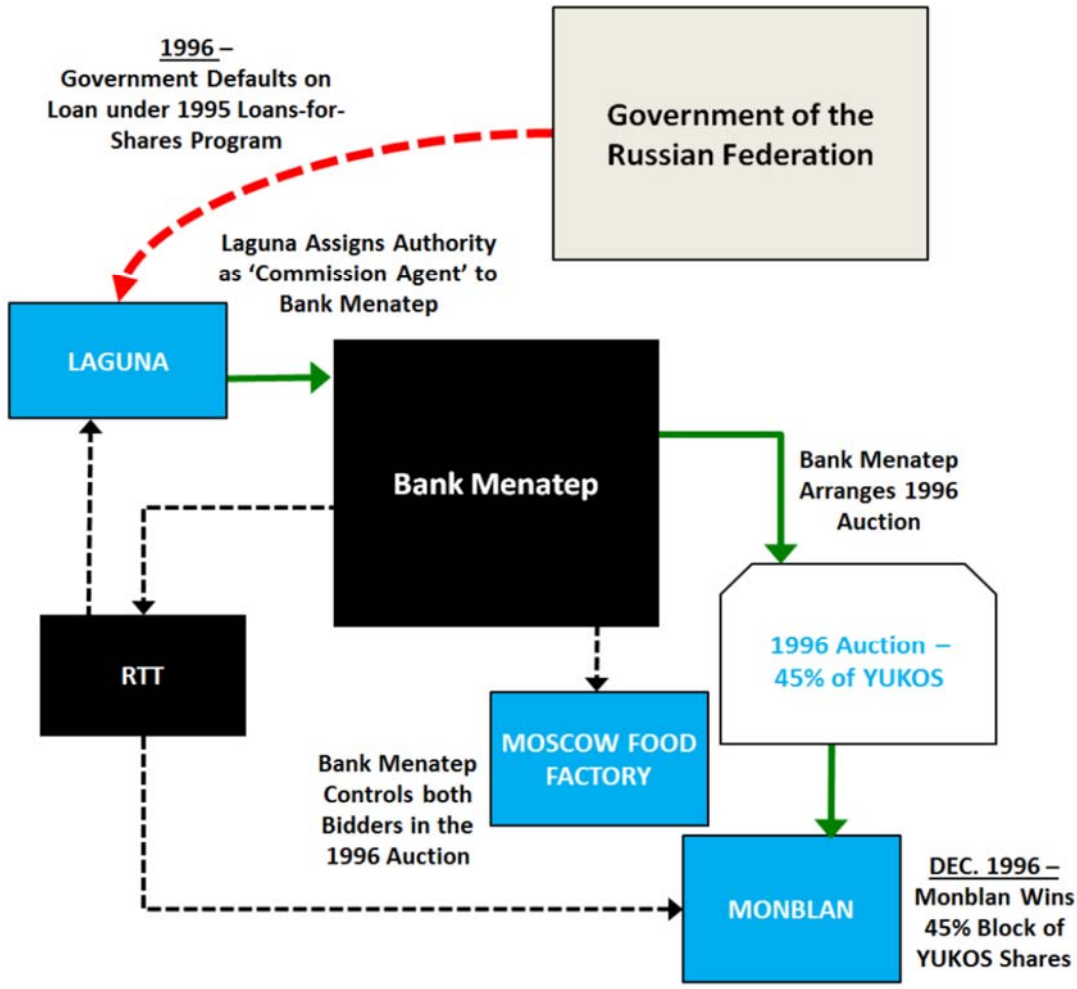
[37] Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge of 31 August 1995, Article 7, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-013 = iPad-66.a).** Expert report of Prof. Pieth of 27 January 2017, (**Exhibit RF-D13 = iPad-66.a**), para. 39.

[38] Laguna was represented by the same RTT employee, Mr. Zakharov. Assignment Agreement No. 198 between Laguna CJSC and Bank Menatep of 13 December 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-021 = iPad-66.a)**. Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 40.

[39] Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 48.

1996

Figure 2



- The auction conditions required a minimum bid price to be set. That was the task of the aforementioned Mr Kagalovsky, one of Menatep's directors.[40] He set the minimum bid price at USD 160 million.[41]

---

[40] Schedule of Auction Events dated 1996, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-025 = iPad-66.a**). Prof. Pieth's expert opinion of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 41.

[41] Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company of 24 December 1996, para. 3, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-034 = iPad-66.a**). Prof. Pieth's expert opinion of 27

- Again, only two bidders participated in the auction for the 45% of the pledged shares in Yukos: Monblan and Moscow Food Factory (see the blue boxes on the right hand corner at the bottom of the graph above).[42]

    - Monblan was set up by RTT and was controlled by Menatep (see the two black dotted lines in the graph above).

    - Moscow Food Factory was also controlled by Menatep (see the black dotted line in the graph above).

- Menatep had a difficult relationship with the truth. "*There is no connection between Monblan and Menatep*", its director, Mr Kagalosky stated publicly on 24 December 1996. Also, Menatep's press officer, "denied Menatep had any connection with Monblan."[43] Under cross-examination in July 2019, one of the Russian Oligarchs, Dubov himself, confessed that both of these statements by Bank Menatep officials were false.[44] In reality, both companies were controlled by Bank Menatep (see the graph above).[45]

January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 41. Mr Anilionis, a director of RTT was tasked with determining who the buyers would be, setting up holding companies for these buyers and, on top of that, another layer of holding companies. See List of RTT Employees dated 1 September 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-014 = iPad-66.a**). Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 42. Schedule of Auction Events of 1996, expert report of Prof. Pieht of 27 January 2017 (**Exhibit RF-D13, Appendix MP-025 = iPad-66.a).**

[42] Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company of 24 December 1996, para. 4, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-034 = iPad-66.a).** Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 43.

[43] Sergey Lukyanov, *"'Managed' Yukos Sale Fetches $160M*," Moscow Times, 24 Dec. 1996, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-035 = iPad-66.a)**. Prof. Pieth's expert opinion of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 44.

[44] **Exhibit RF-521 = iPad-125.a**.

[45] Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 44.

- In the shadow bidding, Moscow Food Factory bid USD 160.05 million and Monblan bid USD 100,000 more: USD 160.1 million. So Monblan won the "auction".[46] The result was:[47]
    - Monblan acquired 45% of the shares in Yukos for an amount just above the minimum bid price.
    - The Russian Government was released from the repayment obligation of the USD 159 million loan.
    - The Russian Government received 70% of the difference between Monblan's winning bid (USD 160.10 million) and the amount of the failed loan (USD 159 million), i.e. USD 770,000.
    - So the Russian Oligarchs paid USD 159 million plus USD 770,000 for 45% of the shares in Yukos.
    - With the 33% previously acquired, the Oligarchs thus acquired 78% of the shares and thereby control over Yukos.

24. Due to the previous illegal acts, the Russian Oligarchs acquired through Bank Menatep a 78% majority stake in Yukos in 1996 for about **USD 170 million**. Several months later, Yukos was valued on the Russian stock exchange at **USD 6.9 billion**.[48] The Oligarchs thus acquired the shares in Yukos for about **3%** of their actual value. The commitments to invest USD 150 million and USD 200 million largely benefited the value of these shares.

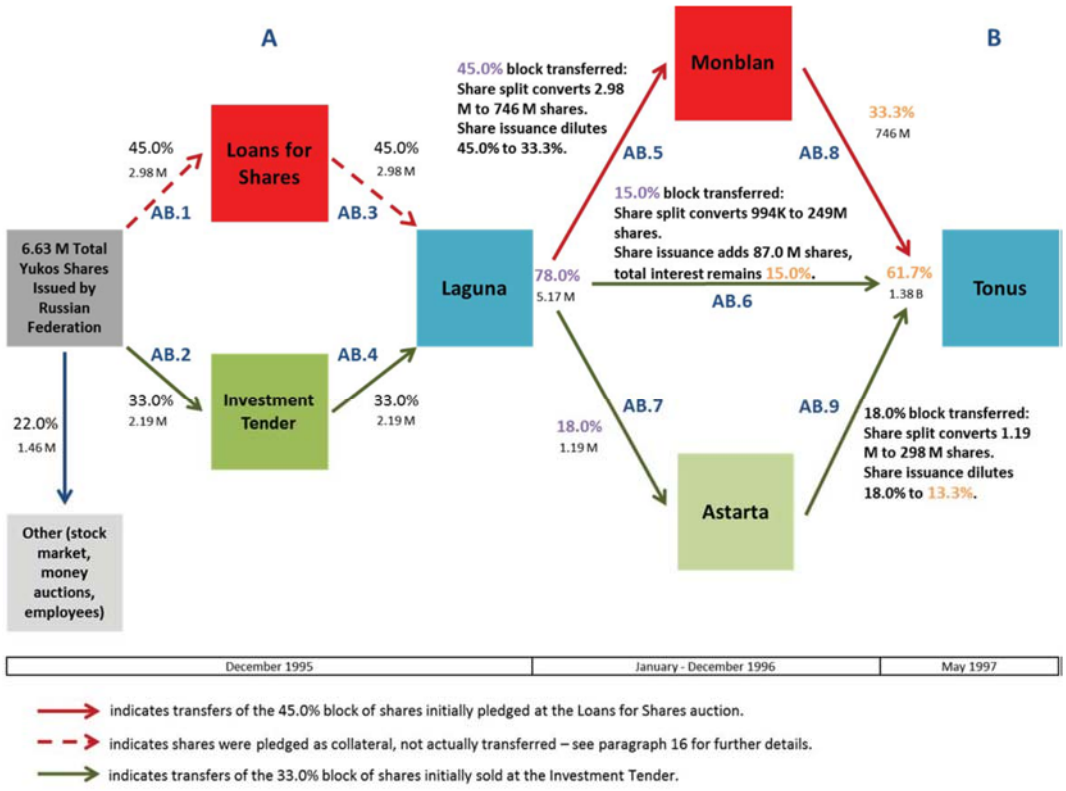
---

[46] **Exhibit RF-476 = iPad-106.a**.

[47] Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a)**, paras. 44-47 with references.

[48] *Market Data, Trade Results by Security for Yukos* of 1 January 1997 to 31 December 2007, RTS Exchange, p. 3 (**Arbitration Exhibit C-565)**. Paul Klebnikov, *The Khodorkovsky Affair*, in Wall Street Journal, 17 November 2003), A20 (**Arbitration Exhibit RME-15**).

25. Prof. Kothari's expert opinion presents the above schematically as follows. I will not discuss this schematic overview in detail.



26. The Russian Oligarchs used two illegal techniques in particular, besides the bribery of the Red Directors, which will be discussed in more detail.

(ii) *Bid-rotation*

27. Earlier in this document, I mentioned the first technique of "bid-rotation".[49] The "bid-rotation" agreements are described in detail in the judgment of the English High Court in *Berezovsky v. Abramovich*, based on witness

---

[49] World Bank, FRAUD AND CORRUPTION AWARENESS HANDBOOK, p. 36, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-106 = iPad-66.a)**; THE MANY FACES OF CORRUPTION TRACKING VULNERABILITIES AT THE SECTOR LEVEL, p. 302, expert report of Prof. Pieht of 27 January 2017 (**Exhibit RF-13, Appendix MP-88 = iPad-66.a**).

statements from participants in the bid-rotation scheme.[50] Mr Khodorkovsky, for example, helped Mr Berezovsky to rig an auction by submitting a predetermined lower bid. Mr Berezovsky testified before the High Court:

> "Q. Menatep was a bank associated with Mr Khodorkovsky and Yukos, wasn't it?
>
> A. It is correct.
>
> Q. Did you agree with Mr Khodorkovsky in advance that his bid would be made at a slightly lower level than NFK's [Berezovsky's sham company][51]?
>
> A. It is correct."[52]

28. Mr Berezovsky also testified:

> "I reached agreement with (among others) Mr Khodorkovsky and his Menatep colleagues ... that we would not compete against each other in any of the loans-for-shares auctions".[53]

29. The High Court held:

> "The only other bidder at the auction itself was a syndicate organised by Bank Menatep, controlled by Mr. Khodorkovsky. He had agreed with Mr. Berezovsky, in advance, to bid slightly more than the reserve and slightly less than NFK [Berezovsky's sham company]. According to Mr. Berezovsky, this resulted from earlier agreements with Mr. Khodorkovsky and his Menatep colleagues, and with other oligarchs

---

[50] High Court, 31 August 2012 (*Berezovsky v. Abramovich*) (**Arbitration Exhibit RME-4654**).

[51] NFK is short for: "Neftyanaya Finansovaya Kompaniya" (Oil Finance Corporation).

[52] Berezovsky's witness testimony of 6 October 2011, Transcript Day 4, p. 52, expert report of Prof. Asoskov of 20 October 2015 (**Exhibit RF-225, Appendix R-266 = iPad-25.b**). Dutch translation: "*Q. Menatep was a bank affiliated with Mr Khodorkovsky and Yukos, wasn't it? A. That is correct. Q. Did you agree in advance with Mr Khodorkovsky that his bid would be slightly lower than that of NFC? A. That is correct.*

[53] Berezovsky's witness statement of 31 May 2011, para. 121, expert report of Prof. Asoskov 20 October 2015 (**Exhibit RF-225, Appendix R-265 = iPad-25.b**). Dutch translation: "*Ik bereikte overeenstemming met (onder andere) de heer Khodorkovski en zijn collega's van Menatep (...). dat we niet met elkaar zouden concurreren op een van de veilingen van leningen voor aandelen*."

