

**University
of Basel**

Faculty of Law



**Expert Report Analyzing Documentary Evidence of
Bribery, Corruption, and Money Laundering
Pertaining to the Privatization of OAO YUKOS Oil Company**

27 January 2017

University of Basel
Faculty of Law
Peter Merian-Weg 8, P. O. Box
4002 Basel, Switzerland
ius.unibas.ch

Prof. Dr. Dr. h.c. Mark Pieth
Professor of Criminal Law and Criminology
T +41 61 267 25 39
mark.pieth@unibas.ch

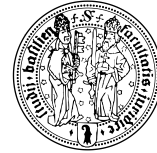
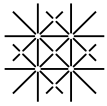
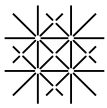


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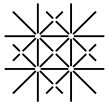


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I. Qualifications

1. I have been a Professor of Criminal Law and Criminology at the University of Basel, Switzerland since 1993, and am the founder and Chairman of the Board of the Basel Institute on Governance. From 1989 until 1993, I was the Section Head for Economic and Organised Crime at the Swiss Federal Office of Justice. From 1990 until 2013, I was the Chairman of the Organization for Economic Cooperation and Development ('OECD') Working Group on Bribery in International Business Transactions. From 2013-2016, I was the Chairman of the Sanctions Appeals Board of the African Development Bank. I also served as a member of the United Nations' Independent Inquiry Committee for the Oil-for-Food Programme in Iraq (the 'Volcker Committee'). As a member of the World Bank Group's Independent Advisory Board, I have also advised the President and Audit Committee regarding anticorruption policies and the performance of the World Bank's Integrity Vice Presidency. I was also appointed to the Committee of Independent Experts, which was established in 2016 after the 'Panama Papers' scandal to reform the practices of the legal and financial industry in the Republic of Panama.¹
2. In these capacities, I have analyzed the documentary record in hundreds of cases of suspected bribery, corruption, and money laundering. I also have taught courses on international corruption at various universities (Basel, Cape Town, Georgetown (Washington D.C.)). I have published and edited multiple books and articles on the subject, including the leading commentary on the OECD Anti-Bribery Convention. In addition, I have advised and served as an expert witness with respect to the international regulation of corruption by States and compliance with these regulations

¹ Together with my colleague, Joseph E. Stiglitz, I ultimately stepped down from the Committee of Independent Experts in August 2016. We subsequently published a separate report, *Overcoming the Shadow Economy* (Nov. 2016) (MP-115) under the auspices of Friedrich-Ebert-Stiftung (FES), a global political foundation headquartered in Germany.



by investors. In 2014, I was awarded an honorary doctorate by the University of Sussex (UK) and, in 2004, I was awarded Transparency International's Integrity Award for my commitment to fighting corruption.

3. My CV is attached at the end of this Expert Report. It sets forth my relevant qualifications in greater detail. A list of relevant publications relating to issues of bribery, corruption, and money laundering, which I have edited or authored, is also attached.²

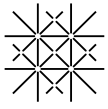
II. Instructions and Summary of Conclusions

4. I have been asked by counsel for the Russian Federation to assess evidence of alleged bribery, corruption, and money laundering reflected in the documentary record surrounding the 1995-1996 privatization of OAO YUKOS Oil Company ('YUKOS') and its aftermath. The documents that I have reviewed and relied upon are identified in the index attached hereto.³
5. The focus of my analysis is a series of very large payments made by the principals of Bank Menatep (the so-called 'Oligarchs'⁴) to four individuals who managed YUKOS (the so-called 'Red Directors') before, during, and after the privatization of YUKOS.
6. According to bank records and other documents I have reviewed, from 1996 to 2003 the Oligarchs paid more than US\$ 600 million to the four Red Directors, Messrs. Sergey Muravlenko, Yuri Golubev, Viktor Kazakov, and Viktor Ivanenko, through various offshore entities. Based on the following facts, it is in my opinion highly likely that the Oligarchs paid these hundreds of millions of dollars to bribe the Red Directors to assist unlawfully in their acquisition of YUKOS during its privatization in 1995-1996.

² Annex A.

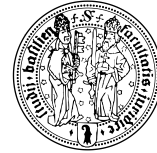
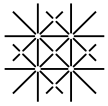
³ Annex B.

⁴ As reflected in a 1996 list of the members of the Board of Directors of Bank Menatep, the Oligarchs include Messrs. Mikhail Brudno, Vladimir Dubov, Mikhail Khodorkovsky, Platon Lebedev, and Leonid Nevzlin. *See* List of Members of the Board of Directors of Bank Menatep dated 1 Nov. 1996 (MP-033).



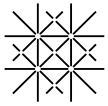
- Prior to the privatization of YUKOS, the Red Directors managed YUKOS on behalf of the Russian Government and established key aspects of the procedures that regulated the YUKOS privatization.
- The Red Directors participated directly in supervising and selecting the winner of an Investment Tender, in which the Government sold 33% of the YUKOS shares, and a 'Loans-for-Shares' auction, in which the Government offered 45% of the YUKOS shares as collateral for a loan.
- In December 1995, the Oligarchs 'won' both the Loans-for-Shares auction and the Investment Tender, but the only two bidders had the same date of incorporation, the same registered address, and secret links to Bank Menatep, which was supervising the auction for the Russian Government.
- In December 1996, the Oligarchs rigged another auction to acquire the 45% shareholding that was collateral for the Loans-for-Shares loan (on which the Government defaulted); with the shares purchased in the Investment Tender, the Oligarchs thus held approximately 78% of the YUKOS shares.⁵
- In December 1998, one of the Red Directors certified to the Russian Government that the Oligarchs' shell company had complied with the investment conditions from the Investment Tender.
- Subsequently, from 2002-2003 the Oligarchs paid more than US\$ 600 million to the Red Directors, which is a huge amount of money by any objective standard and was clearly disproportionate to the amounts paid to other YUKOS executives during the same period.
- While these payments purportedly were made pursuant to an Agreement concluded between the Oligarchs and the Red Directors in March 2002, the

⁵ I understand that the respective percentages of YUKOS shares contained in the two blocks at issue in the Investment Tender and the Loans-for-Shares auction changed during the course of 1996, due to a 'rights offering' and a '250:1 share split' initiated by the YUKOS Board of Directors. *See* Expert Report of S.P. Kothari dated 20 Oct. 2015 ¶¶ 28-29. This fact does not affect my analysis, however, because the Oligarchs evidently retained majority control of YUKOS throughout this process.



Oligarchs advised YUKOS's auditor, PricewaterhouseCoopers ('PWC'), that they paid the Red Directors pursuant to oral agreements in 1995-1996 that predated their acquisition of YUKOS.

- At the time of the oral agreements in 1995-1996, the Red Directors were public officials who had the authority to perform significant 'public' or 'governmental' functions in connection with the privatization of YUKOS.
 - There was no legitimate basis for the Oligarchs to negotiate privately with the Red Directors prior to the privatization of YUKOS and agree to pay them hundreds of millions of dollars.
 - Rather than pay the Red Directors directly, the Oligarchs concealed the beneficiaries of their payments by paying offshore shell entities, even though all of the Oligarchs and all of the Red Directors are Russian nationals.
 - The Oligarchs retained Curtis & Co and Valmet Group, both of which have been found by courts and regulators to have engaged in money laundering through falsified documents and sham agreements, to establish the offshore entities that concealed their payments to the Red Directors.
7. In these circumstances, there can be no real doubt that the Oligarchs promised to pay and then paid hundreds of millions of dollars to the Red Directors to corrupt the privatization process leading to their acquisition of YUKOS. No other explanation for these payments makes economic sense or is consistent with the contemporaneous documentary record.
8. My analysis and conclusions in this expert opinion are based almost entirely on contemporaneous documents. Most of this documentary record was created either during the YUKOS privatization itself or by YUKOS shareholders, executives, and advisors in 2002 and 2003 during internal due diligence performed in preparation for the sale of American Depositary Receipts ('ADRs') on the U.S. securities market (a project which YUKOS executives called 'Project Voyage').



9. I am aware that former YUKOS employees and one of the Red Directors, Mr. Muravlenko, have provided testimony and written statements regarding the YUKOS privatization during many years of legal proceedings. I have not met with these individuals, however, nor have I witnessed their testimony. As I cannot assess the credibility of these witnesses, I have not relied on the statements or testimony they provided during the legal proceedings.

III. Summary of the Facts

10. In this factual summary, I summarize the key evidence that leads me to conclude that the Oligarchs promised to pay and then paid bribes to the Red Directors to obtain their assistance in acquiring YUKOS.

A. The Red Directors Managed YUKOS on Behalf of the Government and Established Key Aspects of the Procedures for Its Privatization

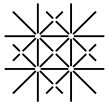
11. YUKOS was established as a State-owned enterprise ('SOE') in the early 1990s, and designated for 'privatization and transformation into a joint stock company' in Presidential Decree No. 1403 dated 17 November 1992.⁶ According to Presidential Decree No. 1403, YUKOS controlled a wide range of oil production assets and refining facilities in the regions of Tyumen, and Samara.⁷
12. In March 1993, the Council of Ministers of the Russian Federation issued Resolution No. 383-p, which 'entrusted' one of the Red Directors, Mr. Muravlenko, with 'responsibility for implementing the organizational arrangements' under Presidential Decree No. 1403 with respect to the privatization of YUKOS.⁸ In Resolution No. 354 dated 15 April 1993, the Council of Ministers appointed Mr. Muravlenko as President of YUKOS and the first Chairman of its Board of Directors.⁹

⁶ Presidential Decree No. 1403 dated 17 Nov. 1992 (MP-007); *see also* 2000 YUKOS Annual Report 38 (MP-055); 2001 YUKOS Annual Report 44 (MP-058).

⁷ Presidential Decree No. 1403 dated 17 Nov. 1992 (MP-007).

⁸ Council of Ministers Resolution No. 383-p dated 6 Mar. 1993 (MP-008).

⁹ Council of Ministers Resolution No. 354 dated 15 Apr. 1993 (MP-009).



13. The other Red Directors, Messrs. Ivanenko, Kazakov, and Golubev, also managed YUKOS on behalf of the Government prior to and during its privatization.¹⁰
14. As the managers of YUKOS, the Red Directors made important decisions concerning the privatization process. For example, Mr. Muravlenko presided over a meeting in May 1994, attended by Mr. Ivanenko in his capacity as a ‘vice president’ of YUKOS, at which the YUKOS Board of Directors approved the ‘consolidated final draft of the Company’s privatization plan.’¹¹
15. In a Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 December 1994, YUKOS undertook to hold an ‘investment tender’ in which bidders would bid to purchase an undetermined number ‘of the Company’s state-owned shares’ and invest in the company.¹² This Regulation was signed by Mr. Muravlenko as Chairman of the YUKOS Board, was ‘agreed’ to by ‘the Board of Directors of the Company [YUKOS] and the Russian Federal Property Fund,’ and was ‘approved by the Ministry of Fuel and Energy.’¹³
16. Under this Regulation, the Investment Tender for YUKOS would ‘be held with open participation and closed filing (filing bids in sealed envelopes).’¹⁴ A five-member ‘Tender Commission,’ including one representative of YUKOS (presumably Mr. Muravlenko or his designee), would supervise the tender process and determine the winner.¹⁵ The winning bidder thereafter would need to comply with an ‘[I]nvestment [P]rogram approved by the Board of Directors’ (chaired by Mr. Muravlenko), which would include ‘[m]andatory and additional tender conditions

¹⁰ Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071).

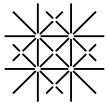
¹¹ Protocol No. 3 of the YUKOS Board of Directors dated 27 May 1994 (MP-011).

¹² Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 § 1.3 (MP-012).

¹³ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994, attached to Letter No. 10/112 dated 19 June 1995 (MP-012) (indicating that further approval of the State Property Committee was requested).

¹⁴ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 § 1.5 (MP-012).

¹⁵ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 §§ 2.4, 2.5 (MP-012).



and the specific value of the shares put up for tender.’¹⁶ The Russian Fund of Federal Property then would be responsible for ‘[m]onitoring the buyer’s compliance with the tender conditions.’¹⁷

17. At some point in 1995, the Government determined to privatize 33% of the YUKOS shares through the Investment Tender.¹⁸ The Government also determined to offer a separate 45% shareholding of YUKOS as collateral to obtain a loan from a private lender through its ‘Loans-for-Shares’ auction program.¹⁹

18. The Loans-for-Shares program was established by President Boris Yeltsin’s Decree No. 889 dated 31 August 1995, which called for bidders in Loans-for-Shares auctions to submit competitive proposals to make loans to the Government of the Russian Federation.²⁰ The largest offered loan would be selected as the winner and would be collateralized by a fixed percentage of the shares of an SOE.²¹ If the Government defaulted on the loan, then the winning bidder (as the Government’s ‘commission agent’) would be obligated to sell the shares to a third party and share the proceeds of the sale in a fixed percentage with the Government.²² Decree No. 889 further provided that the results of the auction would be “valid if more than one bidder participates in the auction, but ‘[i]f these requirements are not met, then the auction shall be invalidated.’²³

¹⁶ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 § 1.8 (MP-012).

¹⁷ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 §§ 2.1, 5.1 (MP-012).

¹⁸ See Letter from S.V. Muravlenko to A.B. Chubais dated 27 Sept. 1995 (MP-015).

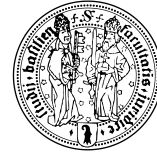
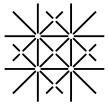
¹⁹ See Letter from S.V. Muravlenko to A.B. Chubais dated 27 Sept. 1995 (MP-015).

²⁰ Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge dated 31 Aug. 1995 (MP-013).

²¹ Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge dated 31 Aug. 1995, Rules For Holding Auctions for the Right to Conclude Credit Agreements, Contracts of Pledge of Federally Owned Shares, and Commission Contracts; see also *id.* at Appendix No. 2 (MP-013).

²² Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge dated 31 Aug. 1995, Appendix No. 3 (MP-013).

²³ Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge dated 31 Aug. 1995, arts. 6-7 (MP-013).



19. In a letter to First Deputy Prime Minister Anatoly Chubais dated 27 September 1995, Mr. Muravlenko contended that the Loans-for-Shares auction and the Investment Tender should be ‘interconnected,’ which in his view was necessary to attract a ‘serious strategic investor.’²⁴ He proposed to require participants in the Loans-for-Shares auction to participate in the Investment Tender as well.²⁵
20. Consistent with Mr. Muravlenko’s proposal, in October 1995 the State Property Committee ordered that ‘[p]articipation in the Investment Tender’ was a mandatory precondition to participate in the Loans-for-Shares auction.²⁶
21. Mr. Muravlenko also signed the YUKOS Investment Program, which was approved by the YUKOS Board on 12 October 1995 and by the State Property Committee and the Ministry of Fuel and Energy on 25 October 1995.²⁷ The Investment Program established minimum bid requirements for the Investment Tender and the Loans-for-Shares auction and ‘criteria for determining the winners of the tender and auction.’²⁸
22. Prior to the privatization of YUKOS, the Red Directors therefore not only managed the company on behalf of the Government, but also established key aspects of the rules governing the Investment Tender and the procedures implementing the Loans-for-Shares auction under President Yeltsin’s Decree.

B. In October 1995, the Oligarchs Promised to Pay a ‘Significant Financial Interest’ to the Red Directors

23. According to a memorandum dated 2 November 1995 from the head of Bank Menatep’s Investment Department, Mr. A.D. Golubovich, to Mr. Mikhail Khodorkovsky (one of the Oligarchs), in and around mid-October 1995 the Oligarchs

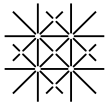
²⁴ Letter from S.V. Muravlenko to A.B. Chubais dated 27 Sept. 1995 (MP-015).

²⁵ Letter from S.V. Muravlenko to A.B. Chubais dated 27 Sept. 1995 (MP-015).

²⁶ State Property Committee Order No. 1458 dated 10 Oct. 1995, amended 31 Oct. 1995, Notice § 5.1 (MP-016).

²⁷ Investment Program, approved by Decision of the Board of YUKOS Oil Company, Minutes No. 13 dated 12 Oct. 1995 (MP-017).

