



PRESS RELEASE

ARBITRATION BETWEEN JSC CB PRIVATBANK AS CLAIMANT AND THE RUSSIAN FEDERATION

THE HAGUE, 22 NOVEMBER 2019

Respondent Appears in the Arbitration; Tribunal Fixes Calendar for Damages Phase of the Proceedings including Respondent's Illegality Objection

As reported previously (Press Release dated 15 February 2019), on 4 February 2019 the Tribunal issued its unanimous Partial Award addressing the Respondent's liability in respect of the Claimants' claims under the Ukraine-Russia BIT, as well as all outstanding issues of jurisdiction and admissibility. The issue of compensation was deferred to a subsequent phase of the proceedings.

On 3 May 2019, after consulting Parties, the Tribunal issued a procedural order in which it recalled its finding in the Partial Award that the claims of the second Claimant, Finance Company Finilon LLC ("Finilon"), fall outside its jurisdiction, and determined that, absent any reasoned application by Finilon to continue to participate in the proceedings as a party having a direct interest in the proceedings, or on some other basis, which the Tribunal is required to address, Finilon may no longer participate in the proceedings going forward.

On 8 May 2019, the Tribunal informed the Parties that it considered that it would be useful for the remaining Claimant, JSC CB PrivatBank (the "Claimant"), to make further submissions on damages that take into account the Tribunal's findings in its Partial Award. The Tribunal invited the Claimant to make these revised submissions by 19 June 2019, and invited the Respondent to indicate whether it wished to submit a reply to the Claimant's revised submissions on damages.

On 21 May 2019, the Respondent, which had not previously participated in the proceedings, expressed "its willingness to appear in the arbitration." By letters of 21 May, 18 June and 19 July 2019, the Respondent requested the Tribunal to (i) allow the Respondent to make written and oral submissions on jurisdiction; (ii) in the alternative, stay the proceedings pending the outcome of set aside proceedings initiated by the Respondent on 2 May 2019 before the Court of Appeal in The Hague against the Tribunal's Interim Award dated 24 February 2017 and its Partial Award dated 4 February 2019; and (iii) if the Tribunal's jurisdiction is confirmed, give the Respondent an opportunity to raise objections in relation to the claim on the merits and quantum, including by way of an evidentiary hearing.

By letters dated 7 June and 16 July 2019, the Claimant accepted that the Respondent was entitled to participate in the damages phase of the proceedings, but asked the Tribunal to dismiss the Respondent's other requests.

On 12 September 2019, the Tribunal issued a procedural order granting the Respondent's request to make submissions in respect of issues of damages, as well as submissions in support of its argument that "PrivatBank does . . . not qualify as an investor within the meaning of Article 1(1) of the [Ukraine-Russia BIT] who has made investments within the meaning of Article 1(2) of the [Ukraine-Russia BIT], because PrivatBank obtained its investments through corruption, fraud and violence, among other things" (the "Illegality Objection"). The Tribunal denied the remainder of the Respondent's requests, noting that the Respondent "will have the opportunity to make all of its jurisdictional arguments before the Hague Court of Appeal in the Set Aside Proceedings."

On 7 October 2019, after consulting the Parties, the Tribunal issued a procedural order fixing the following calendar for the damages phase of the proceedings:

- 27 March 2020 Claimant’s Submission on Quantum
- 23 September 2020 Respondent’s Response on Quantum (including the Illegality Objection)
- 22 December 2020 Claimant’s Reply on Quantum (including the Illegality Objection)
- 29 March 2021 Respondent’s Rejoinder on Quantum (including the Illegality Objection)
- 17-21 May 2021 Hearing

On 21 October 2019, the Respondent paid its share of deposits requested by the Tribunal.

Background on the Arbitration

The above-referenced arbitration was commenced by the Claimants (then JSC CB PrivatBank and Finance Company Finilon LLC) against the Russian Federation pursuant to the Ukraine-Russia BIT and in accordance with the UNCITRAL Arbitration Rules 1976 on 13 April 2015. The Claimants contended that the Russian Federation had breached its obligations under the Ukraine-Russia BIT by taking measures that prevented them from operating their banking business in Crimea.

The Tribunal was constituted on 6 July 2015. It is comprised of Professor Pierre-Marie Dupuy (Presiding Arbitrator), Sir Daniel Bethlehem, QC (appointed by the Claimants), and Dr. Václav Mikulka (appointed by the appointing authority, Mr. Michael Hwang, on behalf of the Respondent).

Under the instructions of the Tribunal, the PCA will issue press releases from time to time containing information on the procedural steps taken by the Tribunal. Basic information about the proceedings is available on the PCA website at <https://pca-cpa.org/en/cases/130/>.

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Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 122 Contracting Parties. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA’s International Bureau is currently administering 4 interstate arbitrations, 104 investor-State arbitrations, 53 cases arising under contracts involving a State or other public entity, and 2 other disputes. More information about the PCA can be found at www.pca-cpa.org.

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