> who were interested in obtaining control of other State businesses under the loan-for-shares scheme, that they would not compete against each other in any of the loans-for-shares auctions."[54]

30. What is more, one of the Russian Oligarchs, Mr Nevzlin, has confirmed this aspect of the conspiracy:

> "We reached an agreement on who would take what. We agreed not to get in each others' way."[55]

31. Mr Nevzlin was also heard as a witness in the *Berezovsky v. Abramovich* case. He testified:

> "[A]ll the companies which participated in these loans for share auctions, all, further down the line, became the owners of these privatised [companies]. And the question of ownership structure was discussed and decided by them before they entered the auction, before they made their investment."[56]

32. As Prof. Asoskov explained, this conspiracy is contrary to Russian law, including rules in Decree No. 889 by President Yeltsin, the Russian Civil Code and the Russian statutes on privatisation and competition.[57] In this connection, Decree No. 889 prescribes explicitly that the auction of pledged shares must be done in compliance with "*the principle (...) of*

---

54 High Court, note 50 *supra*, para. 224 (**Arbitration Exhibit RME-4654**).

55 Freeland, note 25 *supra*, p. 166 (**Arbitration Exhibit RME-5**).

56 Dutch translation: "*Alle vennootschappen die deelnamen aan deze leningen-voor-aandelen veilingen werden uiteindelijk de eigenaars van deze geprivatiseerde [vennootschappen. En de kwestie van de eigendomsstructuur werd door hen besproken en uitgemaakt voordat ze de veiling ingingen, voordat ze hun investering deden."* Expert report of Prof. Asoskov 20 October 2015, Appendix R-269, pp. 65-66 (**Exhibit RF-225, Appendix R-269 = iPad-25.b**.)

57 Prof. Asoskov's expert opinion of 20 October 2015 (**Exhibit RF-203 = iPad-21.b**), paras. 35-48. Expert report of Prof. Asoskov of 14 August 2019 (**Exhibit RF-D26 = iPad-114.b**), paras. 31-40.

competitiveness".[58] On the basis of these statutory rules, the privatisation of Yukos was legally void *ab initio*.[59]

(iii) *Shadow-bidding*

33. The second technique I mentioned before is that of "shadow bidding". The only bidders who were eventually allowed to participate in the privatisation of Yukos were sham companies that were actually controlled by the Russian Oligarchs.[60] The formal directors of these sham companies were all employees of the aforementioned RTT. As stated, RTT acted on instructions from the Russian Oligarchs organised in Bank Menatep.[61]

34. The director of RTT, Mr Anilionis, explains that the Russian Oligarch Lebedev had personally instructed him to set up shell companies that would pretend to "compete" in rigged auctions. In his witness statement, Mr Anilionis describes how he ordered the incorporation of ZAO Laguna and ZAO Reagent, two sham companies that submitted two predetermined bids at the 1995 auction.[62]

35. Others involved in the auctions of 1995 and 1996 confirm the use of sham companies. Mr Zakharov, fictitious director of the sham company ZAO

---

[58] Presidential Decree No. 889, Article 7, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-013 = iPad-66.a**).

[59] Expert report of Prof. Asoskov of 20 October 2015 (**Exhibit RF-203 = iPad-21.b**), paras. 41-42.

[60] Respondent's Counter Memorial on the Merits (**Arbitration Exhibit RF-03.1.B-3**), paras. 27-30, Memorial on Jurisdiction, Chart 8 in Resp. C-Mem, para. 275.

[61] Witness statement of Anilionis of 16 October 2015 (**Exhibit RF-200 = iPad-21.b**), para. 12. Witness statement of Zakharov of 14 October 2015 (**Exhibit RF-201 = iPad=21.b**), para. 17. Witness statement of Gololobov of 26 July 2016 (**Exhibit RF-G2 = iPad-66.b)**, para. 25.

[62] Witness statement of Anilionis of 16 October 2015 (**Exhibit RF-200 = iPad-21. b)**, paras. 19 and 20.

Laguna at the 1995 auction, confirms, for example, that the auctions were in fact controlled and prepared by Bank Menatep.[63]

36. This process of "shadow bidding" was contrary to Russian law: Decree No. 889, the Civil Code and a number of other Russian statutes required there to be truly competitive bids.[64] Consequently, the privatisation of Yukos was legally void on the basis of the express provisions of these statutes and decrees.[65] Moreover, shadow bidding often goes hand in hand with the rigging of auctions and bribery.[66]

B. Bribery of the Red Directors (1995 -2003)[67]

37. The Red Directors were members of the incumbent board of Yukos prior to its privatisation in 1995-1996 (Mr Muravlenko (you see him on the slide with Mr. Khodokovsky), Mr Golubev, Mr Kazakov and Mr Ivanenko). At that time, they were still civil servants of the Russian State. The Russian

---

[63] Witness statement of Zakharov of 14 October 2015 (**Exhibit RF-201 = iPad-21.b)**, para. 10.

[64] Witness statement of Gololobov of 26 July 2016 (**Exhibit RF-G2 = iPad-66.b**), para. 9. Expert report of Prof. Asoskov's expert opinion of 20 October 2015 (**Exhibit RF-203 = iPad-21.b**), para. 47. See also the Resolution of the Duma of the Federal Assembly of the Russian Federation No. 3331-II-GD, 4 December 1998 (**Arbitration Exhibit R-19**). Expert report of Prof. Asoskov of 14 August 2019 (**Exhibit RF-D26 = iPad-114.b**), paras. 34-40.

[65] Gololobov's witness statement (of 26 July 2016 (**Exhibit RF-G2 = iPad-66.b**), para. 9; Prof. Asoskov's expert opinion of 20 October 2015 (**Exhibit RF-203 = iPad-21.b**), paras. 49-52. See also the Resolution of the Duma of the Federal Assembly of the Russian Federation. No. 3331-II-GD, 4 December 1998 (Appendix R-19). Expert report of Prof. Asoskov of 14 August 2019 (**Exhibit RF-D26 = iPad-114.b**), paras. 34-40.

[66] Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 32. Expert report of Prof. Pieth of 10 October 2017 (**Exhibit RF-D14 = iPad- 66.a**), paras. 49-53; World Bank, FRAUD AND CORRUPTION AWARENESS HANDBOOK (2013), p. 35. Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-106 = iPad-66.a**). Witness statement of Gololobov of 26 July 2016, paras. 13-14 (**Exhibit RF-G2 = iPad-66.b**). Witness statement of Anilionis of 16 October 2015 (**Exhibit RF-200 = iPad-21.b**), para. 17 et seq. Expert report of Prof. Kraakman of 1 April 2011 (**Arbitration Exhibit RF-03.1.C-2.2.5**), paras. 14 et seq.

[67] See Defence on Appeal, paras. 530-538 with references; RF's Submission, paras. 164-186 with references.

Oligarchs needed their help and bribed them by paying the unprecedented amount of at least **USD 613.5 million**.[68]

38. The undisputed facts are:[69]

- On 1 November 2002, the following parties signed a "Restated Compensation Agreement" between:
    - Group Menatep Limited (GML, Gibraltar, "in the person of Yukos Universal Limited" (YUL, Isle of Man, the "Y" in "HVY"), and
    - Messrs Muravlenko, Golubev, Kazakov and Ivanenko (the Red Directors) as "Beneficiaries", and
    - Tempo Finance Ltd. (BVI, British Virgin Islands), "representing all Beneficiaries"[70]
- This Compensation Agreement is also referred to as the "Tempo Contract".
- The subject of the "Tempo Contract" is "payment to the Beneficiaries of Fees" (Clause 2.1).

---

[68] In addition to payments of USD 875,000 to three Red Directors during the period 1996-1998, which were not made for any business purpose. The payments were made on the basis of the virtually identical "Service Agreements" with letterbox companies in the Isle of Man controlled by the Russian Oligarchs, with the notorious money launderer Valmet acting as agent. See expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), paras. 53-60.

[69] See also the detailed explanation of the facts in the Arbitrations: Respondent's Rejoinder on the Merits, paras. 1293 et seq. (**Arbitration Exhibit RF-03.1.B-5**); Respondent's Counter Memorial, paras. 728 et seq. (**Arbitration Exhibit RF-03.1.B-3**). See also witness statements of Gololobov of 26 July 2016 (**Exhibit RF-G2 = iPad-66.b**), paras. 17-22, 52-53 and transcript of witness testimony Muravlenko of 14 May 2007(**Exhibit RF-301 = iPad-66.c**), p. 9.

[70] Expert report of Prof. Pieth's expert opinion of 27 January 2017 (**RF-D13, Appendix MP-075 = iPad-66.a).**

- "Fees" are defined in Clause 1.7:

> "'Fees' means fees payable by Group MENATEP to the Beneficiaries for their active participation in increasing the capitalisation and investment attractiveness of YUKOS, establishing a capable and socially responsible workforce and making a significant contribution to the development of Russia's oil extraction and refining industry during their employment at YUKOS for the period ending 31 December 1995. The amount of Fees will be determined in accordance with provisions of this Restated Compensation Agreement." (emphasis added)

- The Fees amount to 15% of the "Revenue from the sale of Shares" (Clause 2.4). If the Yukos shares would be sold for e.g. US$ 8 billion, the Red Directors would on the basis of this contract be entitled to receive US$ 1.2 billion.

- Payments have been made under the agreement. The "Y" in HVY, YUL, paid Tempo Finance a total of USD 613.5 million in four instalments between 2 April 2002 and 17 December 2003. This is apparent from YUL's own account statements.[71]

- In 2002, two Red Directors were still employed (Messrs Muravlenko and Golubev). Messrs Kazakov and Ivanenko had already left in 1998 and 1999. Nevertheless, the latter two were also "Beneficiaries" under the Tempo Contract.

- The agreement with the Red Directors was made orally by the Russian Oligarchs in 1995, before the 1995 and 1996 auctions. The agreement was allegedly worked out in late 1999 - early 2000. The paper version followed in 2002, which was necessary in the context of the plan for the IPO of Yukos in the United States (which plan was never realised).

---

[71] Expert report of Prof. Pieth expert opinion of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 62 with references.

- Mr Khodorkovsky confirmed in a Facebook post of 9 June 2016 "I made a verbal promise and performed my obligation to pay hundreds of millions; that is true."[72]

39. The original version of the Tempo Contract was dated more than seven months earlier, 26 March 2002.[73] It defined the subject matter of the agreement as: "*the exercise of the Beneficiaries' rights to Fees for many years active and fruitful production activity at YUKOS that resulted in significant increases in the capitalisation and investment attractiveness of YUKOS and developments in the oil exploration and refining industry.*"

40. In Project Voyage (see §§ 49 et seq. below), the consultants of the Oligarchs and Yukos (law firms Clifford Chance, Cleary Gottlieb and Akin Gump as well as the tax consultancy firm PricewaterhouseCoopers (PwC)) were suddenly confronted in June 2002 with the original Tempo Contract (Compensation Agreement) of 26 March 2002, which was completely unknown to them. They were not only amazed by the Tempo Contract, but also wondered whether these "costs" should be borne by the shareholders (the Russian Oligarchs) and not by Yukos.

41. And if Yukos had to pay for these costs at all, the question was how the enormous amount of money should be accounted for in Yukos's financial

---

[72] **Appendix MP-139** to expert report of Prof. Pieth of 10 October 2017 (**Exhibit RF-D13 = iPad-66.a**). See also the letter of 5 August 2016 from Mr Osborne (director of GML) to the American Lawyer, in which he acknowledges: "*A promise was therefore made to the former directors of Yukos to ensure that they would be personally invested in the company's success. To that end, Yukos agreed that the former directors would be compensated commensurate to the share value of the company, in exchange for their work in making Yukos an attractive prospect for investors*." Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-113 = iPad-66.a).**

[73] **Appendix MP-067** to expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**).

documents. Doug Miller of PwC gave the following account of his discussion on these questions with Messrs Khodorkovsky and Lebedev:

> The benefits are not contingent on any future services, events or conditions.
>
> Upon inquiry, Mr. Lebedev and Mr. Khodorkovsky asserted that the benefits are in fact provided as compensation for services provided to shareholders, not to YUKOS. Additionally, they made the following points:
>
> • The decision to provide this benefit was discussed and agreed in principle during the period of YUKOS' privatisation, in 1995 and 1996, *prior* to the core shareholders' winning of the privatisation tender;
>
> • Details were agreed with the Beneficiaries in January 2000;
>
> • Benefits are intended to compensate for the Beneficiaries' work in building the Company through privatisation, not beyond; and
>
> • Although the specifics of the benefits were not defined in 1995-1996, the primary idea that the Beneficiaries were to share a significant financial interest with the core shareholders was understood." (emphasis added) [74]

42. Bruce Bean (Clifford Chance) was also concerned about the reasons for the original version of the Tempo Contract of 26 March 2002 and its publication:

> "The issues for us to consider in advance are how we amend or restate the agreement and what sort of arrangement they must have effectively had six or seven years ago which led them to record this in 2002. No one gives away $1B without a reason, not even someone who already has $8B. Logically this should help reduce the risk the agreement must be filed as an exhibit - though logic is not always relevant."[75] (emphasis added)

---

[74] E-mail from Doug Miller (PwC) of 14 August 2002 (**Appendix MP-071** to expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**).

[75] E-mail from Bruce Bean of 15 August 2002 (**Appendix MP-072** to expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**); see also Appendix MP-074.

43. All this resulted in the omission of the subject in the original Tempo Contract of 26 March 2002 and in a vaguer definition of the "services" of the Red Directors in the revised version of the Tempo Contract (Amended and Restated Compensation Agreement) of 1 November 2002.