²⁸ Investment Program, approved by Decision of the Board of YUKOS Oil Company Minutes No. 13 dated 12 Oct. 1995 §§ 6.1, 7 (MP-017).



engaged in ‘negotiations to acquire YUKOS JSC shares.’²⁹ The Oligarchs’ intention at that time was to acquire the ‘controlling block of shares’ for YUKOS through ‘the Bank’s participation in the auction and Investment Tender.’³⁰

24. Mr. Golubovich’s memorandum to Mr. Khodorkovsky reflects that the Oligarchs’ negotiations concerning their acquisition of YUKOS involved ‘representatives of the company.’³¹ Given that Mr. Muravlenko was both the President of YUKOS and the Chairman of its Board of Directors and that Mr. Ivanenko was a Vice President of YUKOS, it would be reasonable to understand Mr. Golubovich’s reference to ‘representatives of the company’ as including one or more of the Red Directors or their associates. In fact, the Oligarchs’ subsequent correspondence conclusively establishes that the Oligarchs engaged in negotiations with the Red Directors during this time.

25. As set out in detail below, Messrs. Khodorkovsky and Lebedev informed YUKOS’s auditor, PWC, in August 2002 that the Oligarchs and Red Directors ‘*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,*’ that the Oligarchs would make payments to the Red Directors.³² ‘Although the specifics of the benefits’ to be paid from the Oligarchs to the Red Directors ‘were not defined in 1995-1996, *the primary idea that the Beneficiaries [the Red Directors] were to share a significant financial interest with the core shareholders was understood.*’³³

26. The decrees and regulations governing the Investment Tender and the Loans-for-Shares auction purported to establish competitive bidding procedures and clearly did not permit negotiations between the Oligarchs and the Red Directors who managed

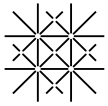
²⁹ Memorandum from A.D. Golubovich to M.D. Khodorkovsky dated 2 Nov. 1995 (MP-018).

³⁰ Memorandum from A.D. Golubovich to M.D. Khodorkovsky dated 2 Nov. 1995 (MP-018).

³¹ Memorandum from A.D. Golubovich to M.D. Khodorkovsky dated 2 Nov. 1995 (MP-018).

³² Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071) (emphasis added).

³³ Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071) (emphasis added).



YUKOS.³⁴ Presidential Decree No. 889, which governed the Loans-for-Shares auctions, provided generally that the bidding procedure was to comport with ‘principles of competitiveness and publicity.’³⁵ The State Property Committee’s Order No. 1458 further provided that the YUKOS Loans-for-Shares auction ‘shall be conducted in the form of a public auction’ and that ‘[t]he bidders’ offers with respect to the amount of the credit facility shall be accepted in sealed envelopes by the Auction Committee on the day and during the period indicated in the notice.’³⁶ The YUKOS Regulation on Investment Tenders of 15 December 1994 likewise provides: ‘The contest [Investment Tender] shall be held with open participation and closed filing (filing bids in sealed envelopes).’³⁷

27. There are therefore strong indicators that the negotiations between the Oligarchs and the Red Directors were anticompetitive and illegal under these decrees and regulations, and that there was no legitimate basis for the Oligarchs to promise to pay ‘a significant financial interest’ to the Red Directors if the Oligarchs acquired YUKOS.

C. In December 1995, the Oligarchs ‘Won’ the Loans-for-Shares Auction and the Investment Tender Through Collusive Bidding

28. The Oligarchs were the principals of Bank Menatep,³⁸ which was selected to organize and supervise the Loans-for-Shares auction on behalf of the Government.³⁹ Under Agency Contract No. 01-2/2632 dated 31 October 1995, the State Property Committee appointed Mr. Konstantin Kagalovsky, one of Bank Menatep’s

³⁴ See generally Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge dated 31 Aug. 1995 (MP-013); Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 (MP-012).

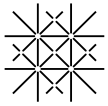
³⁵ Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge dated 31 Aug. 1995, art. 7 (MP-013).

³⁶ State Property Committee Order No. 1458 dated 10 Oct. 1995 §§ 2, 5 (MP-016).

³⁷ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 § 1.5 (MP-012).

³⁸ List of Members of the Board of Directors of Bank Menatep dated 1 Nov. 1996 (MP-033).

³⁹ Auction Minutes No. 1 dated 8 Dec. 1995 (MP-019).



directors,⁴⁰ to supervise the Loans-for-Shares auction as the ‘Representative of the State Property Committee of Russia.’⁴¹

29. Only two bidders participated in both the Loans-for-Shares auction and the Investment Tender: ZAO Laguna and ZAO Reagent.⁴² A third bidder, OAO Babayevskoye, was disqualified and withdrew its application.⁴³

30. The two bidders in the Loans-for Share auction and the Investment Tender, ZAO Laguna and ZAO Reagent, were both incorporated on the same day, 21 November 1995, only a few weeks before the bidding, and they shared the same address at 2b Yurinskoye Shosse in Taldom, Moscow Region.⁴⁴

31. The representatives of ZAO Laguna and ZAO Reagent, Messrs. A.V. Zakharov and A.V. Koval, respectively,⁴⁵ were also both employees of JV Russian Trust and Trade (‘RTT’).⁴⁶ RTT was a joint venture between Bank Menatep and a related Swiss company called Menatep SA.⁴⁷ The evidence therefore indicates that both ZAO Laguna and ZAO Reagent were related entities controlled by Bank Menatep, the Oligarchs’ company.

32. ZAO Laguna won both the Loans-for-Shares auction and the Investment Tender on 8 December 1995.⁴⁸ The Loans-for-Shares auction procedures stipulated that a ‘starting price’ of US\$ 150 million was required.⁴⁹ ZAO Reagent offered a loan of

⁴⁰ List of Members of the Board of Directors of Bank Menatep dated 1 Nov. 1996 (MP-033).

⁴¹ Auction Minutes No. 1 dated 8 Dec. 1995 (MP-019).

⁴² Auction Minutes No. 2 dated 8 Dec. 1995 (MP-020).

⁴³ Auction Minutes No. 1 dated 8 Dec. 1995 (MP-019).

⁴⁴ Auction Minutes No. 2 dated 8 Dec. 1995 (MP-020).

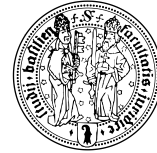
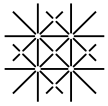
⁴⁵ Auction Minutes No. 2 dated 8 Dec. 1995 (MP-020).

⁴⁶ List of RTT Employees dated 1 Sept. 1995 (MP-014).

⁴⁷ RTT Revised JV Charter §§ 1.11, 3.1 dated 8 Dec. 1997 (MP-043).

⁴⁸ See Auction Minutes No. 2 dated 8 Dec. 1995 (MP-020).

⁴⁹ State Property Committee Order No. 1458 dated 10 Oct. 1995, amended 31 Oct. 1995, Notice § 1 (MP-016) (‘The starting price of the auction is USD 150 million.’).



only US\$ 150.1 million, effectively matching the minimum bid.⁵⁰ The facts indicate that ZAO Reagent therefore submitted a ‘shadow bid,’⁵¹ which was not intended to win the auction but would give the false appearance of competition.

33. Without any actual competition, ZAO Laguna offered a loan of US\$ 159 million in the Loans-for-Shares auction;⁵² it separately paid approximately US\$ 9 million to purchase the 33% YUKOS shareholding that the State sold in the Investment Tender;⁵³ and it committed to invest the minimum amounts of US\$ 150 million and US\$ 200 million required by the two competitions.⁵⁴ ZAO Laguna thus acquired one-third of YUKOS, a major State-owned oil company, by paying only US\$ 9 million directly to the State for its shares and committing to make the minimum required investments in the company. ZAO Laguna also obtained the right to provide a loan to the Russian Government secured by an additional 45% of the company’s shares by offering only US\$ 9 million more than the minimum required bid.

34. The roles played by Bank Menatep, the Red Directors, and the RTT employees in the Investment Tender and the Loans-for-Shares auction are depicted in **Figure 1**:

⁵⁰ Auction Minutes No. 2 dated 8 Dec. 1995 (MP-020).

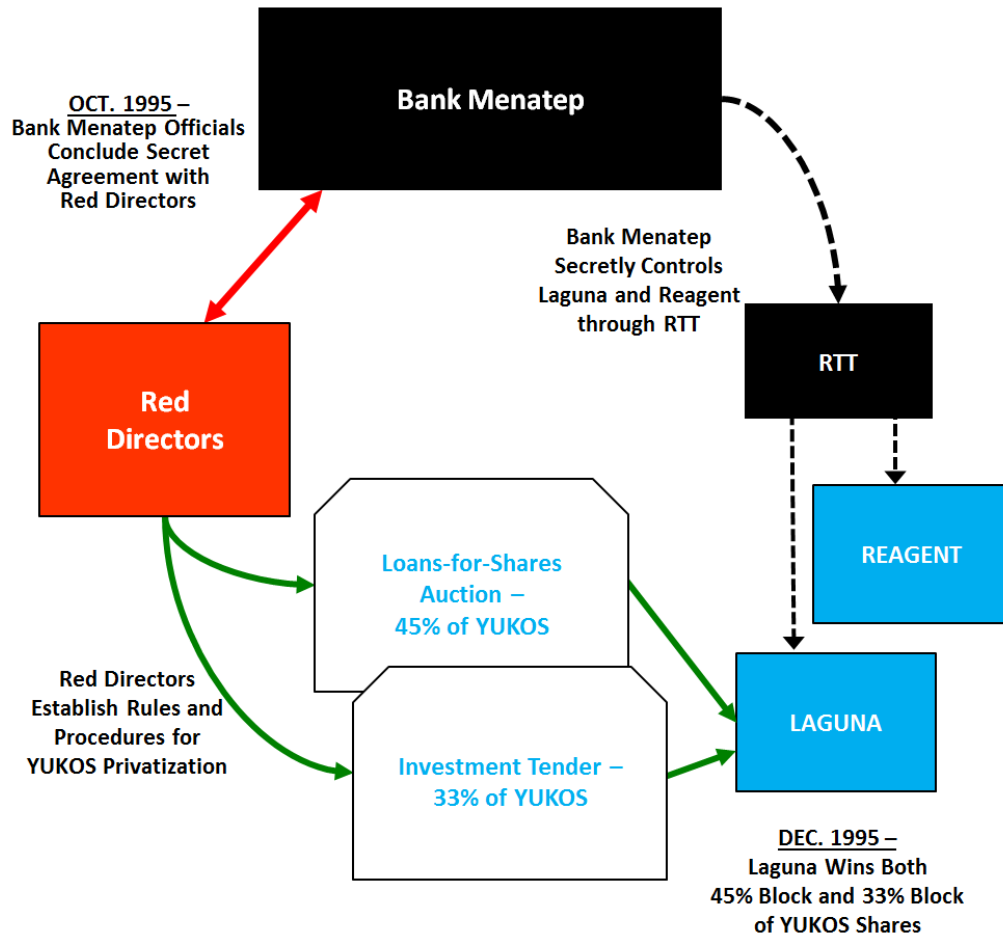
⁵¹ *See, e.g.,* WORLD BANK, FRAUD AND CORRUPTION AWARENESS HANDBOOK 35 (2013) (MP-106) (explaining that ‘designated winners can use shell companies, fictitious firms, or subsidiaries as designated losing bidders’ and ‘evade detection by executing their scheme in a manner that gives the appearance of competition, e.g., by . . . submitting complementary bids, also known as ‘protective’ or ‘shadow’ bids,’ which they know ‘will never be successful’).

⁵² Auction Minutes No. 2 dated 8 Dec. 1995 (MP-020).

⁵³ Stock Purchase Agreement No. 1-12-1-990 dated 14 Dec. 1995 (MP-023).

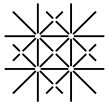
⁵⁴ *See* Investment Agreement between Mr. Muravlenko and Mr. Zakharov dated 1996 § 3.1.2 (MP-024) (reflecting an investment commitment of ‘USD 200 (two hundred) million’); Stock Purchase Agreement No. 1-12-1-990 dated 14 Dec. 1995 § 4.1.1 (MP-023) (reflecting an investment commitment of ‘150,125,000 (one hundred and fifty million one hundred and twenty five thousand) US dollars’).

Figure 1



35. From these facts, it is highly likely that the Loans-for-Shares auction and the Investment Tender were shams. As I discussed above, one YUKOS representative (presumably Mr. Muravlenko, another Red Director, or one of their associates) was a member of the Tender Commission that oversaw key aspects of these rigged procedures.⁵⁵

⁵⁵ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 §§ 2.4, 2.5 (MP-012).



D. Indicia for Further Bid Rigging in 1996 to Acquire Majority Control of YUKOS

36. ZAO Laguna directly acquired 33% of the YUKOS shares from the Government through the Investment Tender, pursuant to a Stock Purchase Agreement dated 14 December 1995.⁵⁶
37. On 24 January 1996, ZAO Laguna sold the YUKOS shares it acquired in two tranches: (i) 18% (approximately 1.19 million shares) to ZAO Astarta and (ii) 15% (approximately 994,000 shares) to ZAO Tonus.⁵⁷
38. Mr. Zakharov executed the share purchase agreements with ZAO Astarta and ZAO Tonus on behalf of ZAO Laguna.⁵⁸ Mr. Koval, who had represented ZAO Reagent in the Loans-for-Shares auction and the Investment Tender,⁵⁹ executed the share purchase agreement on behalf of ZAO Astarta.⁶⁰ Mr. Y.A. Kobzar executed the share purchase agreement on behalf of ZAO Tonus.⁶¹ Messrs. Zakharov, Koval, and Kobzar all worked for RTT, the joint venture between Bank Menatep and Menatep S.A.⁶² The share transfers from ZAO Laguna to ZAO Astarta and ZAO Tonus thus reinforce the impression that the bidding between ZAO Laguna and ZAO Reagent in the Loans-for-Shares auction and the Investment Tender was collusive and that both bidders represented the interests of Bank Menatep.
39. In 1996, the Russian Government defaulted on the US\$ 159 million loan that ZAO Laguna had provided to the Government pursuant to the Loans-for-Shares

⁵⁶ Stock Purchase Agreement No. 1-12-1-990 dated 14 Dec. 1995 (MP-023).

⁵⁷ Stock Purchase Agreement No. L/A-1 dated 24 Jan. 1996 § 1.1 (MP-029); Stock Purchase Agreement No. L/T-1 dated 24 Jan. 1996 § 1.1 (MP-030).

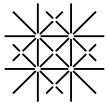
⁵⁸ Stock Purchase Agreement No. L/A-1 dated 24 Jan. 1996 (MP-029) (reflecting that Mr. Zakharov represented ZAO Laguna); Stock Purchase Agreement No. L/T-1 dated 24 Jan. 1996 (MP-030) (reflecting that Mr. Zakharov represented ZAO Laguna).

⁵⁹ Auction Minutes No. 2 dated 8 Dec. 1995 (MP-020).

⁶⁰ Stock Purchase Agreement No. L/A-1 dated 24 Jan. 1996 (MP-029) (reflecting that Mr. Koval represented ZAO Astarta).

⁶¹ Stock Purchase Agreement No. L/T-1 dated 24 Jan. 1996 (MP-030) (reflecting that Mr. Kobzar represented ZAO Tonus).

⁶² List of RTT Employees dated 1 Sept. 1995 (MP-014).



auction. Under Presidential Decree No. 889, ZAO Laguna accordingly was obligated to act as the Government's 'Commission Agent' to sell the 45% shareholding that was collateral for this loan to a third party.⁶³

40. ZAO Laguna (represented by Mr. Zakharov of RTT) assigned its obligation to act as the Government's commission agent in the sale of YUKOS shares to Bank Menatep.⁶⁴ Bank Menatep thereafter sold the Government's 45% shareholding in YUKOS through another auction, which appears to have been rigged.

41. According to a schedule of tasks to prepare for this auction, one of Bank Menatep's Board members, Mr. Kagalovsky (who previously had supervised the Loans-for-Shares auction on behalf of the State Property Committee⁶⁵) was to determine the minimum bid price for the auction,⁶⁶ which he set at US\$ 160 million.⁶⁷

42. Also according to that schedule, Mr. G.P. Anilionis, the executive director of RTT,⁶⁸ was to 'determine the buyers,' create 'holding companies' for the auction participants, and create 'holding companies for [the] holding companies.'⁶⁹ Bank Menatep thus apparently intended to use related shell entities whose owners would be concealed to submit bids in the auction.