44. On the basis of many documents, Swiss Prof. Mark Pieth therefore concludes in three detailed expert opinions that this is a case of bribery of four government officials prior to the 1995-1996 auctions:

> "71. As the documentary record unmistakably reflects, the *Red Directors* and their subordinates did play significant roles in every stage of the Yukos privatization from March 1993 until December 1995. Most critically, (1) the *Red Directors* evidently designed several of the 'privatization plans' and the 'investment program' pertaining to YUKOS, which the Government then adopted;[76] (2) the most senior Red Director, Mr. Sergey Muravlenko, used his official position as the President of YUKOS to advise the Government that the 'Loans-for-Shares' auction pertaining to 45% of YUKOS must become 'interconnected' with the YUKOS Investment Tender pertaining to 33% of YUKOS (a decision which significantly benefited the Oligarchs);[77] (3) the *Red Directors* also were charged with the task of collecting the prospective bidders' applications for distribution to the Investment Tender Commission;[78] and (4) the *Red Directors*' subordinates [i.e., Yudin and Generalov] participated directly in the sessions of the YUKOS Investment Tender Commission as key advisors to the Government representatives.[79]

---

[76] Minutes no. 3 of Yukos's Board of Directors under 2 of 27 May 1994, expert report of Prof. Pieht of 27 January 2017 (**Exhibit RF-D13, Appendix MP-011 = iPad-66.a)**. See also the Invest Program, adopted by resolution of the Board of Yukos Company, minutes no. 13 of 12 October 1995, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-017 = iPad-66.a)**.

[77] Letter from S.V. Muravlenko of 27 September under 1 expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-015 = iPad-66.a**).

[78] Yukos, RFPF and RF State Committee for Management of State Property Contract No. 2-14.2. /473 of 25 July 1994, para. 2.33, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-140 = iPad-66.a**). See also Yukos Investment Tender Public Notice of 4 November 1995 under 2, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-147 = iPad-66.a)**. This shows that applications would be submitted to and evaluated by the Investment Tender Committee, which would be based at Yukos's Moscow office at: 34/21 Kutuzovsky Prospekt.

[79] Meeting of the Tender Commission for the investment tender relating to the shares of

45. One of the Red Directors, Mr Muravlenko, later confirmed that their "support" was necessary: "*In order to win, he needed the support from the team of managers of 'YUKOS,' i.e. our team*".[80] Another Red Director, Mr Ivanenko, also confirmed that the Russian Oligarchs "agreed that [the Red Directors'] financial interests would be taken into account" in exchange for which the Red Directors would "not interfere in the management of the company".[81]

46. HVY are trying in vain to escape the inevitable conclusion of bribery. They rely mainly on three witness statements provided by Oligarch Dubov. No value can be attributed to these witness statements. Dubov testifies that he was "not personally involved in the consultations" with the Red Directors.[82] However, Dubov's witness statements and HVY's other exhibits do show that the Red Directors have taken very real steps to help the Russian Oligarchs at every stage of the privatisation.[83]

Yukos, minutes no. 1 of 8 December 1995, under 1, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-148 = iPad-66.a)**. See also the meeting of the Tender Committee on the summary of the Protocol of Investment Procurement No. 2 of 8 December 1995 under 1, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-149 = iPad-66.a)**.

80 T transcript of witness testimony Muravlenko of 14 May 2007, p. 5 (**Exhibit RF-301 = iPad-66.c**). Dutch translation: "*Om te winnen had hij de steun nodig van het team van managers van 'Yukos', d.w.z. ons team*".

81 See Ivanenko's statement, p. 4 (**Arbitration Exhibit RME-3584**). Dutch translation: "*overeenkwamen dat de financiële belangen van [de Red Directors] in aanmerking zouden worden genomen*" in ruil waarvoor de Red Directors "niet zouden ingrijpen in het bestuur van de vennootschap".

82 Dubov's witness statement, (Exhibit HVY-G3 = iPad-98.b), para. 62. In his newest statement, he states that he attended exactly one discussion with Ivanenko. Exhibit HVY-G8, para. 31.

83 See RF's Submission, para. 170.

47. As Prof. Pieth's put it, there are more than enough "red flags" to establish corruption.[84] These are generally accepted indications of the OECD and the World Bank.[85]

48. The shares in Yukos were therefore tainted by illegal acts (the auctions) and corruption (of the Red Directors), both of which were orchestrated by the Russian Oligarchs. These shares are therefore referred to as the "**Tainted Shares**" in Yukos. These Tainted Shares were continuously owned and controlled by the Russian Oligarchs from 1995/1996 until their acquisition by HVY. That is what Chapter IV below is about.

C. Strengthening of control of the Yukos group (period 1996-1999)

49. In the years after the auctions the Russian Oligarchs strengthened their grip on the group.[86] They gave other stakeholders the runaround. Banks, minority shareholders, employees and business partners were all prejudiced. Indeed, by the 1999 Parliament elections, their influence over public officials had spread so much that the speaker of the Parliament remarked that he "*had the impression that there were 250 Dubovs in the [Parliament] chamber*".[87]

50. On 15 July 1999, for example, an article appeared in The Wall Street Journal explaining how banks were prejudiced by the title: "*Vanishing Act: How Oil Giant Yukos Came to Resemble an Empty Cupboard—Shares Shuffled and*

---

[84] Expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13 = iPad-66.a**), para. 120.

[85] World Bank, FRAUD AND CORRUPTION AWARENESS HANDBOOK (2013), expert report of Prof. Pieth of 27 January 2019 (**Exhibit RF-D13, Appendix MP-106 = iPad-66.a**). OECD Anti-Bribery Convention, expert report of Prof. Pieth of 27 January 2017 (**Exhibit RF-D13, Appendix MP-098 = iPad-66.a).**

[86] See Defence on Appeal, para. 539, *et seq*.

[87] Vladimir Perekrest, Why Khodorkovsky is in jail (Part 3), Izvestiya, June 7, 2006, p. 2 (**Arbitration Exhibit RME-74**).

Dilutions Keep Mr. Khodorkovsky in Control of an Empire—Three Lenders in the Dark".[88] Another contribution from that time with the telling title "*How To Steal an Oil Company"* left nothing to the imagination either: "*theft so blatant and extreme as to defy simple explanation*".[89] Violence was not shunned either. By way of example, I refer to the witness statement of Mr Rybin, who has survived two attacks on his life.[90]

51. By the late 1990s, the reputation of the Russian Oligarchs had fallen to zero. Yukos was seen as synonymous with "*rotten corporate governance*".[91] At some point Khodorkovsky wanted to polish that reputation. I will come back to that later.

III. ILLEGAL ACTS (SUCH AS TAX FRAUD, 1996 – 2003)

52. After the Russian Oligarchs had taken control of Yukos for next to nothing, they started specialising in tax evasion. This chapter will focus primarily on the role played by the appellants in these proceedings. First, it will be explained how they acquired the Yukos shares.

A. HVY acquire Yukos shares (1997-2000)

53. Since 1995/96 the Russian Oligarchs have continuously controlled the Tainted Shares in Yukos. In the period 1995 – 2003 the Tainted Shares regularly changed ownership. These transactions were analysed by the renowned forensic accountant **prof. S.P. Kothari** of the Massachusetts

---

88 **Arbitration Exhibit RME-027**. See also RF Counter-Memorial Merits, paras. 44-76 with references.

89 James Fenkner & Elena Krasnitskaya, Troika Dialog, *How To Steal an Oil Company*, in CORPORATE GOVERNANCE IN RUSSIA: CLEANING UP THE MESS (1999), pp. 93-94 (**Arbitration Exhibit RME-035**).

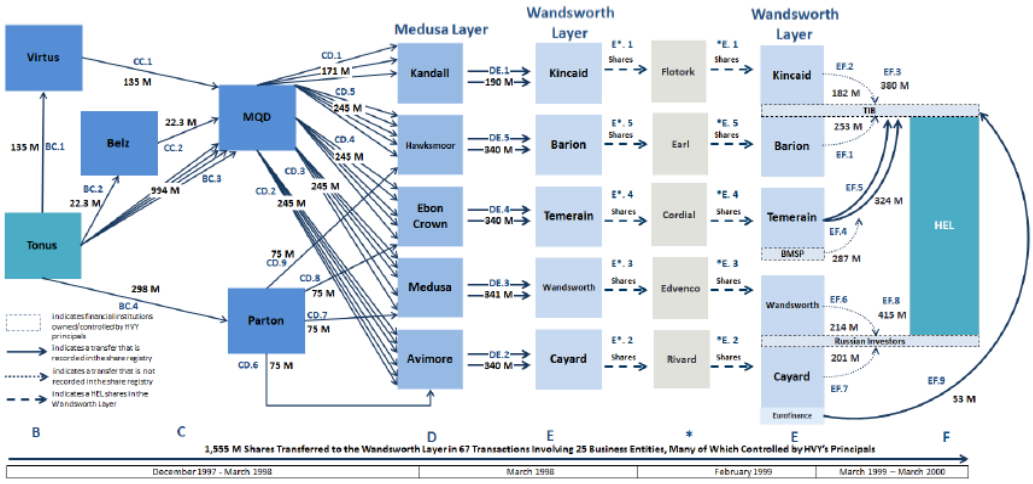
90 **Exhibit RF-G3 = iPad-66.b.**

91 Gololobov's witness statement of 9 July 2018 (**Exhibit RF-G2 = iPad-66.b**), para. 43 and references.

Institute of Technology (MIT). His findings are reflected in two detailed expert opinions, dated 20 October 2015 and 26 November 2017.[92]

54. Prof. Kothari presented part of the transactions schematically.[93] The slide shows a number of transactions from the period 1997 to 2000.

Figure 9: HVY Principals' Involvement of Nominal Holders, "Smurfing," and Unnecessary Use of Intermediaries and Related-Party Transactions



55. All the companies you see were controlled by the Russian Oligarchs. It is remarkable that the Russian Oligarchs transferred their shares in Yukos to Cyprus through dozens of small transactions between approximately thirty affiliated parties (see Hulley on the right side of the graphic above). As described in more detail in Professor Kothari's expert opinions, this is a classic money laundering technique that is known as "structuring" or "smurfing":[94]

---

92 **Exhibits RF-202 = iPad=21.b** and **RF-D15 = iPad-66.a**.

93 Expert report of Prof. Kothari of 20 October 2015 (**Exhibit RF-202 = iPad-21.b**). Expert report Prof. Kothari of 26 November 2017 (**Exhibit RF-D15 = iPad-66.a)**

94 Expert report of Prof. Kothari of 26 November 2017 (**Exhibit RF-D15 = iPad-66.a**), paras. 15, 35-39

> "These terms refer to 'the act of dividing a large sum into small amounts, [and] making a series of small payments' in order to 'avoid[] drawing attention to the individual payments and keeping them below the minimum amount that requires the transaction not to be reported to a monitoring body.'[95] According to the OECD, this technique is employed wherever 'a series of related transactions . . . could have been conducted as one transaction, but . . . has been broken into several transactions by the financial institution and/or the parties to the transaction intentionally . . . for purposes of circumventing transaction reporting requirements.'[96] As these definitions reflect, the essential purpose of using of 'structuring' or 'smurfing' is to complicate forensic analysis of financial or accounting records and disguise the true nature of the underlying transactions."[97]

56. Essentially, the Russian Oligarchs constantly sold the shares to themselves. Prof. Kothari concludes that HVY eventually acquired 737,387,504 shares. These are without exception Tainted Shares: "*This total indicates that 100% of the YUKOS shares underlying HVY's claims in the ECT arbitration were Tainted Shares*."[98] (underlining added by Prof. Kothari).

57. The Russian Oligarchs Nevzlin and Dubov have put in writing witness statements for the purpose of these proceedings. Nevzlin emphasises that he allegedly always had a "*commitment for business transparancy*".[99] According to Dubov, Yukos was the first fully transparent company in

---

[95] Roberto Durrieu, *Rethinking Money Laundering & Financing of Terrorism in International Law*, Martinus Nijhoff, (2013), p. 32, expert report of Prof. Kothari of 26 November 2017 (**Exhibit RF-D15, Appendix SPK-78 = iPad-66.a)**.

[96] OECD, Joint Audit Report, Sixth Meeting of the OECD Forum on Tax Accounts (15-16 September 2010), para. 73, n. 42.

[97] Expert report of Prof. Kothari of 26 November 2017 (**Exhibit RF-D15 = iPad-66.a**), para. 35.

[98] Expert report of Prof. Kothari of 26 November 2017 (**Exhibit RF-D15 = iPad-66.a)**, para. 84.

[99] Witness statement Nevzlin (Exhibit HVY-G1), para. 21. Transparency applied at most with regard to the situation as at 20 October 2003, which was reflected in the "Russian Sandwich" in the Appendix to the Interim Awards (see 72 *intra*).

Russia.[100] However, Nevzlin and Dubov do not discuss the many transactions through which the shares continuously changed ownership.[101] These transactions have been discussed in the witness statement of Gitas Anilionis. He was responsible for carrying out all these transactions. He stated that all these transactions had no legitimate business purpose whatsoever and were only intended to disguise the fact that the Russian Oligarchs were constantly in control of Yukos.[102]

B. HVY abused tax convention (1999-2004)[103]

58. Why were Hulley and VPL (the "H" and the "V" in HVY) incorporated in Cyprus? Why did the Russian Oligarchs transfer the shares in a Russian company to letterbox companies located there between 1999 and 2001?

59. HVY have admitted that they "*have not carried out any substantial business activities in its place of organisation (or elsewhere)"* other than holding shares and collecting dividends.[104] There's nothing in Cyprus. Hulley, for example, is based at an office with 322 (!) other companies. 59-61

---

[100] Witness statement Dubov (Exhibit HVY-G3), para. 66. See also other Exhibits, such as Exhibit HVY-426, Witness Statement Smirnov, para. 12: "*Yukos (...) is generally recognised as the first transparent Russian company*."

[101] With regard to the proposition that the Russian Oligarchs have exercised transparency, see, inter alia, Defence on Appeal, paras. 617-632, RF's Submission paras. 454 et seq.

[102] Anilionis's witness statement of 16 Oktober 2015 (**Exhibit RF-200 = iPad-21.b**), para. 33.

[103] See Defence on Appeal, paras. 546-577 with references; RF's Submission, paras. 202-214 with references.

[104] Original English: "*does not engage in any substantial business activity in its place of organization (or elsewhere)*" in HVY's letter to the Tribunal dated 3 November 2006, p. 2 (Appendix (Merits) C 1396). See also HEL Counter-Memorial on Jurisdiction and Admissibility, para. 288 (in which it admitted that Hulley "does not have any substantial business activities [in its place of incorporation] within the meaning of Article 17(1) ECT"; YUL Counter-Memorial on Jurisdiction and Admissibility, para. 287 (idem for YUL); VPL Counter-Memorial on Jurisdiction and Admissibility, para. 290 (idem for VPL).

Akropoleos Avenue, Floor 3, Office 301, Strovolos, p.c. 2012 Nicosia.[105] There is no office, no marking and not even a letterbox with the name Hulley at that address:[106]

60. HVY's own party witnesses then confirm that the incorporation of Cypriot letterbox companies was prompted by tax motives.[107] HVY themselves

---

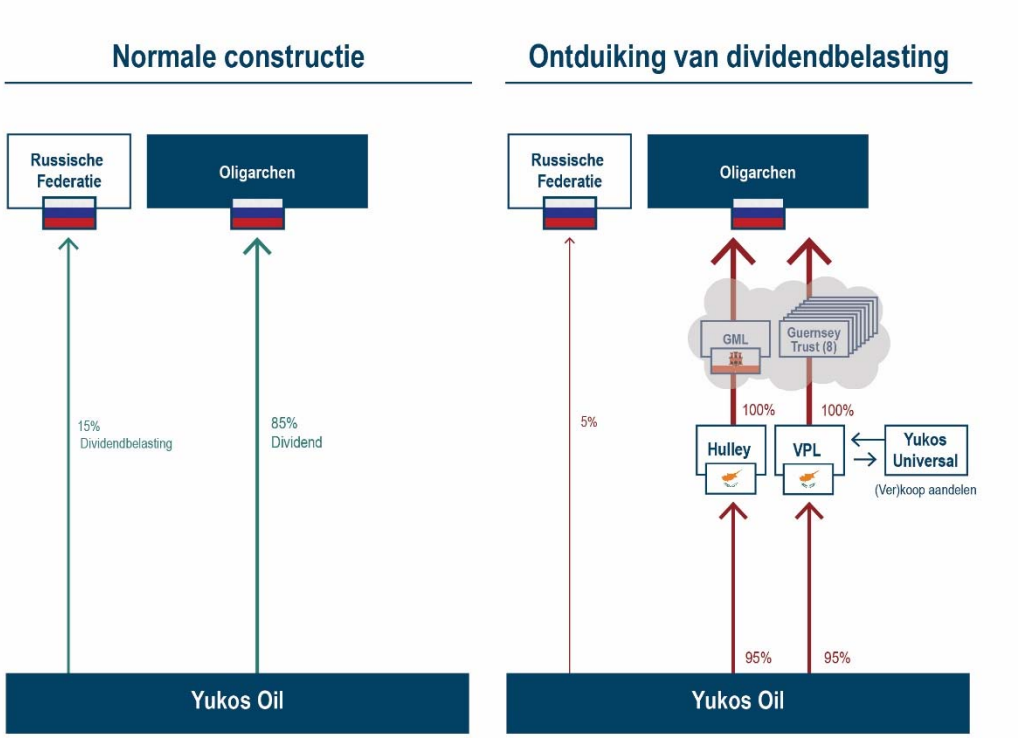
[105] See Achilleos's statement of 17 November 2017 (**Exhibit RF-G5 = 66.b**), para. 3 and search result of the Cypriot Trade Register (Achilleos's statement, Appendix 1).

[106] See Achilleos' statement of 17 November 2017 (**Exhibit RF-G5 = iPad-66.b**), paras. 4-5 and office photos (Achilleos' statement, Appendices 2-5).

[107] Defence on Appeal para. 547, Submission RF, paras. 207 et seq. This is apparent from documents/statements by Soublin (former CFO Yukos), Wilson (tax adviser PwC), Lebedev (Russian Oligarch) and Misamore (former CFO, see **Arbitration RME-3819**). HVY merely assert – without offering any explanation – that tax evasion "*was not among the motives for*

qualify Cyprus as a "*low tax jurisdiction*".[108] This is because Cyprus had the desired double taxation convention. This Cypriot-Russian Tax Convention is also referred to in the documents as the "*Double Taxation Treaty*" or *"DTA*".[109]

61. Dividends in the Russian Federation are usually taxed at a rate of 15%. This is made clear on the left-hand side of the image below.[110]



62. The Russian Oligarchs did not want to pay dividend withholding tax. That is why they incorporated Cypriot companies. Article 10 of the Cyprus-Russian

---

the ... ultimate share transfer" to the Cypriot companies Hulley and VPL, see "Submission" HVY, para. 1216.

108 "Submission" HVY, para. 1093.

109 Cyprus-Russia Double Taxation Agreement (5 December 1998) (Arbitration Exhibit C-916).

110 Defence on Appeal, para. 551.

Double Taxation Convention provides for a reduced tax rate of 5%.[111] The Convention is intended to avoid double taxation. There was no question of double taxation here. The Russian Oligarchs did submit tax forms on behalf of Hulley and VPL, in which they wrongly claimed the lower tax rate of 5%.[112] YUL also participated by temporarily selling its shares to Hulley and VPL just before a dividend payment.[113] Hundreds of millions of taxes were thus wrongly evaded.

63. The Russian Federation challenged two expert reports in the Arbitrations, which explained in detail that the conditions to qualify for the lower tax rate had not been met:

- **Prof. Stef van Weeghel** (UvA) concluded that Hulley and VPL did not qualify for the tax benefits on the basis of the tax convention and that the Yukos holding structure was a "*sham or otherwise abusive under general principles of international tax law*".[114]

---

[111] Article 10 provides: "*1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State. 2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other State, the tax so charged shall not exceed: 5% of the gross amount of the dividends….*" See also Final Awards, paragraph 1292 (**Exhibit RF-02 = iPad-2.g**).

[112] Expert report of Prof. Rosenbloom of 1 April 2011, para. 26 (**Arbitration Exhibit**). Expert report of Prof. Rosenbloom 15 August 2012, paras. 18-26 (**Arbitration Exhibit**).

[113] See Defence on Appeal 566 and the sources cited there.

[114] Expert report of Prof. Van Weeghel 29 January 2007, p. 33 (**Arbitration Exhibit**). See summary in Interim Award (**Exhibit RF-01 = iPad-2.g**), margin number 435, Final Awards, margin numbers 244-246 (**Exhibit RF-02 = iPad-2.g**). Professor Van Weeghel's 2007 expert opinion, p. 36: "*[T]he claim made by Hulley in tax returns for 2000 and 2001 that the dividend income from Yukos was not connected with activities carried out in the Russian Federation is clearly erroneous (...) Hulley was not entitled to a reduced rate of Russian tax in respect of the dividends, which it claimed on the basis of Article 10 of the Russia-Cyprus DTC (...) VPL was not entitled to a reduced rate of Russian tax in respect of the dividends, which it clearly erroneously claimed on the basis of Article 10 of the Russia-Cyprus DTC.*" (**Arbitration Exhibit**).

- **Prof. David Rosenbloom** (NYU) drafted two reports in which he concluded that the use of the Cyprus-Russia DTA qualifies as a "*blatant example of tax treaty abuse*".[115]

64. The Tribunal had no choice but to establish that the Cypriot - Russian Tax Convention had been abused. The Tribunal established that Oligarch Lebedev, one of the Russian Oligarchs, had personally filed false tax returns on behalf of Hulley.[116] Final Awards, margin number 1620:

> "It seems clear to the Tribunal, on the facts, that Yukos' operations under the DTA [Double Taxation Agreement] were wholly conducted by Mr. Lebedev from Yukos' established offices in Moscow, that his 'place of management' where he habitually concluded contracts relating to operations under the Treaty was in Moscow, which of itself demonstrates that Yukos' avoidance of hundreds of millions of dollars in Russian taxes through the Russia-Cyprus DTA, was questionable. Hulley appears to the Tribunal to have falsely declared on Cypriot withholding tax forms that 'income'—dividends from Yukos—'was not connected with activities carried on in the Russian Federation' despite Mr. Lebedev's activities in Moscow". (emphasis added)

65. On 26 February 2019, HVY submitted a so-called "submission" of 685 pages, accompanied by approximately 900 reports, exhibits and appendices. They have devoted no more than a single paragraph to the abuse of the Tax Convention. This paragraph reads that "*alleged violations of the DTA*" are disputed.[117] An explanation is missing, because these setting aside proceedings allegedly do not allow for "*re-conducting the debate about the alleged violations*".[118] In HVY's Submission of 26 February 2019, HVY submitted statements by virtually all those who were personally involved in the evasion of dividend taxation, including the Oligarchs Lebedev, Nevzlin

---

[115] It concerns the expert reports of 1 April 2011 and 15 August 2012. Prof. Rosenbloom's 1 April 2011, para. 77 (**Arbitration Exhibit**). See summary in Final Awards, margin numbers 204-210 (**Productie RF-02 = iPad-2.g**).

[116] Final Awards, paras. 1291-1306, 1616-1621 (**Productie RF-02 = iPad-2.g**).

[117] "Submission" HVY, para. 1216.

[118] "Submission" HVY, para. 1216.

and Dubov. The detailed statements do not contain any reference to dividend tax, tax treaties or false tax returns.[119]

66. **Conclusion**: The Russian Oligarchs had Hulley and VPL established for no other purpose than to evade taxes. The Russian Oligarch Lebedev has personally filed false tax returns on behalf of Hulley. He therefore directly and personally determined Hulley's policy. Those factual conclusions are of major importance in these appeal proceedings. In what follows, I will explain that letterbox companies that avoid taxes are **not** protected (Jurisdiction Ground 2).

C. Fraud in low tax regions (1997-2004)

67. Within the Russian Federation, the Russian Oligarchs committed tax fraud by setting up shell companies in low-tax regions such as Trekhgorny, Lesnoy and Mordovia. Prof. Koppenol-Laforce will speak about this later today.

68. These sham companies all purchased oil from production companies at non-arm's length prices. They sold the oil on for higher prices and thus made billions in profits. These profits were virtually untaxed. The undeclared funds of these sham companies were then partially returned to Yukos, for instance in the form of a series of "unilateral gifts."[120] These funds were also siphoned off through an obscure network of companies to *offshore* bank accounts. Parts of these funds have been distributed to HVY in the form of dividends.[121]

69. Tax fraud has been discussed in detail in several other proceedings. In this context, it is worth noting in particular two unanimous decisions by two

---

[119] See RF's Submission, para. 212.

[120] See first ECtHR judgment (**Exhibit RME-3328**), paras. 592-593.

[121] See, for example, Hulley's 2003 annual report (7 April 2004) (**Exhibit RME-190**) and VPL's 2003 annual report and annual accounts (15 December 2006) (**Exhibit RME-192**).

separate chambers of the ECtHR. In those decisions it was established that Yukos was evading taxes on a massive scale. Evidence of fraud with the help of sham companies was abundant.[122] Both ECtHR Judgments were upheld by the Grand Chamber of the ECtHR, after unsuccessful appeals by Yukos and Khodorkovsky.[123]

70. In 2011, in the case of *Yukos v. Russia*, the ECtHR ruled unanimously that Yukos Oil Company was indeed guilty of large-scale tax evasion:

> "590. The Court has little doubt that the factual conclusions of the domestic Courts in the Tax Assessment Proceedings 2000-2003 … were sound.…
>
> 591. … [T]he company's 'tax optimisation techniques' applied with slight variations throughout 2000-2003 consisted of switching the tax burden from the applicant company and its production and service units to letter-box companies in domestic tax havens in Russia. ***These companies, with no assets, employees or operations of their own, were nominally owned and managed by third parties, although in reality they were set up and run by the applicant company itself.*** In essence, the applicant company's oil-producing subsidiaries sold the extracted oil to the letter-box companies ***at a fraction of the market price***. The letter-box companies, acting in cascade, then sold the oil either abroad, this time at market price or to the applicant company's refineries and subsequently re-bought it at a reduced price and re-sold it at the market price. ***Thus, the letter-box companies accumulated most of the applicant company's profits. Since they were registered in domestic low-tax areas, they enabled the applicant company to pay substantially lower taxes in respect of these profits.*** Subsequently, the letter-box companies transferred the accumulated profits unilaterally to the applicant company as gifts. The Court observes that substantial tax reductions were only possible through the mixed use and simultaneous application of at least two different techniques. The applicant company used ***the method of transfer pricing***, which consisted of selling the goods from its production division to its marketing companies at intentionally lowered prices and ***the use of sham entities registered in the domestic regions with low taxation levels and nominally owned***

---

[122] First ECtHR Judgment (**RF-03.2.C-2.3328**, **Exhibit RME-3328**), Second ECtHR Judgment (**Exhibit RF-04 = iPad-2.g**). See also Summons, paras. 344-350, Reply, paras. 317-319, with various references to the First ECtHR Judgment and Second ECtHR Judgment. Paras. 588-606 of the First ECtHR Judgment in particular are relevant in this context.