43. Only two entities bid in the auction for the 45% shareholding of YUKOS: (i) ZAO Monblan and (ii) OAO Moscow Food Factory.⁷⁰

⁶³ Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge dated 31 Aug. 1995, art. 7 (MP-013).

⁶⁴ Assignment Agreement No. 198 between Laguna CJSC and Bank Menatep dated 13 Dec. 1995 (MP-021).

⁶⁵ Auction Minutes No. 1 dated 8 Dec. 1995 (MP-019).

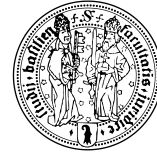
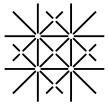
⁶⁶ Schedule of Auction Events dated 1996 (MP-025).

⁶⁷ Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company dated 24 Dec. 1996 ¶ 3 (MP-034).

⁶⁸ List of RTT Employees dated 1 Sept. 1995 (MP-014).

⁶⁹ Schedule of Auction Events dated 1996 (MP-025).

⁷⁰ Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company dated 24 Dec. 1996 ¶ 4 (MP-034).



44. At the time of the auction in December 1996, Mr. Kagalosky asserted that ‘[t]here is no connection between Monblan and Menatep.’⁷¹ Bank Menatep’s spokeswoman, Ms. Natalya Mandrova, also reportedly ‘denied Menatep had any connection with Monblan.’⁷² ZAO Monblan submitted its bid in the auction, however, through its general director, Mr. Andrey Krainov,⁷³ who was the Head of the Operational Financial Operations Department of RTT.⁷⁴ ZAO Monblan thus was controlled by Bank Menatep. Indeed, YUKOS subsequently acknowledged in internal memoranda and an unpublished Draft F-1 Registration Statement (prepared, but never submitted, for a filing with the U.S. Securities and Exchange Commission) that ZAO Monblan was an ‘affiliate of companies jointly controlled by the current shareholders of Group MENATEP.’⁷⁵ Bank Menatep similarly listed OAO Moscow Food Factory among the ‘Menatep Group’ of companies.⁷⁶
45. Bank Menatep, which was acting as the Government’s commission agent in the sale of the YUKOS shares, thus controlled both of the bidders in the 1996 auction—just as it previously had controlled both of the bidders in the Loans-for-Shares auction and the Investment Tender in 1995.
46. According to the auction minutes, OAO Moscow Food Factory bid US\$ 160.05 million—only US\$ 50,000 more than the minimum bid price set by Mr. Kagalovsky of Bank Menatep.⁷⁷ ZAO Monblan bid US\$ 160.1 million—US\$ 100,000 more than

⁷¹ Sergey Lukyanov, ‘Managed’ Yukos Sale Fetches \$160M, *Moscow Times*, 24 Dec. 1996 (MP-035).

⁷² Sergey Lukyanov, ‘Managed’ Yukos Sale Fetches \$160M, *Moscow Times*, 24 Dec. 1996 (MP-035).

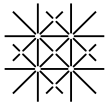
⁷³ Securities Purchase-Sales Agreement No. Ts-703 dated 24 Dec. 1996 (MP-036).

⁷⁴ List of RTT Employees dated 1 Sept. 1995 (MP-014).

⁷⁵ Draft F-1 Registration Statement dated 19 Mar. 2003, at 78 (MP-078); *see also* Memorandum from Clifford Chance on Privatisation of YUKOS dated 12 Aug. 2002, at 3 (MP-070).

⁷⁶ List Identifying OAO Moscow Food Factory as Menatep Group Company, at 3 (MP-027).

⁷⁷ Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company dated 24 Dec. 1996 ¶ 3 (MP-034).



the minimum bid price and merely US\$ 50,000 more than OAO Moscow Food Factory's bid.⁷⁸

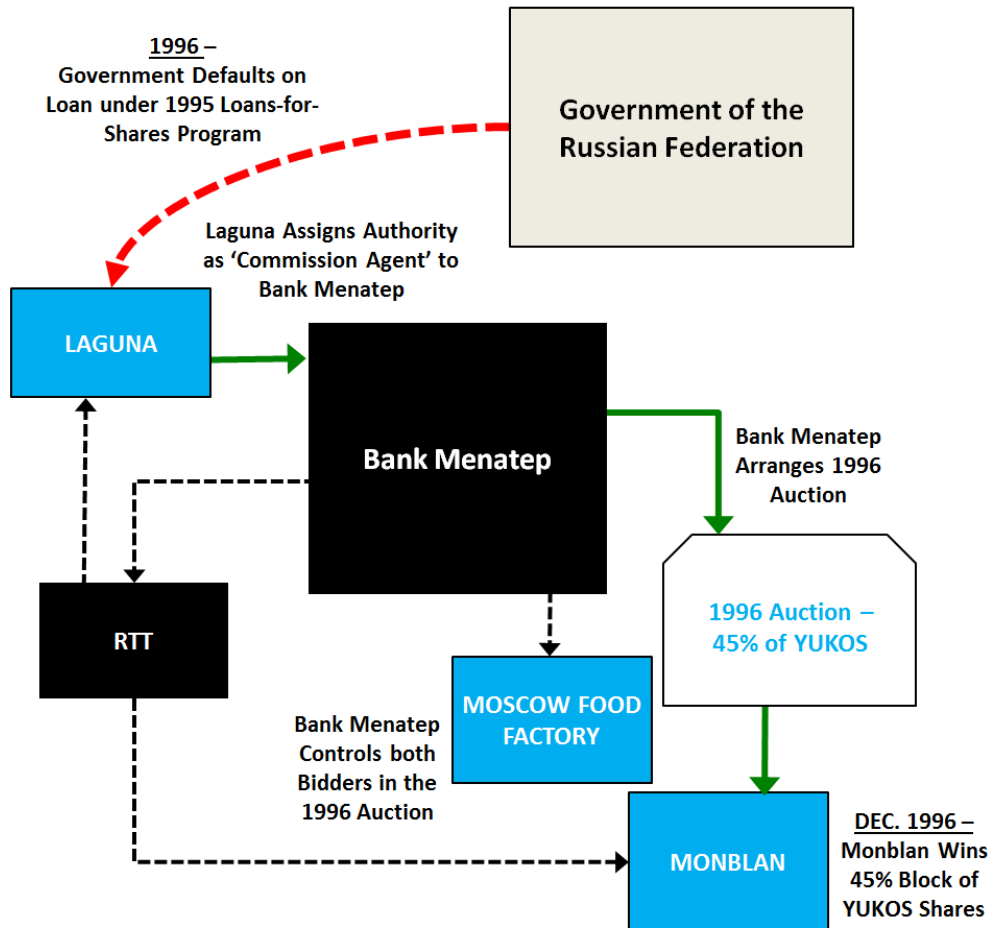
47. Through the auction in December 1996, ZAO Monblan acquired 45% of the YUKOS shares from the Russian Government for just over the minimum bid price. In return for these shares, the Government was relieved of its loan repayment obligations to ZAO Laguna and was paid 70% of the difference between the amount of ZAO Monblan's winning bid (US\$ 160.1 million) and the amount of the defaulted loan (US\$ 159 million).⁷⁹ Thus, apart from forgiving the Government's loan repayment obligations to ZAO Laguna, the Oligarchs paid only approximately US\$ 770,000 to the Government for the 45% block of shares that gave them majority control and approximately 78% of the YUKOS shares.

48. The roles played by Bank Menatep and the RTT employees in the 1996 auction are depicted in **Figure 2**:

⁷⁸ Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company dated 24 Dec. 1996 ¶ 5 (MP-034).

⁷⁹ Presidential Decree No. 889 on the Procedure for Putting the Federally Owned Shares in Pledge dated 31 Aug. 1995, Appendix No. 3 § 8 (MP-013).

Figure 2

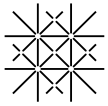


49. On 5 May 1997, ZAO Astarta, which had been renamed as ZAO Flex-Oil, sold its 18% shareholding in YUKOS to ZAO Tonus, which had been renamed as ZAO YUKOS-Trust.⁸⁰ On that same day, ZAO Monblan sold its 45% shareholding to ZAO YUKOS-Trust.⁸¹ As a result of these transactions, ZAO YUKOS-Trust held the entirety of the Oligarchs' approximately 78% shareholding in YUKOS.

50. ZAO YUKOS-Trust was subsequently renamed as ZAO Yukos Universal. In December 1998, ZAO Yukos Universal submitted a certificate signed by Mr. Kobzar

⁸⁰ Stock Purchase Agreement No. U-51/97 dated 5 May 1997 (MP-040) (reflecting that Mr. Koval represented ZAO Flex-Oil as 'General Director' and that Mr. Kobzar represented ZAO YUKOS-Trust as 'General Director'); *see also* 1998 Chart of Shell Companies (MP-026).

⁸¹ Stock Purchase Agreement No. U-52/97 between Monblan and Yukos-Trust dated 5 May 1997 (MP-041) (reflecting that Mr. Krainov represented ZAO Monblan and Mr. Kobzar represented ZAO YUKOS-Trust).



of RTT representing that it had fulfilled its obligation as the ‘investor’ under the YUKOS Investment Program.⁸²

51. As I discussed above, under the Regulation on Investment Tenders, the Russian Fund of Federal Property was responsible for ‘[m]onitoring the buyer’s compliance with the tender conditions.’⁸³ It appears, however, that the Russian Fund of Federal Property delegated this responsibility to one of the Red Directors, Mr. Kazakov. Mr. Kazakov was the only public official who signed the certification dated 16 December 1998 attesting that ‘[t]he Investor has performed targeted financing of investment projects in the amount of 200 (two hundred) million US dollars.’⁸⁴

E. From 1996-2003, the Oligarchs Paid Hundreds of Millions of Dollars to the Red Directors

52. During their acquisition of YUKOS, from April 1996 to December 1998 the Oligarchs paid US\$ 875,000.00 to three of the Red Directors, through shell entities, pursuant to four purported ‘Services Agreements.’⁸⁵ Subsequently, in 2002-2003 the Oligarchs paid more than US\$ 600 million to the Red Directors through another shell entity, pursuant to an oral agreement in 1995-1996 that was replaced by a written compensation agreement in March 2002.⁸⁶ I discuss both sets of payments below.

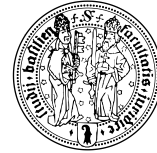
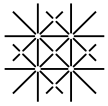
⁸² Certificate of Fulfilment of the Activities of YUKOS Oil Company OJSC’s Investment Program in Accordance with the Conditions of the Pledge Auction dated 16 Dec. 1998 (MP-052).

⁸³ Regulation on Investment Tenders for the Sale of Shares of OAO Yukos Oil Company dated 15 Dec. 1994 § 5 (MP-012).

⁸⁴ Certificate of Fulfilment of the Activities of YUKOS Oil Company OJSC’s Investment Program in Accordance with the Conditions of the Pledge Auction dated 16 Dec. 1998 (MP-052) (signed by V.A. Kazakov).

⁸⁵ See Services Agreement between Tisbury Limited and V.V. Ivanenko dated 5 Jan. 1996 (MP-028); Services Agreement between Laleham Limited and V.V. Ivanenko dated 12 Jan. 1998 (MP-045); Services Agreement between Status Services Limited and V.A. Kazakov dated 7 May 1998 (MP-047); Services Agreement between Hinchley Limited and S.V. Muravlenko dated 1 Oct. 1998 (MP-049).

⁸⁶ See Memorandum from A.D. Golubovich to M.D. Khodorkovsky dated 2 Nov. 1995 (MP-018); Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071); Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002 (MP-067).



1. From 1996-1998, the Oligarchs Paid US\$ 875,000 to Three of the Red Directors Pursuant to Four Consulting Services Agreements

53. From 1996-1998, four of the Oligarchs' shell entities concluded consulting services agreements with three of the Red Directors as follows:

- on 5 January 1996, Tisbury Limited ('Tisbury') agreed to pay US\$ 125,000 to Mr. Ivanenko for 'consulting on the issues of security of commercial activity and political risks';⁸⁷
- on 12 January 1998, Laleham Limited ('Laleham') agreed to pay US\$ 200,000 to Mr. Ivanenko to advise on 'financial, economic, and banking regulations in the Russian Federation' and 'conduct an independent survey of crude oil markets within the CIS with particular emphasis on Kazakhstan, including delineation of production areas as well as licensing';⁸⁸
- on 7 May 1998, Status Services Limited ('Status Services') agreed to pay US\$ 250,000 to Mr. Kazakov to advise on 'financial, economic and banking regulations' and to 'conduct an independent survey of Russian commodities market, including oil, as well as financial market';⁸⁹ and
- on 1 October 1998, Hinchley Limited ('Hinchley') agreed to pay US\$ 300,000 to Mr. Muravlenko to advise 'in the area of financial and economic regulations in the Russian Federation' and to 'conduct industrial market surveys in Russia and the CIS'.⁹⁰

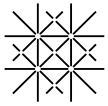
54. Receipts signed by Messrs. Ivanenko, Kazakov, and Muravlenko show that Tisbury, Laleham, Status Services, and Hinchley paid the full amounts due to them under

⁸⁷ Services Agreement between Tisbury Limited and V.V. Ivanenko dated 5 Jan. 1996 §§ 1.1, 2.2.1, 3.1 (MP-028).

⁸⁸ Services Agreement between Laleham Limited and V.V. Ivanenko dated 12 Jan. 1998 §§ 1, 3.2.1, 4.1 (MP-045).

⁸⁹ Services Agreement between Status Services Limited and V.A. Kazakov dated 7 May 1998 §§ 1, 3.2.1, 4.1 (MP-047).

⁹⁰ Services Agreement between Hinchley Limited and S.V. Muravlenko dated 1 Oct. 1998 §§ 1, 3.2.1, 4.1 (MP-049).



these agreements on 15 April 1996,⁹¹ 28 April 1998,⁹² 11 August 1998,⁹³ and 7 December 1998,⁹⁴ respectively. Although denominated in US dollars in the agreements, all of the payments were paid in Russian roubles. Tisbury, Laleham, Status Services, and Hinchley were thereafter dissolved in 2000-2001.⁹⁵

55. The Oligarchs controlled all four of the entities that made the payments to the three Red Directors. Prior to their dissolution, Tisbury, Laleham, and Hinchley had the same nominal shareholders (Scaan Limited and Fovarrane Limited), the same registered agent (Valmet Group), and the same registered address (Unit 1300, Summerhill Business Park, Victoria Road, Douglas, Isle of Man, IM2 4RW).⁹⁶ Valmet Group, the registered agent, employed two of the directors and officers of Tisbury, Laleham, and Hinchley, namely Messrs. Ian James Plummer and Iain Gardiner.⁹⁷ Bank Menatep owned 20% of Valmet Group in 1998-1999.⁹⁸

56. Another director of Hinchley and Laleham, Mr. Vladimir Moiseev, reported that his occupation was 'Bank' and that his 'residential address' was 17a Dubininskaya

⁹¹ Receipt of Payment from Tisbury Limited dated 15 Apr. 1996 (MP-031).

⁹² Receipt of Payment from Laleham Limited dated 28 Apr. 1998 (MP-046).

⁹³ Receipt of Payment from Status Services Limited dated 11 Aug. 1998 (MP-048) (signed by Mr. Kazakov).

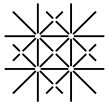
⁹⁴ Receipt of Payment from Hinchley Limited dated 7 Dec. 1998 (MP-051) (signed by Mr. Muravlenko).

⁹⁵ Letter from Iain Gardiner to Isle of Man Financial Supervision Commission Chief Registrar dated 9 Nov. 2000 (Hinchley) (MP-056); Letter from Iain Gardiner to Isle of Man Financial Supervision Commission Chief Registrar dated 9 Nov. 2000 (Laleham) (MP-057); Letter from Iain Gardiner to Isle of Man Financial Supervision Commission Chief Registrar dated 12 June 2001 (MP-062).

⁹⁶ Hinchley Registration Documents, attached to Letter from Iain Gardiner to Isle of Man Financial Supervision Commission Chief Registrar dated 9 Nov. 2000 ('Hinchley Registration Documents') (MP-056); Laleham Registration Documents, attached to Letter from Iain Gardiner to Isle of Man Financial Supervision Commission Chief Registrar dated 9 Nov. 2000 ('Laleham Registration Documents') (MP-057); Tisbury Registration Documents, attached to Letter from Iain Gardiner to Isle of Man Financial Supervision Commission Chief Registrar dated 12 June 2001 (MP-062) ('Tisbury Registration Documents').