[123] See Defence on Appeal, paras. 593-596.

> ***and run by third persons*** (see paragraphs 14-18, 48, 62-63 for a more detailed description).
>
> 592. The domestic courts found that such an arrangement was at face value clearly unlawful domestically, as it involved the fraudulent registration of trading entities by the applicant company in the name of third persons and its corresponding failure to declare to the tax authorities its true relation to these companies (see paragraphs 311, 349-353, 374-380). This being so, **the Court cannot accept the applicant company's argument that the letter-box entities had been entitled to the tax exemptions in questions**. For the same reason, **the Court dismisses the applicant company's argument that all the constituent members of the Yukos group had made regular tax declarations and had applied regularly for tax refunds and that the authorities were thus aware of the functioning of the arrangement**. The tax authorities may have had access to scattered pieces of information about the functioning of separate parts of the arrangement, located across the country, but, given the scale and fraudulent character of the arrangement, they certainly could not have been aware of the arrangement in its entirety on the sole basis on the tax declarations and requests for tax refunds made by the trading companies, the applicant company and its subsidiaries.
>
> 593. **The arrangement was obviously aimed at evading the general requirements of the Tax Code**, which expected taxpayers to trade at market prices (see paragraphs 395-399), and by its nature involved certain operations, such as unilateral gifts between the trading companies and the applicant company through its subsidiaries, which were incompatible with the rules governing the relations between independent legal entities (see paragraph 376)."[124]

71. In the case of *Khodorkovsky and Lebedev v. Russia*, a different Chamber of the ECtHR came to the same unanimous conclusion in 2013.[125]

72. Following the ECtHR's example, the Amsterdam Court of Appeal also ruled in 2017:

> "... that there has been large-scale and prolonged tax evasion with regard to the taxation of profits by using legal entities with no real activities (the sham entities, also referred to hereinafter as sham

---

[124] First ECtHR Judgment (**Arbitration Exhibit RME-3328**).

[125] ECtHR 25 July 2013, case no. 11082/06 and 13772/05 (*Khodorkovsky and Lebedev v. Russia)* (**Exhibit RF-4 = iPad-2.g**)

> companies), whose only purpose was to facilitate and conceal Yukos Oil's conduct.[126] (…)
>
> The Court of Appeal agrees with the ECtHR's opinion that Yukos Oil has committed fraud with regard to the taxation of profits because of the way in which it used the sham companies."[127]

D. Russian Oligarchs obstructed justice

73. The fourth and last category of illegal actions relates to the obstruction of justice after the fraud was uncovered at the end of 2003. At least two eye witnesses have for example described how the order was given for the mass destruction of documents. The process in which documents where shredded and hard disks destroyed lasted weeks and concerned multiple departments.[128] HVY have not substantially disputed these statements.[129]

74. HVY further failed to dispute that at least US$ 6 billion was transferred to *offshore* bank accounts.[130] The Russian Oligarchs are still in possession of multiple billions, which they used to buy a range of high-end hotels in *inter alia* Miami Beach, New York and Chicago. For a number of pictures hereof I refer to the exhibits.[131]

---

[126] Amsterdam Court of Appeal 9 May 2017, (*Godfrey et al./Promneftstroy*), ECLI:NL:GHAMS:2017:1695, para. 4.27

[127] *Id.*, para. 4.60.2.

[128] See Expert Opinion of Dmitry Gololobov (**Exhibit RF-G2 = iPad-66.b**), para. 75 and the interrogation protocol of Alexey Kurtsin (RME-416), pp. 2-3. See also the accountancy's e-mail of 15 March 2002 (**Exhibit RF-484 = iPad-106.a**).See Defence on Appeal paras. 604-605; Submission RF, paras. 241-243; RF Counter-Memorial on the Merits, para. 681; RF Rejoinder on the Merits, para. 723.

[129] They only submitted a witness declaration concerning the destruction of the administration of Bank Menatep at the end of the 1990ies and they have unconviningly attempted to challenge the credibility of witnesses. See Submission RF, paras. 241-243.

[130] See Defence on Appeal, Chapter III with references and paras. 607-614; Submission RF, paras. 244-250.

[131] See Submission RF, paras. 246-248 and 'Investigation: Khodorkovsky hotels in the USA', *Forum Daily* dated 1 June 2015; available on line at: https://www.forumdaily.com/en/aktivy-hodorkovskogo-ne-znaem-o-takih/.

IV. UNINTERRUPTED CONTROL OF YUKOS SHARES BY RUSSIAN OLIGARCHS SINCE 1995[132]

A. The essence of the structure: *Russian Sandwich*

(a) Russian Sandwich

75. Since 1995/96 the Russian Oligarchs have continuously controlled the Tainted Shares in Yukos. In fact, nothing has changed since 1995/96. That is of major importance to these setting aside proceedings. As will be explained later, domestic investments and investments obtained in violation of the law are not protected (see §§ V.C(a)-134 below).

76. The Tribunal held that Yukos' structure was "*complex*" and "*opaque*".[133] An Appendix to the Interim Awards shows the structure as at 20 October 2003 in a diagram. In these proceedings, this diagram became known under the name the "Russian Sandwich", because the letterbox companies and trusts were sandwiched between Russians: Russian Oligarchs at the top and Russian Yukos Oil at the bottom:

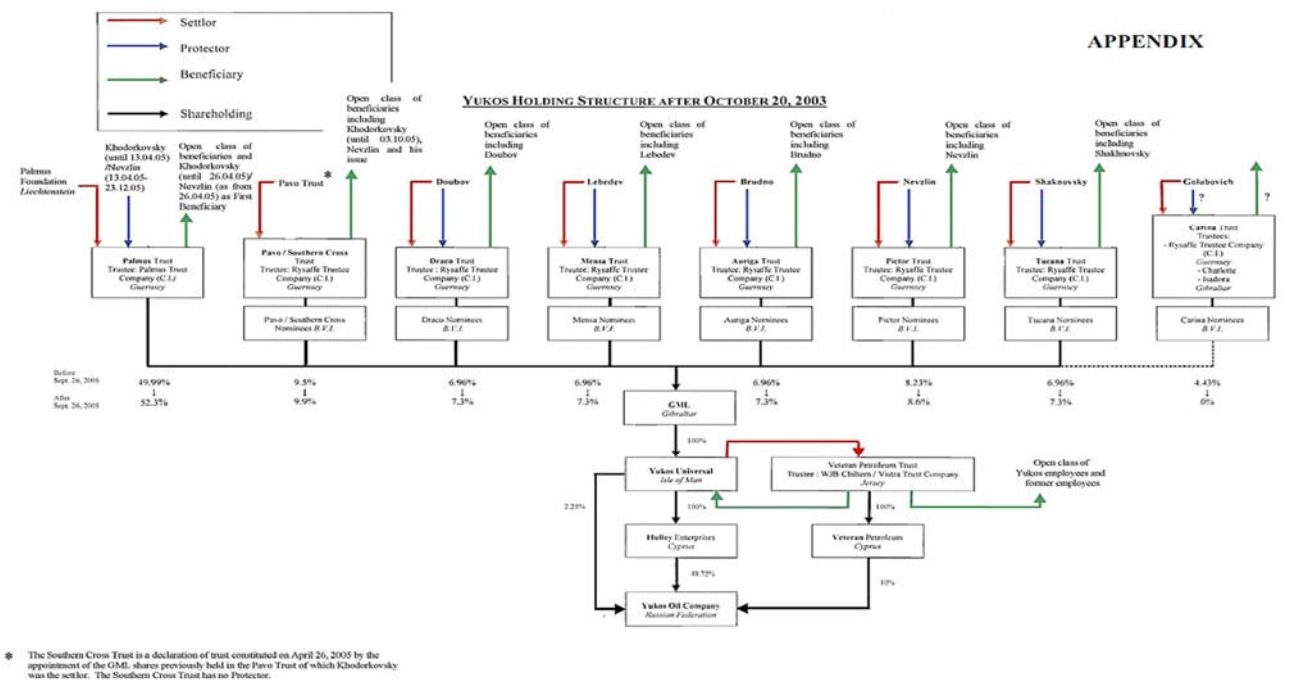
---

[132] See Defence on Appeal, paras. 617-647 with references, and RF's Submission, paras. 122-148 with references.

[133] Final Awards, margin number 1808: "*Finally, and perhaps most significantly, there are the risks associated with the complex and opaque structure set up by Claimants, or by others on their behalf, in order to transfer money earned by Yukos out of the Russian Federation through a vast offshore structure. This structure is well documented in the reports of Professor Lys. An organizational chart attached as an appendix to a letter from PwC Cyprus to PwC Moscow dated 10 April 2003 shows the complexity of the structure as of that date, and the fact that Yukos' control over it was established by means of call options. With this structure, Yukos was able to consolidate the profits of the trading companies and offshore holding companies (entities within its "consolidation perimeter") into its results while remaining 'free to segregate these profits from minority shareholder claims whenever it served the majority shareholders' or management's interests*."

UNOFFICIAL TRANSLATION
This text is an unofficial translation of the Dutch original. In case of any discrepancies, the Dutch original shall prevail.

Russian Sandwich



* The Southern Cross Trust is a declaration of trust constituted on April 26, 2005 by the appointment of the GML shares previously held in the Pavo Trust of which Khodorkovsky was the settlor. The Southern Cross Trust has no Protector.

77. The diagram shows eight trusts. They are established in Guernsey and Jersey:

- They jointly hold 100% of the shares in GML (Gibraltar);
- Through YUL, Hulley and VPL, GML holds over 70%[134] of the shares in Yukos;[135]
- Russian Oligarchs are wearing several hats. They act as "*Settlor*" (set up the Trust), "*Beneficiary*", and "*Protector"* (approves important decisions and appoints the trustee);

---

[134] Final Awards, para. 69 (**Exhibit RF-02 = iPad-2.g**). Their precise importance varied, as set out in detail in the Expert Report of Kothari (**Exhibit RF-D15 = iPad-66.a**).

[135] Timothy Osborne is the director of YUL, Hulley and GML simultaneously, even though he lives in England.

- Almost all the "Trustees" (directors of the Trusts) are the same company. It concerns a trust office. Rysaffe Trustee Company.[136]

- Then, at the bottom of the schedule there is the Veteran Petroleum Trust. In the witness statements of Osborne and Nevzlin, it can be seen that VPL is a pension fund for former Yukos employees.[137] Those "former employees" appear to be mainly the Russian Oligarchs themselves. 100% of the economic benefits of VPL have so far been paid to them. They can also claim 95% to 100% of any future revenues.[138]

(b) Legal control rests with Oligarchs

78. HVY deny the assertion that the Russian Oligarchs have legal control over HVY. They claim that they should not be considered to be the legal owners of HVY. According to HVY, the legal ownership and control over them is allegedly vested in the Trustees of the Trusts.[139] They repeated this assertion in the Statement of Appeal.[140]

79. HVY are trying to construct a *bona fide* claim of a foreign investor. In doing so, they in vain are trying to distance themselves from the Russian Oligarchs. They also try to distance themselves from their illegal activities.

---

[136] "Rysaffe" is an anagram for "Saffery", as in Saffery Champness, which is the accounting firm headed by HVY's witness, Kelvin Hudson. Hudson testifies in these annulment proceedings on the purported independence of the trusts. Exhibit HVY-G5.

[137] Osborne's witness statement (Exhibit HVY-G4 = iPad-98.b), para. 20; Nevzlin's witness statement (Exhibit HVY-G1 = iPad-98.b), para. 62.

[138] See, inter alia, Defence on Appeal, paras. 636-641 and Submission RF, paras. 135-143. VPL admits that virtually all the economic benefits arising from its Yukos shares (including dividends, disbursements and possible proceeds from the sale of Yukos shares) must also be paid to YUL under a trust agreement - so that these economic benefits eventually find their way back to the Russian Oligarchs as well.

[139] See Statement of Defence, para. I.94. See also Statement of Defence, paras. 177-185.

[140] Statement of Appeal, paras. 733, 836; HVY's Submission, chapter 15.3.

80. An extremely superficial reading of general sources of law on the operation of trusts could give the impression that trustees are kind of administrators and therefore have control and power.[141] This is not the case with the trusts based in Guernsey and Jersey. An analysis of the laws and regulations and the small print in the trust documentation show that the real control does not lie with the trustee. It is the so-called "*protector*" who has the actual control. The Russian Oligarchs fulfilled both the roles of beneficiary and protector. Briefly put: (i) as beneficiary they were beneficial owners (ii) as protector they had a veto right over important decisions, and (iii) as protector they could also appoint another trustee at any time.[142] Their assertion that they did not have control is false.[143]

81. The Russian Oligarchs thus retained factual and legal control over the group.[144] The extensive documents, legal opinions and (new) expert opinions

---

[141] See also the corresponding decision in the HEL Interim Award, margin numbers 506-510.

[142] See already the analysis of the underlying documentation under Guernsey's law in Martin Mann's expert report of 22 January 2007, as submitted in the Arbitrations. See for example no. 5.3.3. "*Nevertheless under the express terms of the Auriga Type Trusts the protectors can with impunity veto any important decision made by the trustees, without any fear at all of their conduct being successfully challenged. The protectors have absolute and unfettered powers to remove trustees and to appoint new or additional trustees.*" See also HEL Interim Award, para. 498 on "*provisions in the respective Settlements granting significant powers of consent (and therefore veto) to the Protector*".

[143] See, in the same sense the Amsterdam Court of Appeal judgment, 1 May 2014, ECLI:NL:GHAMS:2014:1797 (http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2014:1797), paras. 4.23 and 4.24. In this case, the beneficiary of a trust (established under Jersey law), which, due to the discretionary nature of the trust on paper, apparently only had a bare expectation of income, was nevertheless taxed for income tax purposes (Box 3) because the beneficiary could not demonstrate that he did not in fact have such an influence on the trustee and his right to payment was indeed only a bare expectation. Thus, the actual control was ultimately decisive and not what was written down in the trust deed. See also *Promyshleniy Bank & Ors. v. Pugachev & Ors* [2017] EWHC 2426 (CH) (https://www.bailii.org/ew/cases/EWHC/Ch/2017/2426.html, for a summary see **Exhibit RF-525 = iPad-125.a**).

[144] Defence on Appeal, paras. 636-645.

do not change the broad powers of the protectors.[145] As Martin Mann QC, expert in the field of trusts, summarises it:

> "This said, I can properly opine from the documents that I have been shown[33] that there would seem not only to be evidence which tends to show that the conduct of GML and HVY, and through them the affairs of the operating entities and trusts, have been orchestrated substantially if not wholly by the Russian Oligarchs themselves rather than the corporate officers or even the professional trustees. Such evidence tends to show that the corporate officers and professional trustees 'danced to the tune' of the Russian Oligarchs, who were apparently 'the real actors' even after the settlement of the trusts in 2001 and 2003."[146] (emphasis added)

B. The Russian Oligarchs had actual control

(a) Introduction: it is a question of actual control

82. For the jurisdiction grounds in these appeal proceedings, it is particularly important who actually exercised control over the shares in Yukos. As the agreement on Article 1(6) of the ECT shows, it is a question of '*actual control*' on the basis of "*the specific circumstances of each case*".[147]

83. The Russian Oligarchs continuously exercised actual control over HVY and Yukos at all times. The sale of shares and the establishment of trusts did not change that. This has also been confirmed by those who were personally involved in shaping the structure.[148]

---

145 HVY's Submission, chapter 15.3. For a refutation, see: RF's Submission, paras. 122-148.

146 Martin Mann QC´s expert opinion of 12 August 2019 (**Exhibit RF-D29 = iPad-114.b**), para. 29(2).

147 Final Act, Understanding IV.3 to Article 1(6) ECT *"(...) control of an investment means control in fact, determined after an examination of the actual circumstances in each situation."*

148 Gitas Anilionis was responsible for the many transactions in which Yukos shares changed ownership. He explains in detail that the Oligarchs maintained actual control. Witness statement of Anilionis of 16 October 2015 (**Exhibit RF-200 = iPad-21. b)**, *inter alia* paras. 7 and 33. "33 (…) In practical terms, therefore, the shares were

84. The director of GML - Osborne - once publicly stated in an interview with the Financial Times that the trustees were only "*proxies"* (i.e.: agents, representatives) of the Russian Oligarchs.[149]

85. The Russian Oligarch Nevzlin is the main beneficial owner in these proceedings. His personal interest amounts to USD 35 billion, plus interest. In these appeal proceedings, two witness statements were introduced, which he drew up in close cooperation with his lawyers.[150] In summary, Nevzlin categorically denies that he exercised actual control over HVY.

86. The Russian Federation never had access to documents from the administration of foreign letterbox companies such as Hulley, Veteran, YUL and GML. This has changed recently due to, among other developments, the litigation in New York between the Russian Oligarchs' subordinates

---

actually owned and controlled by Mr. Khodorkovsky, Mr. Lebedev, Mr. Nevzlin, Mr. Brudno, Mr. Dubov (…) As I understand it, all of the transactions executed by my employees at RTT were designed to conceal the actual ownership and control (…)".)

Russian Oligarch Golubovich declared on the establishment of the Jersey and Guernsey trusts. He stated that the essence of the construction was that the Russian Oligarchs retained actual control. See Defence on Appeal, para. 645; Witness statement of Golubovich, **Exhibit RF-300 = iPad-66.c**), p. 7-8. "(…) the system of holding shares in Menatep Group through trusts was set up (…) in such a way that a person he deems essential, i.e., himself, Platon Lebedev or Nevzlin, or some other person in order of priority (…) always has control over the shares (…) the essence of it is that control over all the shares of Menatep Group via these trusts was in any case exercised by the head of the group, who was able to appoint the trustees."

Gololobov was Head of Legal Affairs. He confirmed that the Russian Oligarchs have direct control over HVY and Yukos. According to him, the establishment of the trusts did not change this in any practical or actual way. See Defence on Appeal, para. 645; Witness statement Gololobov (**Exhibit RF-G2 = iPad-66.b**), para. 26. *"I note that the creation of these trust structures had no practical effect on the ability of the Oligarchs to direct the actions of GML and, therefore, exercise complete control over Yukos."*

149 HEL Interim Award, para. 507. "*Respondent quotes from a report in the Financial Times of an interview with Tim Osborne on 18 June 2004. According to the Financial Times, Tim Osborne "stressed that he and his fellow directors took their instructions from the trustees of Menatep—proxies for Mr. Khodorkovsky and his partners.*"

150 See Exhibits HVY-G1 and G7 = iPad-98.b and 117.b. Exhibit HVY-G1 = iPad-98.b: *"3. This witness statement has been prepared with the assistance of the lawyers of de Brauw Blackstone Westbroek N.V.*"

(including David Godfrey, Daniel Feldman, and Bruce Misamore). The Russian Federation has now exhibited communications amongst these subordinates.[151]

(b) HVY's "impotent directors"

87. Nevzlin states that he has allegedly never exercised any control over HVY. Indeed, these companies supposedly had their own directors:

> "I never controlled these companies in any sense, as they had their own boards of management."[152]

88. GML's own documents show how companies such as Hulley were established. On the slide, the fax, introduced as Exhibit RF-440, is shown. If you read it, it becomes clear that Victor Prokofiev – a close confidant of Khodorkovsky[153] – gave instructions from Moscow to establish Cypriot companies. A copy of the fax had been sent to Gitas Anilionis, Russian Oligarch Lebedev's right-hand man. You can see his name in the lower left-hand corner. The instructions in the letter make clear its intention: to create companies "*of the "impotent directors" type*", which explicitly included Hulley itself. The fax shows that all relevant decisions required the consent of the shareholders.

---

[151] See para. 10 *above.*

[152] See HVY G-1, para. 61-63. Strictly speaking, the quote refers to YUL and Hulley, but Nevzlin has made similar statements about VPL in the relevant paragraphs.

[153] Viktor Porkofiev was senior assistant to Khodorkovsky (see **Arbitration Exhibit RME-160**, p. 28). He also played an important role within GML (see for example C-1237).

UNOFFICIAL TRANSLATION
This text is an unofficial translation of the Dutch original. In case of any discrepancies, the Dutch original shall prevail.

Exhibit RF-440

VIA FACSIMILE ONLY

URGENT
Please deliver immediately

February 16, 1998

Mr. Stephen Curtis
Curtis & Co
94 Park Lane
London W1Y 3TA
fax: (44-171) 409 19 50

Mr. Christis Christophorou
Chrysanthou & Christoforou
Corner Th. Dervis-Florinis Street
P.O. Box 1675, Nicosia, Cyprus
fax: (357-2) 473 909

Dear Christis and Stephen,

I am sending this fax to both of you simultaneously in the runup to a conference call that I would like to have, preferably tonight or tomorrow morning.

In the context of the Yukos holding structure that we worked on together, we would need yet another, sixth Cyprus Ltd Co to be formed as soon as possible. You will recall that as of today, we have five Ltds: Hulley Ltd and the other four, which are held by Hulley (Kincaid, Wandsworth, etc). Of these five companies, only Kincaid has a peculiar set of Articles, which enables the Kincaid directors to dispose of assets without reference to the EGM. The other four Ltds, including the parent Hulley Ltd itself, have absolutely identical Articles (or so I hope - Stephen, please confirm!) which require the directors to clear all dispositions of assets with the shareholders.

The sixth company that we will need to have formed will be similar to, say, Wandsworth, in that it should be 100% held by Hulley, and should be of the "impotent directors" type. The matter is so urgent that I would need your advice as to what is faster - to acquire an existing shelf company or form a new one.

The budget, as usual, shall be provided by JV "RTT", which I am copying into this correspondence.

Gentlemen, may I impose on you to start working on this without delay, and I look forward to discussing this with you (and Stelios?) at your earliest convenience (Stephen, I recall Stelios raised some queries on this sometime ago which I hope have since been resolved).

Thank you!

Yours sincerely,

Victor

Victor Prokofiev

cc Mr. Guitas Antitonis

89. The Russian Oligarchs engaged third parties to act as "*impotent directors*". For example, the Cypriot company "Excel Serve" was engaged by GML to manage VPL. The agreements that were made in this context are summarised

in an e-mail. There was a need for people who "*create the impression that they are in charge of companies*":

> "The whole basis of the agreement between GML and Excel is [for Excel-Serve] to act as front runners to the Cyprus companies of the group, i.e. to provide individuals who act as directors to these companies and for these individuals to appear to be managing the companies by administering their bank accounts and signing all agreements and contracts."[154] (emphasis added)

90. The internal documents show that the actual control was never transferred to a Cypriot service provider.

(c) The effective control over the trusts

91. Nevzlin declared that he transferred the ownership and control over billions to trustees in Guernsey and Jersey in late 2003. Nevzlin emphatically denies that he exercised any effective control over the group after that:

> "64. By the end 2003, all of our shares in GML had been transferred into trusts. They have since been owned by the trustees of the trusts, who act completely independently from my former partners and me. (…) I have never intervened with any of the decisions taken by the trustees, nor have I tried to influence any of their decisions or to circumvent them in any manner."[155] (emphasis added)

92. This declaration is already wrong because Nevzlin (just like the other Oligarchs) was the protector of their "own" trusts and already took decisions in that capacity. In reality, this was in truly the case. Due to considerations of time, I will only discuss three examples from GML's own documents that demonstrate the contrary.[156]

---

[154] E-mail from Panos Papadopoulos to Curtis & Co. dated 19 January 2004 (**Exhibit RF-471 = iPad-106.a**).

[155] Exhibit HVY-G1 = iPad-98.b.

[156] See Defence on Appeal, paras. 636-640, and RF Submission, para. 133, for some other examples.

(i) Minutes of the meeting of GML's Advisory Board of 14 and 15 December 2003

93. On 14 and 15 December 2003 a meeting of GML's Advisory Board was held. The minutes reveal the following. First: the trustees from the Guernsey trusts were not present. Second: Nevzlin was present as the "*senior representative of*" GML. He actively participated in the meetings. Third: during the meeting, it was indicated that the shareholder structure had remained "largely unchanged in practice", even though the Guernsey trusts had been created (on paper) several months before this meeting.[157]

94. Four weeks before the hearing, Nevzlin signed a second witness statement. In that statement, Nevzlin stated that he is not concerned with the amount of USD 35 billion, but with the truth.[158] He declared that he had never seen these minutes before. It was supposedly completely unclear who drew up those documents and when.[159] Nevzlin also disputed the content of the minutes: "*I did not act as a representative of GML*".[160]

95. A brief response: two weeks before the hearing an email of 6 February 2004 was entered into the proceedings (Exhibit RF-514). This email originated from GML's own documents. This email describes that the minutes were drawn up by Nevzlin's own PR advisor: APCO Worldwide. Margery Kraus of APCO Worldwide was a member GML's Advisory Board. Jaselle Williams of APCO Worldwide was also present at the meeting. She shared the minutes in question to all the members of the Advisory Board by email on 6 February 2004.

---

[157] RF Submission, ¶ 133(ii). See Minutes GML Advisory Board Meeting 14 and 15 December 2003 (**Exhibit RF-445 = iPad-106.a**).

[158] Exhibit HVY-G7 = iPad-123.c, para. 3,

[159] Exhibit HVY-G7 = iPad-123.c, para. 20: "*20. I have never seen this document previously. It is not signed, and it is unclear who prepared this document and when*."

[160] Exhibit HVY-G7 = iPad-123.c, no. 19 et seq.

(ii) Multimillion dollar contracts with Kagalovsky

96. In January 2004, GML entered into multimillion dollar contracts with the aforementioned Konstatin Kagalovsky.[161] These contracts were not signed by the trustees of the trusts. Nor were they signed by GML's director. They were signed by "GML in the person of Nevzlin".

97. In his new statement Nevzlin denies that he signed the contracts on behalf of GML.[162] Supposedly, he signed the agreement on behalf of "Group Menatep". According to him, that term refers to the Russian Oligarchs. The English translation – which states that Nevzlin acted on behalf of GML – is supposedly incorrect.[163]

98. A brief response: documents submitted at a later date show that the English translation was drawn up and disseminated by an employee of GML Services, Maria Puzitskaya.[164] Recently submitted documents also show that GML executed the agreements.[165]

99. The point is that Nevzlin effectively determined the policy for GML and HVY by appointing Kagalovsky. He handled the filling of a key position. Kagalovsky was to negotiate with the tax authorities on behalf of HVY and Yukos.