⁹⁷ Hinchley Registration Documents (MP-056); Laleham Registration Documents (MP-057); Tisbury Registration Documents (MP-062) (listing Ian James Plummer and Iain Gardiner as directors and officers of Hinchley, Laleham, and Tisbury); *see also* Government of Isle of Man Disqualification Orders dated 19 Nov. 2004 (MP-083) (listing Messrs. Plummer and Gardiner as employees of Valmet).

⁹⁸ Letter from Anton V. Drel to Doug Miller dated 27 Aug. 2002 (MP-073).



Street, Moscow, Russia,⁹⁹ which is Bank Menatep's address.¹⁰⁰ Mr. Moiseev later was appointed a director of Group Menatep Limited ('GML') in July 2003.¹⁰¹

57. Moreover, the terms of the agreement between Status Services and Mr. Kazakov are not only substantially the same as the agreements concluded by Tisbury, Laleham, and Hinchley with Messrs. Ivanenko and Muravlenko, but also are essentially identical to eleven 'Services Agreements' in which Status Services agreed to pay US\$ 10,635,000 to the Oligarchs and six 'Services Agreements' in which Hinchley agreed to pay US\$ 705,000 to the Oligarchs.¹⁰² Taken together, these facts seem to indicate that Status Services, Tisbury, Hinchley, and Laleham were all owned and controlled by the Oligarchs and that Status Services was used by the Oligarchs as an offshore 'slush fund.'

58. Through the four Isle of Man shell entities that they controlled, the Oligarchs paid US\$ 875,000 to the Red Directors in 1996-1998 pursuant to the four consulting services agreements. I am not aware of any business justification for the Oligarchs, who were Russian nationals, to pay the Red Directors, who also were Russian nationals, indirectly through four Isle of Man shell entities that were dissolved only a few years after making these payments.

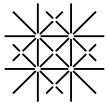
59. I also have serious doubts as to whether Messrs. Ivanenko, Kazakov, and Muravlenko performed the services specified in their consulting agreements with the Oligarchs' shell entities. The provisions in these agreements regarding the services to be rendered, in my view, are vague and contradictory. For example, the agreement between Tisbury and Mr. Ivanenko does not indicate what 'political risks' he was to address or what was meant by the strange phrase 'security of commercial activity' on

⁹⁹ Hinchley Registration Documents (MP-056); Laleham Registration Documents (MP-057) (listing Vladimir Moiseev as a director and indicating his occupation and address).

¹⁰⁰ Contract No. 2-11-2/981 between Bank Menatep and Russian Fund of Federal Property dated 13 Dec. 1995 (MP-022) (listing Bank Menatep's address).

¹⁰¹ GML Registration Documents (MP-038).

¹⁰² See Annex C, Chart of 'Services Agreements' from 1996 to 1998.



which he was to advise.¹⁰³ It likewise is unclear why Laleham would retain Mr. Ivanenko to advise on issues that require very different expertise, such as ‘financial, economic, and banking regulations’ in Russia and ‘crude oil markets’ and licensing issues within the CIS, particularly in Kazakhstan.¹⁰⁴

60. In addition, the agreements between Status Services and Mr. Kazakov, Hinchley and Mr. Muravlenko, and Laleham and Mr. Ivanenko are nearly identical (as are the other eighteen agreements between the Oligarchs and their shell entities).¹⁰⁵ For these reasons, it appears likely that the consulting agreements concluded by Tisbury, Laleham, Status Services, and Hinchley were sham agreements to provide a contractual basis for the Oligarchs to pay hundreds of thousands of dollars to the Red Directors (and millions of dollars to themselves).

2. In 2002-2003, the Oligarchs Paid US\$ 613.5 Million to the Red Directors Pursuant to a March 2002 Compensation Agreement That Replaced Earlier Oral Agreements from 1995-1996

61. Even more troubling and clearly indicative of corruption are the hundreds of millions of dollars that the Oligarchs paid to the Red Directors in 2002-2003.

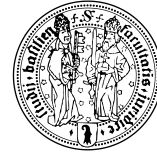
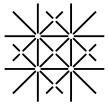
62. According to bank account records of Yukos Universal Limited (‘YUL’), YUL made at least four payments to Tempo Finance Limited (‘Tempo’): (i) US\$ 84,748,573 on 2 April 2002; (ii) US\$ 29,620,403 on 14 November 2002; (iii) US\$ 61,124,826 on 9 July 2003; and (iv) US\$ 438,020,176 on 17 December 2003.¹⁰⁶ Thus, from March 2002 to December 2003 YUL paid Tempo more than US\$ 613.5 million, i.e. more

¹⁰³ Services Agreement between Tisbury Limited and V.V. Ivanenko dated 5 Jan. 1996 §§ 1.1, 2.2.1 (MP-028).

¹⁰⁴ Services Agreement between Laleham Limited and V.V. Ivanenko dated 12 Jan. 1998 §§ 1, 3.2.1 (MP-045).

¹⁰⁵ See Annex C, Chart of ‘Services Agreements’ from 1996 to 1998.

¹⁰⁶ Bank Statements of Yukos Universal Limited (MP-066).



than 60 times the amount paid to all of YUKOS's managers and directors through the company's 'stock-based compensation' program as of September 2003.¹⁰⁷

63. YUL's bank records indicate that each of its payments to Tempo was made pursuant to an Agreement dated 26 March 2002.¹⁰⁸ In that Agreement, the Oligarchs' holding company, GML, a Gibraltar entity, 'acting within the framework of this Agreement through' YUL, an Isle of Man entity, agreed to pay 15% of the revenue from the sale of YUKOS shares to the four Red Directors, Messrs. Muravlenko, Golubev, Kazakov, and Ivanenko, who are the 'Beneficiaries' under the Agreement.¹⁰⁹
64. YUL's payments to the Red Directors were to be paid to Tempo, a British Virgin Islands ('BVI') entity, which was the counterparty to the Agreement 'representing all Beneficiaries for the purpose of performance of this agreement.'¹¹⁰ The Agreement was signed by (i) Mr. Platon Lebedev '[o]n behalf of and instructed by Group Menatep Limited,' (ii) by one of the Red Directors, Mr. Golubev, 'by proxy of November 27, 2001' '[o]n behalf of and instructed by Company Tempo Finance Ltd,' and (iii) all four Red Directors as 'Beneficiaries.'¹¹¹
65. The Agreement did not require the Red Directors or Tempo to perform any services to receive payment from the Oligarchs. Rather, the subject of the Agreement was 'the exercise of the Beneficiaries' rights to Fees for many years [of] 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

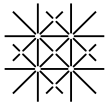
¹⁰⁷ YUKOS Consolidated Financial Statements dated Sept. 2003, at 5 (MP-080); *see also* 2002 YUKOS Annual Report 60 (MP-064); 2001 YUKOS Annual Report 65-66 (MP-058); 2000 YUKOS Annual Report 57 (MP-055).

¹⁰⁸ Bank Statements of Yukos Universal Limited (MP-066).

¹⁰⁹ Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002, §§ 1.1-1.2, 2.2-2.4 (MP-067) (providing that the sale of YUKOS shares would be 'on international capital markets to a legal entity that is not an affiliate of Group Menatep').

¹¹⁰ Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002 (MP-067).

¹¹¹ Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002 (MP-067).



exploration and refining industry.’¹¹² The activities of the Red Directors which allegedly increased the value of YUKOS are not specified in the Agreement, nor is the timeframe in which these activities allegedly were performed.

66. According to contemporaneous correspondence from the ‘Project Voyage’ audit concerning YUKOS’s plans to sell ADRs to the U.S. securities market, Mr. Lebedev provided a copy of the Agreement to YUKOS’s auditor, PWC, on 9 August 2002.¹¹³ Mr. Doug Miller of PWC discussed the agreement three days later with Mr. Khodorkovsky, ‘YUKOS’ CEO and one of the core shareholders.’¹¹⁴

67. After speaking with Messrs. Khodorkovsky and Lebedev, on 14 August 2002 Mr. Miller emailed a memorandum to YUKOS’s Chief Financial Officer, Mr. Bruce Misamore, in which he observed that ‘[t]he benefits are not contingent on any future services, events or conditions.’¹¹⁵ Mr. Miller further observed that, ‘[u]pon inquiry, Mr. Lebedev and Mr. Khodorkovsky asserted that the benefits are in fact provided as compensation *for services provided to shareholders, not to YUKOS*.’¹¹⁶ YUL therefore paid the Red Directors for services rendered to the Oligarchs, not for services that they may have rendered on behalf of YUKOS.

68. In his memorandum, Mr. Miller of PWC further reported that the Oligarchs’ payments to the Red Directors under the 26 March 2002 Agreement were for services rendered during the period of privatization in 1995-1996, before the Oligarchs obtained control of YUKOS. Mr. Miller reported that Messrs. Lebedev and Khodorkovsky ‘made the following points’ in this regard:

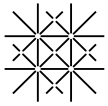
¹¹² Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002 § 2.1 (MP-067); *see also id.* § 1.7 (defining ‘Fees’ as ‘fees payable by Group Menatep to the Beneficiaries for their active participation in increasing the capitalisation and investment attractiveness of OAO NK YUKOS’).

¹¹³ Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071).

¹¹⁴ Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071).

¹¹⁵ Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071).

¹¹⁶ Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071) (emphasis added).



- *‘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 privatization, 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.’¹¹⁷*

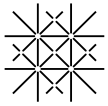
69. In another email sent one day later on 15 August 2002, Bruce Bean, a consultant and partner at Clifford Chance Moscow, similarly reported that PWC ‘had a meeting with MBK [Mr. Khodorkovsky] and Akin [Gump] in which *MBK made it very clear that this agreement relates exclusively to matters dealt with in 1995 and 1996 and is not by any stretch of the imagination compensation for work done currently.*’¹¹⁸

70. Thus, while the Oligarchs’ payments of more than US\$ 600 million were paid to the Red Directors in 2002-2003, it is evident from the statements of Messrs. Lebedev and Khodorkovsky to YUKOS’s auditors and lawyers that the Oligarchs had promised to make these huge payments to the Red Directors *before* they acquired YUKOS from the Russian Government.

71. YUKOS’s auditors and lawyers doubted the basis for and legitimacy of the payments promised by the Oligarchs to the Red Directors. In his 15 August 2002 email, for example, Mr. Bean of Clifford Chance raised the question of ‘how we amend or restate the agreement and what sort of arrangement they must have effectively had

¹¹⁷ Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071) (emphasis added).

¹¹⁸ Email from Bruce Bean dated 15 Aug. 2002 (MP-072) (emphasis added).



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.’¹¹⁹

72. More than two months later, on 1 November 2002 the Oligarchs and the Red Directors signed an ‘Amended and Restated Compensation Agreement.’¹²⁰ The Amended and Restated Compensation Agreement did not change any of the payment terms from the March 2002 Agreement. The parties to the Amended and Restated Compensation Agreement, however, added two clauses regarding the services allegedly provided by the Red Directors in return for the fees paid for their benefit by YUL to Tempo.

73. In a new Whereas Clause (B), the Amended and Restated Compensation Agreement provided that ‘Group Menatep Limited appreciates *the efforts of the Beneficiaries during the period from 1993 to 1995* 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.’¹²¹ In addition, Article 1.7 (which defines the ‘Fees’ payable to the Red Directors) was amended to clarify that the fees were payable to the Red Directors for services rendered ‘*during their employment at Yukos for the period ending 31 December 1995.*’¹²²

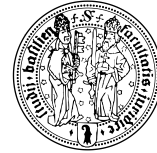
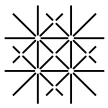
74. These amendments confirmed the August 2002 statements of Messrs. Khodorkovsky and Lebedev that the Oligarchs paid the Red Directors for services rendered before and during the privatization of YUKOS, while it was still an SOE, pursuant to an oral agreement at that time between the Oligarchs and Red Directors. It therefore is clear

¹¹⁹ Email from Bruce Bean dated 15 Aug. 2002 (MP-072).

¹²⁰ Amended and Restated Compensation Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 1 Nov. 2002 (MP-075).

¹²¹ Amended and Restated Compensation Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 1 Nov. 2002, Whereas Clause (B) (MP-075) (emphasis added).

¹²² Amended and Restated Compensation Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 1 Nov. 2002 § 1.7 (MP-075) (emphasis added); *compare with* Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002 § 1.7 (MP-067).



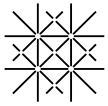
that the Oligarchs paid more than US\$ 600 million to the Red Directors for services rendered while the Red Directors were managing YUKOS and its privatization on behalf of the Russian Government—not for any services that they allegedly rendered while YUKOS was privately owned and controlled by the Oligarchs.¹²³

75. Before the Amended and Restated Compensation Agreement was concluded on 1 November 2002, one of the Project Voyage lawyers, Mr. Murat Akuyev of Cleary Gottlieb, objected to a draft of the proposed amendments. He observed that ‘he did not see much logic in paying the Fees to the [Red Directors] by Group MENATEP for the beneficiaries’ activity in increasing capitalisation in 1993-1996 (*before Group MENATEP became a Yukos’ shareholder*), as any increase in Yukos’ capitalisation entailed the increase of costs for Group MENATEP in its acquisition of control over Yukos through the purchase of Yukos shares.’¹²⁴

76. After reviewing and discussing the Agreement with Messrs. Lebedev and Khodorkovsky, YUKOS’s auditors (PWC) and lawyers (Clifford Chance and Cleary Gottlieb) obviously had difficulties making economic sense of the Agreement. Indeed, it is inconceivable that the Oligarchs (or any rational businessperson) would voluntarily agree to pay hundreds of millions of dollars to the Red Directors for services that they provided from 1993 to 1995, while YUKOS was State owned. Not only were those services rendered on behalf of a third party (the Government of the Russian Federation), but, as Mr. Akuyev points out, any services that increased the

¹²³ Two decades after the privatization, on 5 August 2016 Tim Osborne, the executive director of the Oligarchs’ holding company, GML, argued in an open letter to the *American Lawyer* that ‘[a] promise was . . . made to the former directors of Yukos to ensure that they would be personally invested in the company’s success,’ and ‘[t]o 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.’ Letter from Tim Osborne to *American Lawyer* dated 5 Aug. 2016 (MP-113) (further asserting that ‘[t]his was nothing out of the ordinary’). Not only is this explanation contradicted by all of the contemporaneous evidence from the time of the payments in 2002-2003, but it is obvious that the Oligarchs’ payments to the Red Directors were not ‘ordinary’ share-based compensation. Indeed, as explained above, the Oligarchs’ payments to the Red Directors were over 60 times more than the total value of the ‘stock-based compensation’ program established by the YUKOS Board, which as of September 2003 totaled less than US\$ 10 million. See YUKOS Consolidated Financial Statements dated Sept. 2003, at 5 (MP-080); see also 2002 YUKOS Annual Report 60 (MP-064); 2001 YUKOS Annual Report 65-66 (MP-058); 2000 YUKOS Annual Report 57 (MP-055).

¹²⁴ Clifford Chance Email dated 30 Sept. 2002 (MP-074) (emphasis added).



capitalization of YUKOS prior to its privatization should in fact have increased the Oligarchs' cost of acquiring YUKOS.

77. In response to Mr. Akuyev's concerns, on 30 September 2002 Mr. Bean of Clifford Chance evidently agreed that it made no economic sense for the Oligarchs to pay the Red Directors for services that they performed on behalf of the Government and he therefore suggested that 'the correct way to address Marat's issue [wa]s to delete all reference to the questioned phrase' concerning the dates on which the services were allegedly performed by the Red Directors.¹²⁵ Making these deletions, of course, would not have resolved the fundamental problem that the Oligarchs agreed to pay and then paid hundreds of millions of dollars to four individuals for services that they performed on behalf of the Government prior to and during the privatization of YUKOS—it would merely conceal this problem from sight.

78. In any event, the provisions contested by Messrs. Akuyev and Bean were not deleted, but were included in the Amended and Restated Compensation Agreement as noted above.¹²⁶ Following amendment, the Agreement provided a basis for the Oligarchs to continue to pay hundreds of millions of dollars to the Red Directors as agreed between the parties in 1995-1996. PWC in fact confirmed in correspondence in April 2003 that the Agreement referred back to 'a 1996 unwritten agreement between the ultimate shareholders of the Company and certain former managers of YUKOS Oil Company,' i.e. the Red Directors, and that '*[s]uch benefits were fully vested in 1996 . . .*'¹²⁷ PWC further determined that the 'total compensation expense related to the agreement would have totaled approximately USD 2.4 billion . . .'¹²⁸

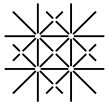
79. In summary, the evidence in this case establishes that the Oligarchs orally promised to make payments to the Red Directors in 1995-1996, while the Red Directors were managing YUKOS and the Russian Government's privatization of YUKOS through

¹²⁵ Clifford Chance Email dated 30 Sept. 2002 (MP-074).

¹²⁶ Amended and Restated Compensation Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 1 Nov. 2002, Whereas Clause (B), § 1.7 (MP-075).

¹²⁷ Email from Doug Miller dated 29 Apr. 2003 (MP-079) (emphasis added).

¹²⁸ Email from Doug Miller dated 29 Apr. 2003 (MP-079).



the Investment Tender and the Loans-for-Shares auction. The Oligarchs acquired majority control of YUKOS by winning auctions that purported to be competitive but were, in all likelihood, rigged. After they acquired YUKOS, the Oligarchs paid hundreds of millions of dollars to the Red Directors pursuant to their earlier oral agreement from 1995-1996. On any legal standard, as I explain below, the corruption in this case is therefore manifest.

IV. Analysis

A. Defining Bribery

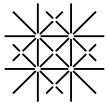
80. In broad terms, the international community has generally accepted that the act of bribery is based on a *quid pro quo* concept, involving the abuse of official authority (whether governmental authority or, under some legal regimes, corporate authority) in exchange for a private benefit. The U.N. Convention Against Corruption ('UNCAC') defines the offense of 'bribery of national public officials' as '[t]he promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.'¹²⁹ The OECD Anti-Bribery Convention (which applies specifically to cases of *transnational* bribery) and numerous other multilateral anti-corruption conventions contain nearly identical definitions of bribery.¹³⁰

81. As reflected in the OECD Working Group's Phase 1 Report on Implementing the OECD Anti-Bribery Convention in the Russian Federation, adopted 16 March 2012 (the 'OECD 2012 Report'), the law of the Russian Federation generally accords with the internationally accepted definition of bribery.¹³¹

¹²⁹ UN Convention Against Corruption, Art. 15 (MP-081).

¹³⁰ OECD Anti-Bribery Convention, Art. 1(1) (MP-098); *see also, e.g.*, 1999 Council of Europe Civil Law Convention on Corruption, Art. 2 (MP-053); 1999 Council of Europe Criminal Law Convention on Corruption (MP-054); 2003 African Union Convention on Preventing and Combating Corruption (MP-077).

¹³¹ OECD Working Group, Phase 1 Report on Implementing the OECD Anti-Bribery Convention in the Russian Federation (16 Mar. 2012) (MP-103).



82. Prior to 1 January 1997, Article 174(1) of the 1960 Criminal Code of the Russian Soviet Federative Socialist Republic prohibited the '[g]iving of a bribe.'¹³² The commentary to Article 174 explains:

'Generally, an individual who gives a bribe from his or her personal resources in exchange for the performance or non-performance of any official actions in the interests of the bribe-giver is a candidate for giving of a bribe.'¹³³

83. Article 173(1) of the 1960 Criminal Code also prohibited the acceptance of a bribe:

'An official's acceptance of a bribe personally or through intermediaries, regardless of the form of the bribe, for the performance or failure to perform any action in the interests of the bribe-giver, which the official should have or could perform using his or her official position—shall be punished'¹³⁴

84. The commentary to Article 173 explains:

'The official's action or failure to act that depends on the bribe may be both lawful (for example, a prosecutor drops the case against a person unjustifiably involved with a criminal prosecution, etc.) and unlawful (a prosecutor knowingly drops the case against a person who is guilty; an auditor conceals a discovered shortage). In the latter case, liability arises not only for acceptance of a bribe, but also cumulatively for abuse of authority or official powers.'¹³⁵

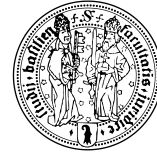
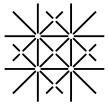
85. On 24 May 1996, the State Duma adopted a new Criminal Code of the Russian Federation, which took force on 1 January 1997. Article 291 of the 1996 Criminal Code prohibited bribe-giving:

¹³² B.S. NIKIFOROV, SCIENTIFIC APPLIED COMMENTARY ON THE CRIMINAL CODE OF THE RSFSR 381 (1963) (MP-003).

¹³³ B.S. NIKIFOROV, SCIENTIFIC APPLIED COMMENTARY ON THE CRIMINAL CODE OF THE RSFSR 381 (1963) (MP-003).

¹³⁴ B.S. NIKIFOROV, SCIENTIFIC APPLIED COMMENTARY ON THE CRIMINAL CODE OF THE RSFSR 376 (1963) (MP-003).

¹³⁵ B.S. NIKIFOROV, SCIENTIFIC APPLIED COMMENTARY ON THE CRIMINAL CODE OF THE RSFSR 378 (1963). Article 170 of the 1960 Criminal Code prohibited the abuse of power or official position. *See id.*, at 364-370 (MP-003).



‘1. Giving a bribe to a functionary, a foreign functionary or a functionary of a public international organisation in person or through an intermediary,- shall be punishable

3. Giving a bribe to a functionary, a foreign functionary or a functionary of a public international organisation in person or through an intermediary for committing wittingly unlawful actions (inaction) - shall be punishable’¹³⁶

86. Article 290 of the 1996 Criminal Code prohibited the taking of a bribe:

‘1. Bribe-taking by a functionary, a foreign functionary or a functionary of a public international organisation in person or through an intermediary, in the form of money, securities or other assets or in the form of unlawful rendering thereto services of property nature, or granting of other property rights, for actions (inaction) in favour of a bribe-giver or the persons he/she represents, if such actions (inaction) form part of the functionary’s official powers or if the latter, by virtue of his/her official position, may further such actions (inaction), and also for overall patronage or connivance in the civil service,- shall be punishable

3. Taking a bribe by a functionary, a foreign functionary or a functionary of a public international organisation for unlawful actions (inaction) - shall be punishable’¹³⁷

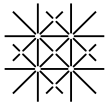
87. At all relevant times, the Russian Federation’s Criminal Code therefore prohibited individuals from giving and public officials from taking a bribe (regardless of the form of the bribe), either directly or through an intermediary, to induce the public official to act or fail to act in the exercise of his or her official powers.

88. The question presented to me is whether the evidence is sufficient to establish that the Oligarchs offered and/or gave a bribe (as that term is defined above) to a public official in connection with their acquisition of YUKOS.

89. In my publications and expert opinions in other matters, I have observed that ‘[i]n corruption cases there will very rarely be direct proof (be it documentary evidence, testimony or admissions),’ and that even where payments are established from a

¹³⁶ Criminal Code of the Russian Federation No. 63-Fz dated 13 June 1996, Art. 291 (MP-032).

¹³⁷ Criminal Code of the Russian Federation No. 63-Fz dated 13 June 1996, Art. 290 (MP-032).



company to an intermediary or agent, '[f]requently the last stage of the payment chain will not be established, since corrupt companies as well as officials . . . use elaborate money laundering techniques on both sides of the equation in order to obscure the true sense of the transaction.'¹³⁸

90. In his treatise on general principles of law as applied by international courts and tribunals, Professor Bin Cheng has observed that, '[i]n cases where direct evidence of a fact is not available, it is a general principle of law that proof may be administered by means of circumstantial evidence.'¹³⁹ Numerous international tribunals and national courts similarly have held that corruption may be proven through circumstantial evidence, in the absence of direct evidence.¹⁴⁰

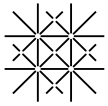
91. A number of 'red flags' or indicia of corruption are commonly associated with payments to consultants, agents, or other third parties in international business transactions.¹⁴¹ International tribunals in fact repeatedly have relied on red flags or

¹³⁸ Mark Pieth, *Contractual Freedom v. Public Policy Considerations in Arbitration*, in PRIVATE LAW, NATIONAL-GLOBAL-COMPARATIVE, FESTSCHRIFT FÜR INGEBORG SCHWENZER ZUM 1382 (A. Böhler and M. Müller-Chen eds., 2011) (MP-099).

¹³⁹ BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 322 (1953) (MP-001) (further observing that 'condemnation, even to the death penalty, may be well-founded on indirect evidence') (citing Judge Azevedo's dissent in *Corfu Channel Case* (Merits) (1949)).

¹⁴⁰ See, e.g., ICC Case No. 8891 at 564 (MP-044) (applying French law and holding that while the burden of proof rests on the party raising illegality, corruption is often difficult to prove and thus arbitrators often have no choice but to rely on circumstantial indicia of corruption); ICC Case No. 12990 ¶¶ 251-252 (MP-085) (same); *United States v. Ellis*, 121 F.3d 908, 922 (4th Cir. 1997) (MP-037) (holding that under U.S. law, '[t]he existence of a 'tacit or mutual understanding' between conspirators is sufficient evidence of a conspiratorial agreement,' and that '[s]uch proof need not be direct, but may be inferred from circumstantial evidence'); see also *Metal-Tech Ltd. v. Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award dated 4 Oct. 2013 ¶ 243 (MP-107) (observing that 'corruption is by essence difficult to establish and that it is thus generally admitted that it can be shown through circumstantial evidence'); *Fraport AG Frankfurt Airport Services Worldwide v. Philippines II*, ICSID Case No. ARB/11/12, Award dated 10 Dec. 2014 ¶ 479 (MP-110) (holding that 'considering the difficulty to prove corruption by direct evidence, the same may be circumstantial'); *Jan Oostergetel and Theodora Laurentius v. Slovak Republic*, UNCITRAL, Award dated 23 Apr. 2012 ¶ 303 (MP-104) (confirming that 'corruption can also be proven by circumstantial evidence').

¹⁴¹ See, e.g., Ingeborg Zerbès, *The Offense of Bribery of Foreign Public Officials*, in THE OECD CONVENTION ON BRIBERY: A COMMENTARY 155 (Mark Pieth, Lucinda A. Low, & Peter J. Cullen eds. 2014) (MP-109); FCPA: A Resource Guide to the U.S. Foreign Corrupt Practices Act, U.S. Department of Justice and U.S. Securities and Exchange Commission dated 2012, at 22-23 (MP-102); ICC Commission on Corporate Responsibility and Anti-Corruption, *ICC Guidelines on Agents, Intermediaries and Other Third Parties* dated 19 Nov. 2010, at 5-6 (MP-97); Woolf Committee Report, *Business ethics, global companies and the*



indicia as the basis for finding that payments to consultants, agents, or third parties were actually bribes paid for the benefit of a public official, even in the absence of direct and decisive proof.¹⁴²

92. In this case, there is direct evidence that the Oligarchs made huge payments totaling more than US\$ 600 million to an offshore entity, Tempo, for the benefit of the four Red Directors, pursuant to oral agreements concluded in 1995-1996. The issues that remain to be assessed therefore are whether the Red Directors were public officials at the time of the oral agreements and whether there was a legitimate basis for such large payments to be made to them.

B. The Oligarchs Paid More Than US\$ 614 Million to the Red Directors

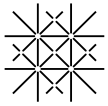
93. The evidence set out above shows that:

- from 1996-1998 four Isle of Man entities owned and controlled by the Oligarchs (Tisbury, Laleham, Status Services, and Hinchley) paid US\$ 875,000 to three of the Red Directors, Messrs. Ivanenko, Kazakov, and Muravlenko, pursuant to four purported services agreements; and
- from 2002-2003 another Isle of Man entity owned and controlled by the Oligarchs (YUL) paid more than US\$ 613.5 million to Tempo, a BVI entity, for the benefit of all four Red Directors.

94. There is incontrovertible evidence that these payments by the Oligarchs were made to the Red Directors. *First*, with regard to the 1996-1998 payments totaling US\$ 875,000, Messrs. Ivanenko, Kazakov, and Muravlenko signed the four services

defence industry: Ethical business conduct in BAE Systems plc – the way forward dated May 2008, at 26 (MP-091).

¹⁴² See, e.g., ICC Case No. 3916 at 509 (MP-005); ICC Case No. 13914 ¶¶ 191-194, 228 (MP-090); ICC Case No. 12990 ¶¶ 253-324 (MP-085); ICC Case No. 6497 ¶¶ 1, 16-17 (MP-010); ICC Case No. 13515 (MP-087); ICC Case No. 6497 ¶¶ 1, 4, 19-30 (MP-010); *Metal-Tech Ltd. v. Uzbekistan*, ICSID Case No. ARB/10/3, Award dated 4 Oct. 2013 ¶¶ 199, 208, 219, 256, 265, 422 (MP-107).



agreements providing for the payments to be made directly to them and four receipts confirming that the payments in fact were made to them.¹⁴³

95. *Second*, with regard to the 2002-2003 payments totaling more than US\$ 613.5 million, Messrs. Muravlenko, Golubev, Kazakov, and Ivanenko signed the Agreement dated 26 March 2002 and the Amended and Restated Compensation Agreement dated 1 November 2002 as the ‘Beneficiaries’ under the agreements and agreed that Tempo ‘represent[ed] all Beneficiaries for the purpose of performance of this Agreement.’¹⁴⁴ YUL’s bank records show four payments to Tempo pursuant to these agreements: (i) US\$ 84,748,573 on 2 April 2002; (ii) US\$ 29,620,403 on 14 November 2002; (iii) 61,124,826 on 9 July 2003; and (iv) US\$ 438,020,176 on 17 December 2003.¹⁴⁵

C. The Oligarchs Paid More Than US\$ 614 Million to the Red Directors Pursuant to Oral Promises in 1995-1996

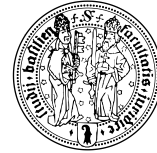
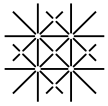
96. The vast majority of the payments from the Oligarchs to the Red Directors, more than US\$ 613.5 million in total, were purportedly paid pursuant to the Agreement dated 26 March 2002 and the Amended and Restated Compensation Agreement dated 1 November 2002.¹⁴⁶ But in reality these payments were made pursuant to oral promises made by the Oligarchs to the Red Directors in 1995-1996.

¹⁴³ Services Agreement between Tisbury Limited and V.V. Ivanenko dated 5 Jan. 1996 (MP-028); Receipt of Payment from Tisbury Limited dated 15 Apr. 1996 (signed by Mr. Ivanenko) (MP-031); Services Agreement between Laleham Limited and V.V. Ivanenko dated 12 Jan. 1998 (MP-045); Receipt of Payment from Laleham Limited dated 28 Apr. 1998 (signed by Mr. Ivanenko) (MP-046); Services Agreement between Status Services Limited and V.A. Kazakov dated 7 May 1998 (MP-047); Receipt of Payment from Status Services Limited dated 11 Aug. 1998 (signed by Mr. Kazakov) (MP-048); Services Agreement between Hinchley Limited and S.V. Muravlenko dated 1 Oct. 1998 (MP-049); Receipt of Payment from Hinchley Limited dated 7 Dec. 1998 (signed by Mr. Muravlenko) (MP-051).

¹⁴⁴ Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002 (MP-067); Amended and Restated Compensation Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 1 Nov. 2002 (MP-075).

¹⁴⁵ Bank Statements of Yukos Universal Limited (MP-066).

¹⁴⁶ Bank Statements of Yukos Universal Limited (MP-066); *see also* Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002 (MP-067); Amended and Restated Compensation Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 1 Nov. 2002 (MP-075).