---

[161] **Exhibit RF-441 = iPad-106.a**, and **Exhibit RF-442 = iPad-106.a**. At the time. Kagalovsky had a top position at Bank Menatep. He was also closely involved in the auctions in 1995-1996 (see para. 22 above).

[162] Exhibit HVY-G7 = iPad-123.c, no. 24 et seq.

[163] Exhibit HVY-G7 = iPad-123.c, no. 24 et seq.

[164] **Exhibit RF-515 = iPad-125.a**.

[165] **Exhibit RF-516 = iPad-125.a**.

(iii) Nevzlin approved multimillion dollar transactions.

100. The Russian Federation submitted handwritten notes of a meeting dated 12 December 2003.[166] These notes demonstrate that Nevzlin personally agreed with the payments made by GML and YUL amounting to many hundreds of millions ("*Mr. N agreed with the payments made*"). It concerns, among other things, a payment of more than US$ 438 million by YUL to the offshore company, Tempo Finance, of the Red Directors.

101. In his new statement, which was submitted four weeks before the hearing, Nevzlin emphatically denied that he approved the payments on 12 December 2003: "*I did not "approve" any (...) payments*". Nevzlin states that all payments allegedly "*had already been made"* prior to the meeting of 12 December 2003. He goes on to say that the handwritten minutes were allegedly "*not executed with due care*", given that they provide that US$ 500,000 was allegedly paid to the Khodorkovsky Foundation. According to Nevzlin, this concerned a much higher amount.[167]

102. Brief response: A spreadsheet with payment data was submitted two weeks before the hearing (Exhibit RF-513). Once again, the document originates from GML's own administrative accounts. It follows from that document that payments were made *after* 12 December 2003. The document also makes it clear that the handwritten minutes are accurate: on 24 December 2003 an amount of exactly US$ 500,000 was transferred to the Khodorkovsky Foundation.[168] Moreover, YUL's own bank records show that the payment to

---

166 Handwritten notes of James Jacobson on "Payments made and signed by Stephen Curtis" (**Productie RF-443 = iPad-106.a**).

167 Exhibit HVY-G7 = iPad-123.c, paras. 14-18.

168 The document also shows that additional payments were made afterwards, adding up to a total amount of US$ 500,000,000. That does not alter the fact that James Jackobson's handwritten minutes are accurate.

Tempo Finance of US$ 438 million also was transferred on 17 December 2004 – which was also after 12 December 2003.[169]

(iv) Conclusion

103. These examples illustrate that effective control of the group at all relevant times was vested in the Russian Oligarchs.

C. Transparency, corporate governance and a possible IPO (2003)

104. Finally, a few words about transparency, corporate governance, PR campaigns and the possible IPO of Yukos.

105. As explained above, Yukos had an extremely dubious reputation at the end of the 1990s (see § 49-51). After Khodorkovsky had strengthened his grip on the company, he wanted to polish up his bad reputation. The New York Times of 18 August 2001 headlined, accurately: "*Fortune in Hand, Russian Tries to Polish Image*."[170] For example, Yukos published a "Corporate Governance Charter" in which Yukos declared its commitment to "*international*

---

[169] Appendix MP-066 to the Expert Report of prof. Pieth dated 27 January 2017 (**Productie RF-D13, Bijlage MP-066 = iPad-66.a**).

[170] New York Times, 18 August 2001, Sabrina Tavernise, "*Fortune in hand, Russian tries to polish image"*, available at https://www.nytimes.com/2001/08/18/business/international-business-fortune-in-hand-russian-tries-to-polish-image.html?%20pagewanted=all "*Mr. Khodorkovsky sat under a sign saying 'Honesty, Openness, Responsibility' in late June to discuss the company's latest financial results with reporters with an air of friendly candor. It was quite a performance, particularly for a man who two years earlier orchestrated a series of flagrant corporate abuses of minority shareholders unparalleled in the short history of modern Russian capitalism, setting what one Moscow brokerage firm called a benchmark for unacceptable behavior*.") (**Exhibit RF-G2, Appendix DG-064 = iPad-66.b**); also see Lucy Komisar, "*Yukos Kingpin on Trial*", 10 May 2005, ("*The media in the West, on the other hand, seems bent on portraying Khodorkovsky as a victim of politics. Major U.S. media routinely obscure references to the man's criminality, calling his past 'murky' and the fraudulent privatizations 'cut-price' and 'controversial*.'" https://corpwatch.org/article/yukos-kingpin-trial https://corpwatch.org/article/yukos-kingpin-trial (**Exhibit RF-97 = iPad-12.a**).

principles of good corporate governance".[171] In order to polish his own reputation, Khodorkovsky spent many millions on engaging one of the leading PR firms, Washington-based APCO Worldwide. They introduced him to American politicians, arranged interviews, etc.[172]

106. Khodorkovsky wanted to further enhance his prestige by, among other things, having Yukos go public in the United States. The problem his advisers were asked to address,[173] however, was that US laws and regulations on stock exchange listings required the disclosure of all relevant information about the company (the "F-1 Registration Statement"). But in an attempt to map out these relevant facts, one skeleton after the next fell out of the closet. These were internally classified as the "*old sins*". These included the illegal activities discussed above. It proved quite impossible to conceal all these sins.[174] Khodorkovsky feared that disclosure of the old sins would lead to "*de-privatization*" and criminal prosecution. He then abandoned the plan for the U.S. IPO in 2003.[175]

107. There was no disclosure of old sins. Nevertheless, it is maintained to this day that Yukos was allegedly a modern, transparent company. Even in this appeal procedure, party statements refer to alleged '*transparency*' and '*good governance'*. The same statements do not contain any reference to shadowy transactions, opaque structures, false tax returns or bribes. The Tribunal has

---

171 Gololobov's witness statement, para. 44 (**Exhibit RF-G2 = iPad-66.b**).

172 According to the lobbying disclosures filed in the United States, GML spent millions of dollars every year on PR services and lobbying in order to spin the Russian Oligarchs– first as respectable businessmen and then subsequently as oppressed political figures.

173 The external counsel Clifford Chance, Cleary Gottlieb and Atkin Gump and tax consultants (PricewaterhouseCoopers). Contrary to HVY's claims (HVY's Submission, para. 817(99)), White & Case was not involved in the Tempo Contract.

174 *Id.* paras. 47-51.

175 *Id.* paras. 56-58. Level 1 ADRs had been issued, but these required less to be disclosed. For an explanation to Level 1 and Level 3 ADR.

rightly dismissed the claims concerning transparency and corporate governance as nothing more than a façade.[176]

108. Later, after additional tax assessments were imposed, more millions were spent – also in the Netherlands – in order to polish reputations. GML's own documents also contain internal PR opinions from APCO Worldwide. They describe the "*all-out assault"*, the "*public relations Blitz"* and the "*war"*.[177]

109. As the European Court of Human Rights concluded in a similar context, the Yukos case has "attracted massive public attention" but statements resulting from the Russian Oligarchs' lobbying campaign must be understood as having "little evidentiary value".[178]

110. The Russian Federation respectfully requests this Court of Appeal not to base its judgment on media reports or witness statements of recent date, but rather on documentary evidence from the period 1995-2003.

V. LEGAL ASPECTS OF JURISDICTION GROUND 2

A. Introduction

111. After this factual explanation, it is clear that the Yukos Awards must be set aside pursuant to Article 1065(1)(a) DCCP due to the lack of a valid arbitration agreement, as HVY cannot invoke the arbitration clause in Article 26 ECT.

112. The scope of the arbitration clause in Article 26(1) ECT is limited to: "*Disputes between a Contracting Party and an Investor of another*

---

176 Final Awards, margin number 1809.

177 **Exhibit RF-454 = iPad-106.a**.

178 *OAO Neftyanaya Kompania Yukos v. Russia*, EHRM, Appl. No. 14902/04, Judgment, 20 September 2011, para. 665 (**Arbitration Exhibit RME-3328**).

Contracting Party relating to an Investment of the latter in the Area of the former (...)" This dispute does not fall within the scope of the arbitration clause. There is no "*investor*", there is no "*investment"* and there is no investment in "*another Contracting Party"*.

B. HVY are not "Investors" and did not make "Investments" within the meaning of the ECT because the ECT does not offer protection for "U-turn" investments by nationals of a host country through letterbox companies[179]

113. A fundamental feature of investment law is that "*investment law aims at protecting international investment and not domestic investments"*.[180] As professor Pellet convincingly explains, the object and goal of the ECT – as is the case for other investment treaties – is therefore limited to the protection of foreign investments.[181]

114. This is a matter involving Russian Oligarchs who[182] "invested" Russian funds in the Russian Federation. It involves a domestic investment. Domestic investments are not protected, not even if the funds are diverted via an offshore letterbox company (the so-called "roundtripping" or A-B-A). A "U-turn" investment (State A – State B – State A) does not fall under the ECT and therefore not under Article 26. I would note as follows in this respect.

115. The Tribunal wrongly based its jurisdiction on the definitions in Article 1(6) and (7) ECT without taking heed of the wording in other provisions, the

---

179 Defence on Appeal, paras. 670-700 with references; RF's Submission, paras. 256-295 with references.

180 Akte RF, para. 272.

181 Expert Report prof. Pellet dated 9 November 2017 (**Exhibit RF-D16 = iPad 66.a**), paras. 14-28; Expert Report prof. Pellet of 13 August 2019 (**Exhibit RF-D24 = iPad 114.b**), para. 13; Submission RF, para. 272.

182 What is meant is: funds that ultimately originate from the Russian Federation.

context, subject matter and objective.[183] If one properly looks beyond the bare definitions alone, then it is clear that the Tribunal's ruling cannot be upheld.

116. According to Articles 31 and 32 VLCT, the terms of the treaty do not suffice for the interpretation of the treaty, because meaning must also be given to the terms of the treaty in their context and in the light of its object and purpose:

> "[p]retending that an investment made by Venoklim should be considered as a foreign investment only because this company is incorporated in the Netherlands, even though the investment that is the object of the dispute is in the end the property of Venezuelan legal entities, would allow formalism to prevail over reality and betray the object and purpose of the ICSID Convention."[184] (onderstreping toegevoegd)

> "(…) such a strict literal interpretation may appear to go against common sense in some circumstances, especially when the formal nationality covers a corporate entity controlled directly or indirectly by persons of the same nationality as the host State."[185]

117. Object, purpose and context have been analysed extensively in the Summons, the Reply, the Defence on Appeal, and the Submissions.[186] In summary, this leads to the following.

118. *Wording*: The text of Article 26(1) ECT is limited to: "*Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former (...)*" The text is clear: only disputes with investors "of another Contracting Party" can be submitted

---

183 Interim Awards, paras. 411-417, 419-434.

184 *Venoklim Holdings B.V. v. Bolivarian Republic of Venezuela*, ICSID Case Nr. ARB/12/22, award dated 3 April 2015, para. 156 (**Exhibit RF-145 = iPad-12.a**).

185 *TSA Spectrum de Argentina S.A. v. Argentine Republic*, ICSID Case Nr. ARB/05/5, award dated 19 December 2008, paras. 144-146 (**Exhibit RF-74 = iPad-2.g**).

186 Summons, paras. 248 et seq., Reply, paras. 227-251; Defence on Appeal, paras. 671-684; RF's Submission, paras. 256-272.

to arbitrators. They must therefore be foreign investors and foreign investments.

119. *Object and purpose:* The ECT is intended to promote and protect foreign investments.[187] Object and purpose of the ECT are to create a "*framework for international cooperation*"[188] "*to capitalize on the complementary relationship between the European Economic Community, the USSR and the countries of Central and Eastern Europe*"[189], to "*establish a legal framework in order to promote long-term co-operation in the energy field, based on complementarities and mutual benefits in accordance with the objectives and principles of the* [European Energy] *Charter"*[190], in order to create a favourable climate for the "*flow of the investments and technologies*" and to promote "*the international flow of investments"*[191]. In the words of the Dutch legislature: *"the treaty [creates] an attractive regime for foreign investors".*[192] The ECT is not intended to protect domestic investors and investments, even if a foreign holding has been inserted.

120. *Context:* Articles 10(1), 13 and 17 ECT make it contextually clear that "U-turn" investments are not protected:[193]

---

187 Reply, paras. 227, 232; Defence on Appeal, paras. 671-675.

188 ECT Introduction, para. 2.

189 Communication from the EC Commission on European Energy Charter, COM(91) 36, 14 February 1991, para. 1,2 (**Exhibit RF-5 = iPad-2.g**).

190 Article 2 ECT.

191 Concluding Document of The Hague Conference on the European Energy Charter, (17 December 1991), Title I, Objectives (**Arbitration Exhibit C-2**), 214, 218; Reply, para. 227 and Defence on Appeal, paras. 671-675.

192 *Parliamentary Papers II*, 1995/96, 24 545 (R 1560), no. 3, p. 11.

193 Summons, paras. 256, 262-264, Reply, paras. 226-236 and Defence on Appeal, paras. 677-684.

- Article 10(1) ECT ("Promotion, Protection and Treatment of Investments") refers to "*investors of other Contracting Parties to make investments in its area*".

- Article 13 ECT ("Expropriation"): also refers to "*[i]nvestments of investors of a Contracting Party in the area of any other Contracting Party*".