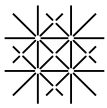
97. The memorandum from Mr. Golubovich of Bank Menatep to Mr. Khodorkovsky in November 1995 in fact shows that, in and around mid-October 1995, the Oligarchs engaged in ‘negotiations’ with ‘representatives of the company [YUKOS],’ i.e. the Red Directors, to acquire a ‘controlling block of shares’ through ‘the Bank’s participation in the auction and Investment Tender.’¹⁴⁷
98. During Project Voyage in August 2002, Messrs. Khodorkovsky and Lebedev advised PWC that ‘[t]he decision to’ make the payments to the Red Directors under the March 2002 Agreement ‘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;’ that the payments were ‘intended to compensate’ the Red Directors for their work ‘*through* privatization, not beyond;’ and that although ‘the specifics’ were not agreed until January 2000, in 1995-1996 ‘the primary idea that the Beneficiaries [the Red Directors] were to share a significant financial interest with the core shareholders was understood.’¹⁴⁸ In a meeting with auditors and lawyers, Mr. Khodorkovsky also ‘made it very clear that this agreement relates exclusively to matters dealt with in 1995 and 1996 and is not by any stretch of the imagination compensation for work done currently.’¹⁴⁹
99. Further, the Amended and Restated Compensation Agreement dated 1 November 2002 provides that the Oligarchs paid the Red Directors for services rendered ‘during their employment at Yukos for the period ending 31 December 1995.’¹⁵⁰ PWC thereafter confirmed in April 2003 that the Agreement referred back to ‘a 1996 unwritten agreement between the ultimate shareholders of the Company and certain

¹⁴⁷ Memorandum from A.D. Golubovich to M.D. Khodorkovsky dated 2 Nov. 1995 (MP-018).

¹⁴⁸ Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071) (emphasis in original).

¹⁴⁹ Email from Bruce Bean dated 15 Aug. 2002 (MP-072) (describing the ‘arrangement they must have effectively had six or seven years ago’).

¹⁵⁰ Amended and Restated Compensation Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 1 Nov. 2002 § 1.7; *id.*, Whereas Clause (B) (MP-075) (providing that the agreement concerned ‘the efforts of the Beneficiaries during the period from 1993 to 1995’).



former managers of YUKOS Oil Company,’ i.e. the Red Directors, and that ‘[s]uch benefits were fully vested in 1996’¹⁵¹

100. It therefore is indisputable that the Oligarchs promised to make the payments to the Red Directors which eventually totaled more than US\$ 613.5 million in 1995-1996.

D. At the time of the Oligarchs’ Oral Promise to Pay a ‘Significant Financial Interest’ to the Red Directors in 1995-1996, YUKOS Was State Owned and the Red Directors Were Public Officials

101. In my assessment, at the time of the Oligarchs’ oral promise to pay ‘a significant financial interest’ to the Red Directors in 1995-1996,¹⁵² the Red Directors (particularly Mr. Muravlenko) were public officials of the Russian Government.

102. Both UNCAC and the OECD Anti-Bribery Convention define a (foreign) ‘public official’ to include ‘any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary,’ or ‘any other person who performs a public function, including for a public agency or public enterprise.’¹⁵³

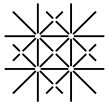
103. The Russian Federation has continuously defined ‘public official’ in similar terms in both the 1960 and 1996 versions of the Criminal Code.¹⁵⁴

¹⁵¹ Email from Doug Miller dated 29 Apr. 2003 (MP-079).

¹⁵² Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071).

¹⁵³ United Nations Convention Against Corruption, Art. 2(a) (MP-081); OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Art. 1(4) (MP-098).

¹⁵⁴ Criminal Code of the Russian Federation No. 63-Fz dated 13 June 1996, Art. 285, Notes 1-3 (MP-032); 1960 Criminal Code, Article 170, Note (MP-002); OECD Working Group, Phase 1 Report on Implementing the OECD Anti-Bribery Convention in the Russian Federation (16 Mar. 2012) (MP-103); Plenum of the USSR Supreme Court, Resolution No. 4 dated 30 Mar. 1990 (MP-006); Survey of Court Practice of the Supreme Court of the Russian Federation for the Third Quarter of 1998 Regarding Criminal Cases, approved by Resolution of the Presidium of the Supreme Court of the Russian Federation dated 2 Dec. 1998 § 11(MP-050); G.P. TIKHONOVA AND A.A. BOLSHAKOV, COMMENTARY ON THE 1960 CRIMINAL CODE OF THE RSFSR 308-309 (1962) (MP-002); B.S. NIKIFOROV, SCIENTIFIC APPLIED COMMENTARY ON THE CRIMINAL CODE OF THE RSFSR 364 (1963) (MP-003).



104. In 1995-1996, when the Oligarchs promised payment to the Red Directors, YUKOS was an SOE that was in the process of being privatized by the State. At that time, the Red Directors—and particularly Mr. Muravlenko—were managing YUKOS and were empowered by the Government of the Russian Federation to perform ‘public functions’ in connection with the YUKOS privatization:

- Mr. Muravlenko was the President of YUKOS and the Chairman of its Board of Directors and Mr. Ivanenko was a ‘vice president’ of YUKOS;¹⁵⁵
- under Resolution No. 383-p dated 6 March 1993, Mr. Muravlenko was ‘entrusted’ with ‘responsibility for implementing the organizational arrangements’ regarding the privatization of YUKOS;¹⁵⁶
- in May 1994 Mr. Muravlenko chaired the meeting (attended by Mr. Ivanenko as YUKOS ‘vice president’) at which the YUKOS Board approved the ‘consolidated final draft of the Company’s privatization plan’;¹⁵⁷
- on 15 December 1994, Mr. Muravlenko signed on behalf of the YUKOS Board to approve the Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company;¹⁵⁸
- section 1.8 of the Regulation provided that the YUKOS Board of Directors (chaired by Mr. Muravlenko) would be responsible for approving an ‘investment program’ that would include ‘[m]andatory and additional tender conditions and the specific value of the shares put up for tender’;¹⁵⁹

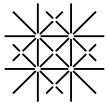
¹⁵⁵ Council of Ministers Resolution No. 354 dated 15 Apr. 1993 (MP-009); Protocol No. 3 of the YUKOS Board of Directors dated 27 May 1994 (MP-011).

¹⁵⁶ Council of Ministers Resolution No. 383-p dated 6 Mar. 1993 (MP-008).

¹⁵⁷ Protocol No. 3 of the YUKOS Board of Directors dated 27 May 1994 (MP-011).

¹⁵⁸ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 (MP-012).

¹⁵⁹ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 § 1.8 (MP-012).



- sections 2.4 and 2.5 of the Regulation provided that YUKOS would name ‘one representative’ (presumably Mr. Muravlenko, another Red Director, or one of their associates) to participate on the Tender Commission, which would supervise the tender process and determine the winner;¹⁶⁰
- on 27 September 1995, Mr. Muravlenko proposed to the First Deputy Chairman of the Government of the Russian Federation that the Loans-for-Shares auction and the Investment Tender should be ‘interconnected,’ and that participation in the Investment Tender should be a mandatory precondition to participate in the Loans-for-Shares auction;¹⁶¹
- on 12 October 1995, the YUKOS Board approved the YUKOS Investment Program, which was signed by Mr. Muravlenko;¹⁶² and
- on 16 December 1998, Mr. Kazakov certified to the Russian Fund of Federal Property that ‘[t]he Investor has performed targeted financing of investment projects in the amount of 200 (two hundred) million US dollars.’¹⁶³

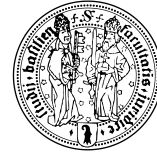
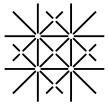
105. From this list, it is evident that the Red Directors had the authority to influence both the procedures and the outcome of the YUKOS privatization in 1995-1996 and the Government’s ratification of the Oligarchs’ purported fulfillment of the YUKOS Investment Program in 1998. The Red Directors therefore were public officials who could take action or fail to take action to facilitate the Oligarchs’ acquisition of YUKOS when the Oligarchs orally promised to provide a significant financial interest to the Red Directors in 1995-1996.

¹⁶⁰ Regulation on Investment Tenders for the Sale of Shares of YUKOS Oil Company dated 15 Dec. 1994 §§ 2.4-2.5 (MP-012).

¹⁶¹ Letter from S.V. Muravlenko to A.B. Chubais dated 27 Sept. 1995 (MP-015).

¹⁶² Investment Program, approved by Decision of the Board of YUKOS Oil Company, Minutes No. 13 dated 12 Oct. 1995 (MP-017).

¹⁶³ Certificate of Fulfilment of the Activities of YUKOS Oil Company OJSC’s Investment Program in Accordance with the Conditions of the Pledge Auction dated 16 Dec. 1998 (MP-052) (signed by V.A. Kazakov).



E. The Privatization Process Leading to the Oligarchs' Acquisition of YUKOS Was Anticompetitive and Unlawful

106. As public officials entrusted by the Government with establishing the procedures for and managing the privatization of YUKOS, the Red Directors were in a position to be corrupted. The Nobel Prize winning economist, Professor Joseph Stiglitz, has observed that bribery is unfortunately common in privatizations: 'Perhaps the most serious concern with privatization, as it has so often been practiced, is corruption [P]rivatization has made matters so much worse that in many countries today privatization is jokingly referred to as 'briberization.''¹⁶⁴

107. Professor Susan Rose-Ackerman has explained that public officials involved in privatizations may be bribed for a wide range of reasons, including to prequalify bidders or limit the number of competing bidders:

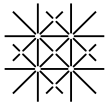
'[T]he process of transferring [State-owned] assets to private ownership is fraught with corrupt opportunities. Many corrupt incentives are comparable to those that arise in the award of contracts and concessions. Instead of bribing a parastatal to obtain contracts and favorable treatment, bidders for a public company can bribe officials in the privatization authority or at the top of government. Bribes may be solicited for inclusion on the list of prequalified bidders, and firms may pay to restrict the number of other bidders.'¹⁶⁵

108. A telltale sign of corruption in the context of a privatization is collusive bidding: 'A corruption scheme often involves more than one type of misconduct. A corrupt scheme in procurement often begins with a demand for, or offer of payment, followed by bid rigging and finally fraud to cover up the scheme.'¹⁶⁶

¹⁶⁴ JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 58 (2002) (MP-065).

¹⁶⁵ SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* 35 (2d ed., 2016) (MP-112).

¹⁶⁶ *FRAUD AND CORRUPTION AWARENESS HANDBOOK* 7 (2013) (MP-106); *see also* Glen T. Ware et al., *Corruption in Public Procurement: A Perennial Challenge*, in J. EDGARDO CAMPOS & SANJAY PRADHAN, *THE MANY FACES OF CORRUPTION: TRACKING VULNERABILITIES AT THE SECTOR LEVEL* 301 (2007) (MP-088) (observing that in some cases 'public officials actively participate in the manipulation, sometimes with the willing collaboration of some or all of the bidders or, at other times, by coercing some or all of the bidders to participate in the bid-rigging scheme').



109. With regard to the privatization of YUKOS, Mr. Muravlenko persuaded the Government that the Loans-for-Shares auction and the Investment Tender should be ‘interconnected’ and that only Investment Tender participants should be permitted to bid in the auction.¹⁶⁷ As I discussed above, Mr. Muravlenko thus helped to restrict the number of potential competitors in the Loans-for-Shares auction.

110. In fact, only two bidders participated in the Investment Tender and the Loans-for-Shares auction and both of the bidders, ZAO Laguna and ZAO Reagent, were incorporated on the same date and at the same address and were represented by employees of RTT, the joint venture between Bank Menatep and Menatep SA.¹⁶⁸ ZAO Reagent’s bid of US\$ 150.1 million in the Loans-for-Shares auction also was just above the minimum bid price of US\$ 150 million.¹⁶⁹

111. After the Government defaulted on the Loans-for-Shares loan from ZAO Laguna, ZAO Laguna assigned its obligation to act as the Government’s commission agent in the sale of 45% of the YUKOS shares to Bank Menatep.¹⁷⁰ Again only two bidders participated in the auction: (i) ZAO Monblan, which was represented by RTT’s Head of Legal Department, and (ii) OAO Moscow Food Factory, which was listed in Bank Menatep records among the ‘Menatep Group’ of companies.¹⁷¹ Although YUKOS’s own documents show that ZAO Monblan was an ‘affiliate of companies jointly controlled by the current shareholders of Group MENATEP’,¹⁷²

¹⁶⁷ Letter from S.V. Muravlenko to A.B. Chubais dated 27 Sept. 1995 (MP-015); State Property Committee Order No. 1458 dated 10 Oct. 1995, amended 31 Oct. 1995, Notice § 5.1 (MP-016).

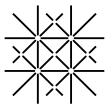
¹⁶⁸ Auction Minutes No. 2 dated 8 Dec. 1995 (providing, among other things, that ZAO Laguna was represented by Mr. Zakharov and that ZAO Reagent was represented by Mr. Koval) (MP-020); *see also* List of RTT Employees dated 1 Sept. 1995 (MP-014); RTT Revised JV Charter §§ 1.11, 3.1 dated 8 Dec. 1997 (MP-043).

¹⁶⁹ Auction Minutes No. 2 dated 8 Dec. 1995 (MP-020); *see also* Order No 1458 of the State Property Committee of the Russian Federation, Notice § 1 (MP-16).

¹⁷⁰ Assignment Agreement No. 198 between Laguna CJSC and Bank Menatep dated 13 Dec. 1995 (MP-021).

¹⁷¹ Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company dated 24 Dec. 1996 (MP-034) (providing, among other things, that ZAO Monblan was represented by Mr. Krainov); *see also* List of RTT Employees dated 1995 (MP-014); List Identifying OAO Moscow Food Factory as Menatep Group Company (MP-027).

¹⁷² Draft F-1 Registration Statement dated 19 Mar. 2003, at 78 (MP-078); *see also* Memorandum from Clifford Chance on Privatisation of YUKOS dated 12 Aug. 2002, at 3 (MP-070).



Bank Menatep's representatives falsely asserted in 1996 that there was no connection between Bank Menatep and ZAO Monblan.¹⁷³

112. In this auction to purchase 45% of YUKOS's shares, the minimum bid price set by Mr. Kagalovsky of Bank Menatep was US\$ 160 million.¹⁷⁴ OAO Moscow Food Factory bid only US\$ 160.05 million, enabling ZAO Monblan to win with a bid of US\$ 160.1 million, i.e. US\$ 100,000 more than the minimum bid price.¹⁷⁵

113. The evidence therefore establishes that the auctions leading to the Oligarchs' acquisition of majority control over YUKOS were anticompetitive and unlawful as the only bidders were secretly controlled by Bank Menatep and the losing bids were clearly intended to create the false impression of competition. The only two bidders were controlled by Bank Menatep, which purportedly was supervising the Loans-for-Shares auction on behalf of the State Property Committee. Given the Red Directors' involvement in establishing the procedures regulating the privatization and selecting the winner of the Loans-for-Shares auction, the collusive bid rigging during these auctions strongly indicates that the Oligarchs' payments to the Red Directors were bribes to manipulate the privatization process in favor of the Oligarchs.

F. There Was No Legitimate Basis for the Oligarchs to Pay More Than US\$ 600 Million to the Red Directors Pursuant to Oral Promises Made in 1995-1996 for Services They Rendered on Behalf of the State

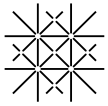
114. Another very strong indicator of corruption arises when the payments at issue do not make economic sense or are supported by 'insufficient *bona fide* business reasons,' for example because the payments were 'unusually high.'¹⁷⁶ The leading

¹⁷³ Sergey Lukyanov, 'Managed' Yukos Sale Fetches \$160M, *Moscow Times*, 24 Dec. 1996 (MP-035) (reporting that Mr. Kagalovsky said '[t]here is no connection between Monblan and Menatep' and Ms. Mandrova 'denied Menatep had any connection with Monblan').

¹⁷⁴ Schedule of Auction Events dated 1996 (MP-025); Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company dated 24 Dec. 1996 (MP-034).

¹⁷⁵ Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company dated 24 Dec. 1996 (MP-034).