- Article 17(1) ECT ("Denial of benefits") provides that treaty protection can be denied if subjects of a third state own or control a legal entity and this legal entity does not have any substantial business activities on the territory of the Contracting State. This applies *a fortiori* to the shareholders of the host state.[194]

- Final Act, Understanding IV.3 to Article 1(6) ECT:

> "For greater clarity as to whether an Investment made in the Area of one Contracting Party is controlled, directly or indirectly, by an Investor of any other Contracting Party, control of an investment means control in fact, determined after an examination of the actual circumstances in each situation." (emphasis added)

121. *Travaux préparatoires*. The States that were involved in the negotiations wanted to prevent the ECT from being abused by investors simply circulating funds.[195]

---

[194] Reply, para. 233; Defence on Appeal, paras. 680-682. The Tribunal fails to recognise this in the Interim Awards, paras. 432-433.

[195] European Energy Charter Conference Secretariat, Document 31/92 – BA 13, June 19, 1992, p. 14, (C-928). Incorrect are the assertions in Statement of Defence, paras. 345-348, Rejoinder, paras. 156, 161 and 162. See also Defence on Appeal, paras. 698-700.

122. Your Court is undoubtedly aware of the widely held concerns about the abuse of letterbox companies to obtain or create ECT protection.[196] The widely voiced criticism affects arbitrators who are all too willing to accept jurisdiction. Exhibit RF-508 shows that an amendment to **clarify** the fact that U-turn investors are not protected is now under consideration. The fact that this is considered to be a clarification in and of itself of course indicates that this corresponds already with the current reading of the ECT. In addition, it makes sense.[197]

123. Rules of international law also prohibit investors in investment dispute from bringing an international-law claim against its own State.[198] First, these investment treaties must be interpreted in light of the general principle that the investment protection in international law only covers foreign investments and not domestic investments.[199] The Russian Federation referred to a number of arbitration awards that held that domestic investors are not protected by investment treaties, even if the investment is routed through an offshore 'revolving door' (i.e., a U-turn investment: State A -> State B -> State A).[200]

---

196 See for example the recent investigation report of Eberhard et al. entered into the proceedings as **Exhibit RF-507 = iPad-114.a**.

197 Expert Report of prof. Pellet dated 13 August 2019 (**Exhibit RF-D24 = iPad 114.b**), para. 28.

198 Summons, paras. 268 et seq. and Reply, para. 236; Defence on Appeal, paras. 685-695.

199 Deskundigenrapport prof. Pellet van 13 augustus 2019 (**Exhibit RF-D24 = iPad 114.b**), paras. 25-28: "*Of course States remain free to stipulate whatever they want in treaties. But they are conscious that what they stipulate, or do not stipulate, in treaties will be interpreted according to customary rules of interpretation including by taking into consideration the "relevant rules between the parties" as provided for in Article 31(3)(c) VCLT.*

Among these "relevant rules between the parties", there is the principle according to which the protection of investments in international law protects only international investment and not domestic investments."

200 Summons, paras. 269-272; Reply, paras. 234, 237-243; Defence on Appeal, paras. 690-692. See also *Société Immobilière de Gaëta v. Republic of Guinea*, ICSID Case No. ARB/12/36, Award, 21 December 2015, paras. 181-183 (http://www.italaw.com/sites/default/files/case-documents/italaw7038.pdf). See further A.J.

124. **Superfluously,** the following: it has been explained in detail above that the Yukos shares regularly changed ownership (see §§ 53-56). None of these internal transfers led to a capital injection in the territory of the Russian Federation. HVY did not make any economic contribution in the host country (the Russian Federation). For that reason, too, an "investment" under the ECT has not been made.[201]

125. More superfluously: The abuse by the Russian Oligarchs of HVY's corporate structure for illegal purposes (including tax fraud) justifies "piercing the corporate veil".[202] This is, and will continue to be, nothing more than a case of Russians against the Russian Federation.

126. **Conclusion:** this concerns a case of Russian Oligarchs against the Russian Federation. This dispute does not fall within the scope of Article 26 ECT. This in itself justifies the setting aside of the Yukos Awards.

C. The ECT does not protect HVY's investments because they were made in violation of the law[203]

(a) Legality of the investment

127. HVY's shares in Yukos are "**Tainted Shares**": shares tainted by illegal actions (the auctions in 1995 and 1996) and corruption ("Red Directors") by the Russian Oligarchs (see Chapter II above).

---

van den Berg, 'The Role of Dissenting Opinions, Tokios Tokelès v. Ukraine, ICSID Case No. ARB/02/18, Dissenting Opinion of Prosper Weil', Building International Investment Law; The First 50 Years of ICSID, p. 585 et seq. (**Exhibit RF-207 = iPad-21.b**).

201 Defence on Appeal, paras. 701-709 with references; RF's Submission, paras. 296-300 with references.

202 Defence on Appeal, paras. 710-718 with references; RF's Submission, paras. 301-315 with references.

203 Defence on Appeal, paras. 719-779 with references.

128. HVY itself are letterbox companies. The Russian Oligarchs have abused these letterbox companies for various **illegal purposes**, including (i) the fraudulent abuse of the Double Taxation Agreement between Cyprus and the Russian Federation; (ii) the payment by YUL of at least USD 613.5 million in bribes to the Red Directors;[204] (iii) the concealment of Yukos' ownership and control structure;[205] and (iv) the diversion of illegally acquired wealth from the Russian Federation.[206]

129. It is a fundamental principle of investment arbitration that the investment must be legal and bona fide.[207] The Tribunal confirmed that an investor cannot rely on investment protection if an investment has been acquired in violation of the law: *"An investor who has obtained an investment in the host State only by acting in bad faith or in violation of the laws of the host state, has brought itself within the scope of application of the ECT through wrongful acts. Such an investor should not be allowed to benefit from the Treaty"*.[208]

130. The shares in Yukos were acquired through manipulation of auctions and corruption. The illegally acquired shares were then transferred to affiliated parties in several steps.[209] The Tribunal rightly established that all transactions must be legal and bona fide: "*The Tribunal agrees with Respondent that an examination of the legality of an investment should not be limited to verifying whether the last in a series of transactions leading up*

---

204 See paras. 37-48 above.

205 Defence on Appeal, paras. 617-645.

206 Defence on Appeal, paras. 602-616.

207 Reply, paras. 258-264.

208 Final Awards, margin number 1352 (**Exhibit RF-02 = iPad-2.g**).

209 HVY wrongly argue that the illegality of the acquisition of the Yukos shares by the Russian Oligarchs in 1995-1996 "pertained to the actual making of investments by HVY, namely their acquisition of Yukos shares in 1999-2001". Statement of Appeal, para. 816.

to the investment was in conformity with the law. The making of the investment will often consist of several consecutive acts and all of these must be legal and bona fide."[210]

131. In this case, both (i) the original acquisition of shares through manipulation of auctions and corruption and (ii) the subsequent transfer for the purpose of tax avoidance are in violation of the law. HVY cannot claim investment protection. Therefore, they cannot invoke the arbitration clause either.[211] The Yukos Awards must be set aside on the basis of Article 1065(1)(a) DCC on account of the absence of a valid arbitration agreement, or on the basis of Article 1065(1)(e) DCCP on account of a violation of public policy.[212]

(b) Defects in the Tribunal's assessment

132. The fact that only bona fide investments are protected cannot, in all reasonableness, be in dispute. However, the Tribunal has inimitably refused to apply this rule.

133. **First**, the Tribunal made a serious error in considering that HVY were separate from the Russian Oligarchs and that therefore the illegal acts at the 1995 and 1995 auctions could not be imputed to HVY:[213] *"... the alleged illegalities connected to the acquisition of Yukos through the loans-for-shares program occurred in 1995 and 1996, at the time of Yukos' privatization. They*

---

[210] Final Awards, margin number 1369 (**Exhibit RF-02 = iPad-2.g**). Dutch translation: "*Het Scheidsgerecht is het met Verweerster eens dat een onderzoek naar de rechtmatigheid van een investering niet beperkt zou moeten worden tot het controleren of de laatste van een serie transacties die tot de investering leidde, rechtmatig was. Het doen van de investering zal vaak bestaan uit verschillende opeenvolgende handelingen en deze moeten alle rechtmatig en bona fide zijn*."

[211] See detailed Defence on Appeal, para. 719 et seq. and Reply paras. 258 et seq.

[212] See, for example, Summons, paras. 26-60; Reply, paras. 13, 26-33, 258-273; Defence on Appeal, paras. 516-545.

[213] Like the Tribunal, HVY also argue that they have nothing to do with the Russian Oligarchs and the "Tainted Shares" and other illegalities. That argument fails, See Defence on Appeal, paras. 726-741.

involved Bank Menatep and the Oligarchs, an entity and persons separate from Claimants, one of which – Veteran - had not even come into existence."[214]

134. The Triibunal's opinion that the Oligarchs are "separate from" HVY is obviously wrong.[215] The Russian Oligarchs had uninterrupted control over HVY.[216] This is already clear from the Appendix to the Interim Awards (the Russian Sandwich), cited above.[217] The opinion is also contrary to other parts of the Yukos Awards.[218] In answering the question of whether article 13 ECT ("Expropriation") was violated, the Tribunal holds, for example, that the Oligarchs, including Khodorkovsky and Lebedev, did not have to take into account that "their *investments*" (emphasis added) would evaporate.[219]

135. **Second**: HVY were incorporated to facilitate tax evasion. The Tribunal rightly found that they were directly involved in serious abuses of a tax treaty.

---

[214] Final Awards, margin number 1370 (**Exhibit RF-02 = iPad-2.g**). Dutch translation: "*(...) de vermeende onrechtmatigheden in verband met de acquisitie van Yukos via leningen-voor-aandelen programma in 1995 en 1996, ten tijde van Yukos' privatisering. Zij hadden hadden betrekking op Bank Menatep en de Oligarchen, een rechtspersoon en personen die los stonden van Eiseressen, waarvan een – Veteran – nog niet eens was opgericht*."

[215] See footnote 214.

[216] **Exhibit RF-202 = iPad-21.b**. See also Summons, paras. 30-50.

[217] The Russian Oligarchs recognise this as well. See Summons, footnote 308. See also Iton.TV, *Interview of Leonid Nevzlin*, 23 August 2014, 10:45 (**Exhibit RF-204 = iPad-21.b**), see also other public statements by Nevzlin (**Exhibit RF-205 = iPad-21.b**), Reply, paras. 265-273; Defence on Appeal, para. 668. "*Speaking from Israel, Nevzlin noted his Group Menatep Limited (GML), the holding company for Yukos' main owners in which Nevzlin has a 70-percent stake, was seeking more than $100 billion but 'it is impossible to say that we are not satisfied with the $50 billion*.'" Radio Free Europe, *Former Yukos Official Satisfied With Court Award*, (29 July 2014) (**Exhibit RF-67 = iPad-2.g**)

[218] See HUL Interim Award, margin number 462, YUL Interim Award, margin number 463 and the definition of Oligarchs in the Final Awards.

[219] Final Awards, margin number 1578, "*Not only did Mikhail Khodorkovsky not appear to expect to be arrested even after the arrest of Platon Lebedev, he and his colleagues surely could not have been expected to anticipate the rationale and immensity of the tax assessments and fines. ... They could not have been expected to anticipate that more than thirteen billion dollars in unpaid taxes and fines would be imposed on Yukos for unpaid VAT on oil exports ... They could not have been expected to anticipate that they risked the evisceration of their investments and the destruction of Yukos.*"

On the basis thereof, the Tribunal should have come to the conclusion that a bona fide investment had never existed. The Tribunal should have declared that it had no jurisdiction. The Tribunal, on the other hand, wrongly assessed this abuse only in the context of contributory fault.[220]

136. **Third**: The principle of legality includes the unclean hands doctrine, which is an established principle of international law and public policy.[221] It is therefore incomprehensible and highly extraordinary that the Tribunal had denied the existence of the unclean hands principle in international law.[222] This is despite the fact that a significant number of other arbitral tribunals have declared that they have no jurisdiction because the investment was acquired through illegal acts, including corrupt payments.[223]

VI. CONCLUSION

137. A sham company which: (i) has performed no actual activities on Cyprus or the Isle of Man,[224] (ii) has never invested money in the Russian Federation that did not originate from the Russian Federation, and (iii) was established and used for the purpose of performing illegal acts, is not entitled to investment protection under a treaty.

138. HVY and their shares in Yukos are not protected by the ECT. The ECT is aimed at foreign investments and does not protect investment disputes between Russian citizens and the Russian Federation. Nor does the ECT offer

---

220 The Tribunal has reduced the amount of damages by 25%, see Final Awards, margin numbers 1616-1621, 1633-1637.

221 Defence on Appeal, para. 720.

222 Final Awards, margin number 1358: "*The Tribunal is not persuaded that there exists a 'general principle of law recognized by civilized nations' within the meaning of Article 38(1)(c) of the ICJ Statute that would bar an investor from making a claim before an arbitral tribunal under an investment treaty because it has so-called 'unclean hands'.*"

223 Defence on Appeal, paras. 721-722 with references.

224 See Summons, paras. 248, 257 and footnote 302. HVY admit this.

protection to HVY and their shares in Yukos due to the criminal and illegal background and practices, including fraud, corruption and tax evasion, of HVY and the Russian Oligarchs. HVY therefore could not invoke the arbitration clause in Article 26 ECT and the Tribunal should not have assumed jurisdiction. The annulment of the Yukos Awards must therefore be upheld on the basis of Article 1065(1)(a) and/or (e) DCCP.