¹⁷⁶ See, e.g., Woolf Committee Report, *Business ethics, global companies and the defence industry: Ethical business conduct in BAE Systems plc – the way forward* dated May 2008, at 26 (MP-0941); ICC Commission on Corporate Responsibility and Anti-Corruption, *ICC Guidelines on Agents, Intermediaries*



commentary on the OECD Anti-Bribery Convention, which I edited, observes that ‘the key factor’ in assessing the legitimacy of payments ‘is whether the commission fee . . . is a reasonable one, i.e. one which is proportionate to the job in question. . . . [A]n exorbitant commission or expenses claim will be a clear indicator of corrupt practices.’¹⁷⁷ Similarly, an anti-corruption handbook published by the World Bank explains that a disproportionately high commission payment ‘may be nothing more than a legalized conduit for money to flow between a . . . bidder and those in government responsible for awarding the contract.’¹⁷⁸

115. There was no bona fide reason for the Oligarchs to pay more than US\$ 600 million to the Red Directors for services that they rendered as public officials prior to and during the period of privatization, pursuant to oral promises in 1995-1996, while the State owned YUKOS. In my opinion, YUKOS’s lawyers rightly observed that there is ‘not . . . much logic’ in the Oligarchs paying fees to the Red Directors for their ‘activity in increasing capitalisation in 1993-1996 (before Group MENATEP became a Yukos’ shareholder), as any increase in Yukos’ capitalisation entailed the increase of costs for Group MENATEP in its acquisition of control over Yukos through the purchase of Yukos shares.’¹⁷⁹

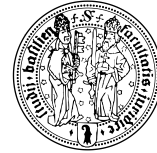
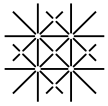
116. Looking at the same issue from the opposite point of view, as public officials managing YUKOS while it was an SOE, the Red Directors would not have been permitted to accept compensation from private parties (such as the Oligarchs) for

and Other Third Parties dated 19 Nov. 2010, at 5-6 (MP-097); Glenn T. Ware, et al., *Corruption in Public Procurement: A Perennial Challenge*, in J. EDGARDO CAMPOS & SANJAY PRADHAN, *THE MANY FACES OF CORRUPTION: TRACKING VULNERABILITIES AT THE SECTOR LEVEL* 300-301 (2007) (MP-088); Ingeborg Zerbes, *The Offense of Bribery of Foreign Public Officials*, in *THE OECD CONVENTION ON BRIBERY: A COMMENTARY* 155 (Mark Pieth, Lucinda A. Low, & Nicola Bonucci eds., 2014) (MP-109); Michael N. Davies, *The Role of Agents and Other Intermediaries*, in *FIGHTING CORRUPTION: INTERNATIONAL CORPORATE INTEGRITY HANDBOOK* 53, 56 (Fritz Heimann & Francois Vincke eds., 2008) (MP-089).

¹⁷⁷ Ingeborg Zerbes, *The Offense of Bribery of Foreign Public Officials*, in *THE OECD CONVENTION ON BRIBERY: A COMMENTARY* 155 (Mark Pieth, Lucinda A. Low, & Nicola Bonucci eds., 2014) (MP-109).

¹⁷⁸ Glenn T. Ware, et al., *Corruption in Public Procurement: A Perennial Challenge*, in J. EDGARDO CAMPOS & SANJAY PRADHAN, *THE MANY FACES OF CORRUPTION: TRACKING VULNERABILITIES AT THE SECTOR LEVEL* 300 (J. Edgardo Campos & Sanjay Pradhan, eds., 2007) (MP-088); *see also* Michael N. Davies, *The Role of Agents and Other Intermediaries*, in *FIGHTING CORRUPTION: INTERNATIONAL CORPORATE INTEGRITY HANDBOOK* 53, 56 (Fritz Heimann & Francois Vincke eds. 2008) (MP-089).

¹⁷⁹ Clifford Chance Email dated 30 Sept. 2002 (MP-074).



work performed while they were employed by the Russian Government. As public officials, accepting large payments would create a conflict of interest.

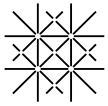
117. In the context of the privatization of an SOE, any compensation (e.g. farewell or termination payments) to the old management must be provided for in an official service contract known to the company before its takeover; secret oral agreements are not permissible. Termination payments must be reasonable and cannot be awarded retrospectively. The 26 March 2002 Agreement and the 1 November 2002 Amended and Restated Compensation Agreement pursuant to which the Oligarchs paid the Red Directors, by contrast, were concluded after the Oligarchs acquired the company and management had been replaced. While the Oligarchs' payments to the Red Directors evidently were agreed between the parties beforehand,¹⁸⁰ this happened in the form of a secret oral agreement that was not registered with the company, which is not permissible in this context, particularly for the extraordinary amounts involved.

118. In addition, the amount of US\$ 613.5 million paid by the Oligarchs to the Red Directors was more than the Oligarchs' entities (ZAO Laguna and ZAO Monblan) paid to acquire their 78% controlling shareholding in YUKOS.¹⁸¹ The amount paid also was more than 60 times greater than all of the payments to YUKOS employees for 'stock-based compensation plans' from 2001 to 2003, which totaled only US\$ 10 million.¹⁸² And it vastly exceeded the total 'maximum benefits' under YUKOS's

¹⁸⁰ Memorandum from Doug Miller to Bruce Misamore dated 14 Aug. 2002 (MP-071).

¹⁸¹ ZAO Laguna and ZAO Monblan acquired the 78% shareholding by paying US\$ 9 million to purchase the 33% shareholding through the Investment Tender; US\$ 160.1 million to purchase the 45% shareholding that collateralized the Loans-for-Shares loan on which the Government defaulted; and a total of US\$ 350.25 million in investments in YUKOS. *See* Auction Minutes No. 2 dated 8 Dec. 1995 (MP-020); Stock Purchase Agreement No. 1-12-1-990 dated 14 Dec. 1995 § 4.1.1 (MP-023); Investment Agreement between Mr. Muravlenko and Mr. Zakharov dated 1996 § 3.1.2 (MP-024); Report on the Sale of a Lot of Shares of Open Joint Stock Company YUKOS Oil Company dated 24 Dec. 1996 (MP-034).

¹⁸² *See* 2002 YUKOS Annual Report 61 (MP-064) ('Recorded compensation expense related to conditional stock awards and stock options issued by the Company to employees was USD 3 million and USD 1 million for the years ended December 31, 2002 and 2001, respectively.').



pension plan from 2000 and 2002, which covered more than 35,000 employees (and not merely four individuals).¹⁸³

119. The Oligarchs' payment of more than US\$ 600 million to the Red Directors thus was clearly disproportionate to any lawful benefit that the Red Directors could have provided to the Oligarchs or YUKOS. Mr. Miller of PWC, the Project Voyage auditor, in fact stated during a deposition in 2009 that he had 'never seen a company compensate management that, for lack of a better term, generously.'¹⁸⁴

120. In sum, the Red Directors were public officials when the Oligarchs promised to make payments to them in mid-October 1995. There was no legitimate basis for the Oligarchs to pay the Red Directors more than US\$ 600 million for work performed prior to 31 December 1995, while YUKOS was an SOE and the Red Directors were responsible for managing YUKOS on the Government's behalf. There also were numerous 'red flags' or indicia of bribery associated with the payments made from the Oligarchs to Tempo on behalf of the Red Directors. It therefore is my professional opinion that the Oligarchs offered and gave bribes to the Red Directors, through Tempo, to facilitate their acquisition of YUKOS.

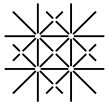
G. The Oligarchs Paid the Red Directors Pursuant to Sham Services Agreements and Oral Agreements

121. Sham agreements also raise concerns of bribery and money laundering. In *Berezovsky v. Abramovich*, Justice Gloster of the English High Court explained that 'a sham agreement, entered into for the purposes of generating documentation that would give a false impression that a genuine commercial transaction had been entered into,' would 'satisfy the money-laundering requirements.'¹⁸⁵

¹⁸³ See YUKOS Consolidated Financial Statements dated Sept. 2003; 2002 YUKOS Annual Report 27 (MP-080).

¹⁸⁴ *In re Application of Mikhail B. Khodorkovsky*, Case No. 09-cv-2185 (S.D. Cal.) [U.S. District Court for the Southern District of California], Deposition of Douglas Miller dated 18 Dec. 2009, at 234 et seq. (MP-094).

¹⁸⁵ *Berezovsky v. Abramovich*, [2012] EWHC 2463 (Comm) [English Commercial Court] ¶ 832 (MP-105); see also *Metal-Tech Ltd. v. Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award dated 4 Oct. 2013 ¶¶



122. As I discussed above, the Oligarchs paid US\$ 875,000 to three of the Red Directors from 1996-1998 pursuant to four services agreements with Tisbury, Laleham, Status Services, and Hinchley. These agreements contain vague and duplicative provisions setting out the services that purportedly were to be provided by the Red Directors in return for payment.¹⁸⁶ Each payment was made within two to three months of the conclusion of the agreement, which is a short amount of time in relation to the amounts of the payments and the work to be performed. The Red Directors also were not paid according to their efforts, but by a lump sum, and to my knowledge did not produce any tangible work product under the agreements.

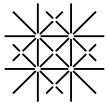
123. Further, each of the agreements was executed ‘in the English and Russian languages, each being equally authentic.’¹⁸⁷ The execution of an authentic *English-language version* of the agreements makes little sense, under the circumstances, given that all of the Oligarchs and all of the Red Directors were Russian nationals, who presumably spoke Russian as their first languages, and all of the purported services were allegedly to be performed in the Russian Federation or in the former Soviet Union. Also, three of the agreements provided that the Red Directors’ services were necessary ‘to improv[e] the efficiency of the Firm’s operations,’¹⁸⁸ even though none of the four Isle of Man shell entities that were parties to the agreements had any discernible ‘operations’ at all. The agreements therefore likely

201-203, 218 (MP-107) (finding that the consulting agreements in that case could ‘[n]ot be regarded as a genuine agreement and must be deemed a sham designed to conceal the true nature of the relationship among the parties to it’).

¹⁸⁶ Services Agreement between Tisbury Limited and V.V. Ivanenko dated 5 Jan. 1996 (MP-028); Services Agreement between Laleham Limited and V.V. Ivanenko dated 12 Jan. 1998 (MP-045); Services Agreement between Status Services Limited and V.A. Kazakov dated 7 May 1998 (MP-047); Services Agreement between Hinchley Limited and S.V. Muravlenko dated 1 Oct. 1998 (MP-049).

¹⁸⁷ Services Agreement between Tisbury Limited and V.V. Ivanenko dated 5 Jan. 1996 § 8.2 (MP-028); Services Agreement between Laleham Limited and V.V. Ivanenko dated 12 Jan. 1998 § 11.2 (MP-045); Services Agreement between Status Services Limited and V.A. Kazakov dated 7 May 1998 § 11.2 (MP-047); Services Agreement between Hinchley Limited and S.V. Muravlenko dated 1 Oct. 1998 § 11.2 (MP-049).

¹⁸⁸ Services Agreement between Laleham Limited and V.V. Ivanenko dated 12 Jan. 1998 § 3.2.1 (MP-045); Services Agreement between Status Services Limited and V.A. Kazakov dated 7 May 1998 § 3.2.1 (MP-047); Services Agreement between Hinchley Limited and S.V. Muravlenko dated 1 Oct. 1998 § 3.2.1 (MP-049).



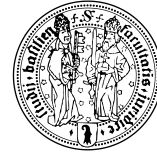
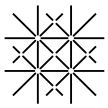
were sham agreements to conceal the true purpose of the payments that the Oligarchs made from Tisbury, Laleham, Status Services, and Hinchley to the Red Directors.

124. Moreover, the Oligarchs paid more than US\$ 600 million to the Red Directors based on what they described as an oral agreement concluded in 1995-1996. An oral agreement of this vast size is far more consistent with an illegal arrangement than a lawful one. As the U.S. Congress has observed, '[o]rganized criminals make extensive use of . . . oral communications in their criminal activities.'¹⁸⁹ Bribery agreements frequently are oral rather than written in order to conceal potential evidence of the corruption.¹⁹⁰ Essentially, where millions or billions of dollars are at stake, rational parties would seek to protect their interests through a detailed written contract—unless a written agreement would actually endanger the parties by increasing the risk of prosecution. In the context of another Loans-for-Shares auction in the Russian Federation, Justice Gloster explained why the parties in that case declined to record their corrupt bargain in writing:

'[I]f the true nature of the arrangement was a political arrangement, that is to say, a trade in influence and protection, in return for payment of large sums of money, as opposed to an oil industry partnership, it is readily understandable that both men, and particularly a person in Mr. Berezovsky's position, would not have wanted there to have been anything recorded in writing. . . . 'Such an arrangement would have been simple enough for a document to be unnecessary, and embarrassing enough for it to be undesirable. It is hardly conceivable that the parties could have intended that an understanding which it is common ground required Mr. Berezovsky to use his influence over the President to his own financial advantage and that of Mr. Abramovich, should have been intended as a binding agreement on which recourse might be had to the Russian courts in

¹⁸⁹ Omnibus Crime Control and Safe Streets Act of 1968, Public Law No. 90-351 dated 1968 § 801(c) (MP-004).

¹⁹⁰ OECD Anti-Corruption Network for Eastern Europe and Central Asia, *Expert Seminar: 'Effective Means of Investigation and Prosecution of Corruption,'* (Oct. 2010) (MP-095) ('Corruption cases are particularly difficult to prove due to existence of a tacit (silent) agreement. In addition, it is often an oral agreement, which is also difficult to prove.') (emphasis in original); Yadong Luo, *An Organizational Perspective of Corruption*, Mgmt. & Org. Rev. 119, 139 (Jan. 2004) (MP-082) ('[C]orrupt activities are highly risky for all actors because of their illicit nature. Such activities are always based on oral agreements that are covert, hidden, and non-transparent.').



case of dispute. It is obvious that the arrangement was intended to be binding in honour, not in law.’¹⁹¹

125. In this case, the Oligarchs and the Red Directors waited until March 2002 to memorialize their oral agreement from 1995-1996. Given the magnitude of the payments at issue, it is astonishing that the Oligarchs and the Red Directors left such an important matter to be governed solely by an oral promise for six or seven years. It is highly unlikely that the Oligarchs and the Red Directors would fail to record the terms of an agreement worth hundreds of millions of dollars in a detailed written contract that could be easily enforced in the Russian courts. The lack of any written agreement during this time clearly suggests that the parties were more concerned with concealing their agreement than enforcing it in court.

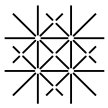
126. Furthermore, while the Oligarchs and the Red Directors eventually replaced their oral agreement with the 26 March 2002 Agreement (which was amended and restated on 1 November 2002), certain key terms were never committed to writing. Mr. Lebedev informed PWC in August 2002, for example, ‘that he (and apparently [the Red Directors]) are aware of the certain limit of payments which when reached, will cause the end of any payments to the [Red Directors]. *This limit is not set out anywhere in the documents.*’¹⁹²

127. The Oligarchs also repeatedly stated in 2002-2003 that they did not know (and evidently did not care) how the Red Directors would divide the payments that the Oligarchs made to Tempo for their benefit.¹⁹³ The Oligarchs’ failure to set out key payment terms in their written agreements and their lack of concern as to how

¹⁹¹ *Berezovsky v. Abramovich*, [2012] EWHC 2463 (Comm) [English Commercial Court] ¶ 294 (MP-105).

¹⁹² Email from Michael Tamaev to Bruce Bean dated 12 Aug. 2002 (MP-069) (further explaining that ‘the amount of payments will reach this limit before January 1, 2007 and then the Compensation Agreement will be amended, if and as necessary’) (emphasis added).

¹⁹³ Email from Michael Tamaev to Bruce Bean dated 12 Aug. 2002 (MP-069) (‘Mr. Lebedev does not know what arrangement these [Red Directors] have among themselves as to distribution of money He is not concerned as to how they allocate the funds among themselves.’); Email from Bruce Misamore to Dmitry Gololobov dated 27 Nov. 2002 (MP-076) (‘Group MENATEP has no information on the arrangements on distribution of proceeds existing between the [Red Directors].’); *see also* Draft F-1 Registration Statement dated 19 Mar. 2003, at 125 (MP-078).



the payments to Tempo would be allocated among the Red Directors cast further doubt as to the bona fides of the transaction.

H. The Oligarchs and the Red Directors Are Russian Nationals, But All of the Payments Were Made Through Offshore Entities

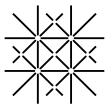
128. Another striking aspect of the Oligarchs' payments to the Red Directors is the use of shell entities based in the Isle of Man and the BVI to transmit the payments, even though the Oligarchs and the Red Directors were all Russian nationals.

129. Transmitting payments through offshore shell entities makes it far more difficult to trace the actual beneficiaries of payments and is therefore a common strategy for concealing illegal payments. In comments on the OECD Anti-Bribery Convention, I have previously written that corruption and offshore money laundering are closely linked: 'Grand corruption typically requires the creation of 'slush funds' (invariably held outside the briber's and the bribee's country of domicile). . . . It has been recognized that [offshore financial centers] play a key role when seeking to obscure transactions.'¹⁹⁴

130. In an expert analysis presented to the OECD Working Group on Bribery, the former Global Managing Partner of PWC and a prominent anti-corruption expert, Mr. Jermyn Brooks, similarly explained that offshore entities and offshore bank accounts are commonly used to conceal and launder bribe payments:

'Members of the senior management team of a company establish a bank account, usually outside the jurisdiction in which the company operates. The bank account is maintained in the name of an off-shore company which is beneficially owned by the members of the management team in question Arrangements are made for the company to make payments to the bank account of the off-shore company and documentation is prepared to 'support' the payments made, usually in the form of invoices for consultancy or similar services Arrangements are made by the senior management of a company for one of its customers to remit moneys to an off-shore

¹⁹⁴ Mark Pieth, *Article 7: Money Laundering*, in *THE OECD CONVENTION ON BRIBERY: A COMMENTARY* 425 (Mark Pieth, Lucinda A. Low, & Nicola Bonucci eds., 2014) (MP-108).



bank account which is controlled by senior management and from which corrupt payments are made.¹⁹⁵

131. Numerous other authorities confirm that corruption is frequently concealed through offshore money laundering: ‘In bribery . . . proceeds of the bribery flow from the bribe giver to the [public official] or an associate, possibly through a shell company or trust in which the [public official] is the beneficial owner. . .’¹⁹⁶

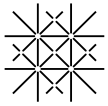
132. Two of the jurisdictions most commonly associated with the concealment of corrupt payments are the Isle of Man and the BVI. According to a 2011 analysis by the Stolen Asset Recovery Initiative (a joint project of the World Bank and the United Nations) of its ‘Grand Corruption Case Database,’ 91 out of 150 corruption cases involved payments made through a BVI entity, while an additional seven cases involved payments made through an Isle of Man entity.¹⁹⁷

133. In this case, the alleged consulting payments in 1996-1998 totaling US\$ 875,000 were made through four Isle of Man entities (Tisbury, Laleham, Status Services, and Hinchley), all of which were dissolved within a few years of making the payments. The 2002-2003 payments totaling more than US\$ 613.5 million were paid from another Isle of Man entity, YUL, to Tempo, a BVI entity.

¹⁹⁵ Mark Pieth, *Article 7: Money Laundering*, in THE OECD CONVENTION ON BRIBERY: A COMMENTARY 426-427 (Mark Pieth, Lucinda A. Low, & Nicola Bonucci eds., 2014) (MP-108).

¹⁹⁶ Financial Action Task Force, *Laundering the Proceeds of Corruption* ¶41 (July 2011) (MP-101); see also Joseph E. Stiglitz & Mark Pieth, *Overcoming the Shadow Economy* (Nov. 2016) 6 (MP-115); U.S. Money Laundering Threat Assessment (Dec. 2005) 47-48 (MP-084) (‘Legal entities such as shell companies and trusts are used globally for legitimate business purposes, but because of their ability to hide ownership and mask financial details they have become popular tools for money launderers. The use of these legal structures for money laundering is well-established.’); U.S. Government Accountability Office, *Company Formations: Minimal Ownership Information Is Collected and Available* (Apr. 2006) 30-31 (MP-086) (‘Law enforcement officials and other reports indicate that shell companies have become popular tools for facilitating criminal activity, particularly laundering money.’); OECD Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors (2009) 19-20, 27 (MP-092); DAVID CHAIKIN & JC SHARMAN, CORRUPTION AND MONEY LAUNDERING: A SYMBIOTIC RELATIONSHIP, Introduction (2009) (MP-093).

¹⁹⁷ Stolen Asset Recovery Initiative, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, at 121, Table B.3 (2011) (MP-100); see also *Metal-Tech v. Uzbekistan* ¶ 202 (MP-107) (finding that various red flags of corruption, including the fact that substantial payments were made ‘through interconnected offshore companies’ rather than directly and transparently between the parties, supported an inference that the payments were bribes).



134. Given that the Oligarchs and the Red Directors were all Russian nationals, there was no evident business reason for all of the payments to be made from Isle of Man entities, rather than directly from the Oligarchs. Nor was there any evident business reason for more than US\$ 613.5 million to be paid to a BVI entity for the benefit of the Red Directors, rather than directly to the Red Directors.

135. Moreover, Tempo was established in the BVI by the Panamanian law firm, Mossack Fonseca, on 14 March 2001,¹⁹⁸ which was only about one year before the Oligarchs began transmitting payments from YUL to Tempo on 2 April 2002.¹⁹⁹ Tempo was struck off the corporate register in 2007, about four years after the last recorded payment from YUL on 17 December 2003.²⁰⁰

136. During its six-year existence, Tempo's limit on authorized capital was never raised above US\$ 50,000.00.²⁰¹ This amount is less than 0.0082% of the US\$ 613.5 million that was ultimately paid from the Oligarchs' company, YUL, to Tempo's bank accounts at Clariden Bank Zurich²⁰² and JP Morgan Chase Bank.²⁰³ It is also noteworthy that the address given for Tempo in the 2002 Agreements is neither in the BVI nor in the Russian Federation, but is the address of a third bank, Coutts Bank (Switzerland) Limited in Geneva.²⁰⁴

137. In addition, until 27 March 2006, Tempo Finance Limited was able to issue bearer shares, such that its beneficial owners did not appear anywhere in the

¹⁹⁸ BVI Financial Services Commission Registry of Corporate Affairs, Report for Tempo Finance Ltd. Registration dated 14 Mar. 2001 (MP-059).

¹⁹⁹ Bank Statements of Yukos Universal Limited (MP-066).

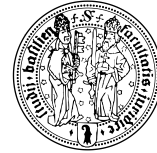
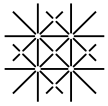
²⁰⁰ Bank Statements of Yukos Universal Limited (MP-066).

²⁰¹ BVI Financial Services Commission Registry of Corporate Affairs, Report for Tempo Finance Ltd. Registration dated 14 Mar. 2001 (MP-059).

²⁰² Schedule of Payments to Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002 (MP-068).

²⁰³ Bank Statements of Yukos Universal Limited (MP-066).

²⁰⁴ Original Agreement between Group Menatep Limited, Beneficiaries, and Tempo Finance Ltd. dated 26 Mar. 2002 (MP-067).



company registry of the BVI.²⁰⁵ As Professor Stiglitz and I explained in our joint report in the aftermath of the ‘Panama Papers’ scandal, bearer shares are a well-known way to hide the beneficial owners of companies, and are frequently used to facilitate money laundering.²⁰⁶

138. For these reasons, it appears that the BVI and Isle of Man entities through which the payments were made from the Oligarchs to the Red Directors—Tempo, Hinchley, Laleham, Status Services, and Tisbury—were typical offshore shell entities with no economic purpose, other than to channel payments secretly from the Oligarchs to the Red Directors.

I. The Oligarchs Retained Known Money Launderers to Establish the Offshore Entities Through Which They Paid the Red Directors

139. It also highly telling that the offshore corporate structures through which the Oligarchs paid the Red Directors were established by Curtis & Co and Valmet Group. Both of these professional service providers have been found by judicial and regulatory authorities to have committed money laundering to misrepresent the true nature of questionable transactions.

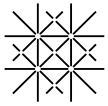
140. I have explained in my written work that it is very common for offenders to conceal corrupt transactions with the aid of a professional service provider:

‘A classic structure requires a professional ‘organiser’. Frequently, he will be a fiduciary, a banker, or ideally an attorney operating from a large [offshore financial centre]. Although the client-attorney privilege would in most countries not withstand criminal investigation, if the attorney acted merely as financial intermediary, the legal difficulties created in clarifying the situation would suffice to impede law enforcement substantially.’²⁰⁷

²⁰⁵ BVI Financial Services Commission Registry of Corporate Affairs, Report for Tempo Finance Ltd. Registration dated 14 Mar. 2001 (MP-059).

²⁰⁶ Joseph E. Stiglitz & Mark Pieth, *Overcoming the Shadow Economy* 6 (Nov. 2016) (MP-115); see also Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* 22, 25, 88 (Oct. 2016) (MP-114).

²⁰⁷ Mark Pieth, *Article 7: Money Laundering*, in *THE OECD CONVENTION ON BRIBERY: A COMMENTARY* 428-429 (Mark Pieth, Lucinda A. Low, & Nicola Bonucci eds., 2014) (MP-108).



141. In its 2010 Report on *Money Laundering Using Trust and Company Service Providers*, the Financial Action Task Force similarly observed that professional service providers are often sought out by criminals for their services:

‘Lawyers, accountants, notaries and other such professionals provide services to clients to help them navigate the often complex and sometimes treacherous world of finance, law and corporate governance. . . . [T]hese same skills and expertise are attributes that are desired by criminals, who require assistance in organizing their affairs, to enable them to distance proceeds from their criminal origins; and to liberate these proceeds for eventual use in ‘legitimate’ endeavours. For this purpose criminals seek out the services of professional intermediaries to help them establish corporate structures, set up trusts, transfer funds and negotiate deals. The important advantages to the criminal are: the concealment of the proceeds of crime; the granting of access to various financial centres through the diverse mechanisms which can be used by these intermediaries; and the creation of confusing audit trails to stymie law enforcement’s efforts with regard to these transactions. . . . [I]t is safe to say that the more complex the scheme being established and the more economically senseless the approach adopted, then the more likely it is that the professional intermediary involved knows, strongly suspects or is wilfully blind to the true nature of the activities which underpin the professional services being provided.’²⁰⁸

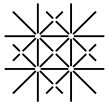
142. In the present case, the offshore structures used by the Oligarchs to pay the Red Directors were created with the assistance of professional service providers who have been found to have committed money laundering.

143. The payments to Tempo were paid through YUL and GML, the directors of which included Mr. Stephen Curtis and Mr. Nicholas Keeling.²⁰⁹ In their business dealings with YUL and GML, Mr. Curtis and Mr. Keeling were assisted by Mr. James Jacobson, who was an associate of Mr. Curtis.²¹⁰ All three of these individuals—Mr. Curtis, Mr. Jacobson, and Mr. Keeling—were identified in

²⁰⁸ Financial Action Task Force, *Money Laundering Using Trust and Company Service Providers* 41 (Oct. 2010) (MP-096).

²⁰⁹ GML Registration Documents (MP-038); YUL Registration Documents (MP-039).

²¹⁰ Email from Stephen Curtis & James Jacobson to Anton Drel dated 12 Apr. 2001 (MP-060); Fax from Nicholas Keeling to Anton Drel cc James Jacobsen dated 1 June 2001 (MP-061); Fax from Victor Prokofiev to Stephen Curtis dated 11 July 2001 (MP-063).



connection with confirmed money-laundering activities in the English High Court's judgment in *Berezovsky v. Abramovich*, which also involved concealing multibillion-dollar payments between Russian oligarchs.

144. As Justice Gloster explained her written decision in *Berezovsky v. Abramovich*, two separate agreements created by Mr. Curtis and his associates, known as the 'Spectrum Agreement' and the 'Devonia Agreement,' were sham contracts devised for money-laundering purposes.²¹¹ All parties to the litigation had accepted that the so-called 'Spectrum Agreement' was a sham contract designed to conceal a payment of US\$ 140 million from Mr. Abramovich to Mr. Berezovsky, while giving the false impression that this amount had been paid by an unrelated company known as Spectrum.²¹² In exchange for arranging this sham transaction to funnel money through Spectrum, Mr. Curtis was evidently paid a fee of US\$ 600,000.00.²¹³

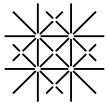
145. Over Mr. Berezovsky's objection, Justice Gloster also concluded in *Berezovsky v. Abramovich* that the evidence overwhelmingly showed that the 'Devonia Agreement' was another sham contract devised by Mr. Curtis, Mr. Jacobson, and Mr. Keeling:

'[T]he Devonia Agreement was not a genuine agreement. It was a sham agreement, entered into for the purposes of generating documentation that would give a false impression that a genuine commercial transaction had been entered into, so as to satisfy the money-laundering requirements of the UK bank, into accounts at which the \$1.3 billion paid by Mr. Abramovich to Mr. Berezovsky and Mr. Patarkatsishvili was, ultimately, going to be paid. . . . The various contemporaneous drafts and notes, and Mr. Curtis's description of the proposed transactions, as well as Mr. Jacobson's evidence, demonstrated the sham and wholly bogus nature of the proposed arrangements. A solicitor, Nicholas Keeling of Denton

²¹¹ *Berezovsky v. Abramovich*, [2012] EWHC 2463 (Comm) [English Commercial Court] ¶¶ 845-858 (MP-105).

²¹² *Berezovsky v. Abramovich*, [2012] EWHC 2463 (Comm) [English Commercial Court] ¶¶ 845-858 (MP-105).

²¹³ *Berezovsky v. Abramovich*, [2012] EWHC 2463 (Comm) [English Commercial Court] ¶ 856 (MP-105).



Wilde Sapte, Gibraltar, was retained to set up any offshore vehicles that might be required. In a telephone conversation on 21 May 2001 with Mr. Curtis and Mr. Jacobson, Mr. Curtis explained to Mr. Keeling the nature of the transaction. Mr. Curtis told Mr. Keeling that it was proposed that Mr. Abramovich should buy the interests of Mr. Berezovsky and Mr. Patarkatsishvili for \$1.3 billion, of which \$500 million would be paid up front and the rest in eight monthly instalments of \$100 million each.²¹⁴

146. Returning to the facts of the present case, the payments made from the YUKOS Oligarchs to the Red Directors from 1996-1998 were paid through Isle of Man entities that were apparently created with the assistance of Valmet Group. Two of the directors and officers of these Isle of Man entities included employees of Valmet Group (Messrs. Ian James Plummer and Iain Gardiner), of which 20% was owned by Bank Menatep during the 1998-1999 period. Both of these individuals, as well as Valmet Group's principal, Mr. Peter Bond, were found guilty of money laundering and disqualified from performing financial services by Isle of Man authorities in 2004 based on a 'Statement of Agreed Facts and Issues.'²¹⁵

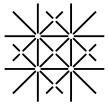
147. The Oligarchs' reliance on the professional services of Curtis & Co. and Valmet Group, both of which have been publicly linked to money laundering, further demonstrates that the hundreds of millions of dollars paid from the Oligarchs to the Red Directors were bribes.

V. Conclusion

148. Based on a full review of the documentary record, it is highly likely that the Red Directors were compensated for the assistance that they provided to the Oligarchs in gaining majority ownership and control of YUKOS. The Oligarchs acquired YUKOS through three auctions that were clearly rigged as the only bidders were controlled by Bank Menatep and the losing bid was clearly a 'shadow bid.' At the time of these auctions, the Red Directors were public officials exercising public functions in connection with the privatization of YUKOS and the Oligarchs made

²¹⁴ *Berezovsky v. Abramovich*, [2012] EWHC 2463 (Comm) [English Commercial Court] ¶¶ 832, 873 (MP-105).

²¹⁵ Government of Isle of Man Disqualification Orders dated 19 Nov. 2004 (MP-083).



oral promises to pay a significant financial interest to the Red Directors. Pursuant to these oral promises in 1995-1996, the Oligarchs paid more than US\$ 613.5 million to the Red Directors, through offshore BVI and Isle of Man shell entities.

149. There was no legitimate basis for the Oligarchs' clearly disproportionate payment of more than US\$ 613.5 million to the Red Directors. If the payments had a lawful purpose, the agreement between the Oligarchs and the Red Directors in 1995-1996 would have been disclosed transparently, rather than concluded orally and only memorialized six or seven years later. The payments also would have been made directly from the Oligarchs to the Red Directors, rather than through offshore shell entities that were established by service providers that had previously been found by judicial and regulatory authorities to have committed money laundering.

150. Under the circumstances, my opinion is that there is a high likelihood that the Oligarchs made huge undue payments to the Red Directors as bribes to induce them to illegally manipulate the privatization process.

Prof. Dr. Mark Pieth
Basel, Switzerland
27 January 2017