



## PRESS RELEASE

### ARBITRATION BETWEEN LIMITED LIABILITY COMPANY LUGZOR AND FOUR OTHERS AS CLAIMANTS AND THE RUSSIAN FEDERATION AS RESPONDENT

THE HAGUE, 28 NOVEMBER 2019

#### **Phase on Responsibility and Quantum and Recent Developments**

As reported previously (Press Release dated 13 December 2017), the Tribunal established a timetable for the phase on responsibility and quantum of these proceedings in its Procedural Order No. 5 dated 15 September 2017. Since then, the Tribunal has conducted a full phase on responsibility and quantum, including a hearing in June 2018.

Subsequently, on 5 April 2019, the Respondent, which had not previously participated in the proceedings, expressed its intention to participate and applied for bifurcation and an opportunity to make submissions on jurisdiction, merits and quantum. On 7 June 2019, after considering the Parties' views, the Tribunal issued a procedural order allowing the Respondent to file a single, comprehensive submission on all issues of jurisdiction, admissibility, responsibility and quantum, which the Respondent did on 17 October 2019.

On 19 August 2019, the Claimants made an application for costs and security for costs. On 30 August 2019, the Tribunal denied the application for security for costs and deferred its decision on the allocation of costs until the conclusion of the proceedings.

All of these developments are described chronologically and in greater detail below.

#### *Phase on Responsibility and Quantum*

As reported previously, the Tribunal issued questions to the Parties on issues of responsibility and quantum on 30 November 2017. On 9 February 2018, the Claimants submitted their responses to the Tribunal's questions. The Respondent did not submit any answers to those questions at that time.

On 20 April 2018, having consulted the Parties on the identity and terms of reference of the expert to be appointed, the Tribunal appointed a valuation expert in accordance with Article 27(1) of the UNCITRAL Arbitration Rules 1976. The Tribunal-appointed expert produced a written report, which was communicated to the Parties for their comments on 18 May 2018. The Claimants provided their comments on 11 June 2018. The Respondent did not provide any comments at that time.

In accordance with the timetable established in Procedural Order No. 5 and subsequent communications, the hearing on responsibility and quantum was held from 25 to 27 June 2018, at the Peace Palace in The Hague. Mr. Simon Moore, Ms. Alexandra Underwood and Ms. Tracey Wright of Fieldfisher LLP, Professor Zachary Douglas QC and Mr. Luis González García of Matrix Chambers, Mr. Richard Boulton QC and Ms. Rachel Oakeshott of One Essex Court Chambers, as well as Mr. Vadym Shevtsov and Mr. Volodymyr Yemtsev of Thesis Law Firm, attended for the Claimants. Although invited, the Respondent did not attend the hearing or otherwise participate.

In the course of the hearing, Professor Douglas and Mr. Boulton addressed the Tribunal in an opening statement. The Tribunal also examined seven fact witnesses and two experts on quantum, all presented by the Claimants. Additionally, the Tribunal-appointed expert on quantum appeared for examination. Following the hearing, its transcript was delivered to the Parties.

On 24 January and 15 February 2019, upon the invitation of the Tribunal, the Claimants submitted updated interest calculations and a submission on the costs of the arbitration. On 25 March 2019, the Tribunal invited the Respondent to comment on these submissions.

#### *Respondent's Application*

Until 5 April 2019, the Respondent had not participated in these proceedings. However, by letters to the Tribunal dated 5 April, 6 May and 4 June 2019, the Respondent expressed a desire to participate “in this Arbitration in order to comprehensively express its position and ensure better protection of its rights.” The Respondent explained that it had “not participated hitherto because the jurisdictional position appeared clear—the Tribunal lacks jurisdiction,” whereas now “[p]articipation has simply become a practical necessity because some recent tribunal decisions have gone awry on basic principles of Public International Law.” Specifically, the Respondent requested that the Tribunal grant it until 5 September 2019 to file a request for bifurcation in which it would seek leave to address the jurisdictional issues arising in this arbitration in a separate procedural phase. The Respondent further indicated that, if this arbitration were to proceed beyond a jurisdictional phase, it wished to make submissions on issues of merits and quantum (the “Respondent’s Application”).

By letters dated 18 April and 10 May 2019, the Claimants objected to the Respondent’s Application.

On 7 June 2019, the Tribunal addressed the Respondent’s Application in its Procedural Order No. 6. In this Order, the Tribunal observed, *inter alia*, that the Respondent’s Application was submitted at a very late stage of the proceedings, after both Parties have been given a full opportunity to make written and oral submissions on all issues arising in this case, including jurisdictional issues, and at which the Tribunal was engaged in deliberating and preparing to render a final award. Nevertheless, considering that an award had not yet been rendered, the Tribunal noted that it would prefer to decide the case on the basis of submissions from both Parties. Mindful of the Claimants’ interest in the efficient conduct of the proceedings and of the delay that would inevitably result if the Respondent’s Application were granted as formulated, the Tribunal concluded that the appropriate balance would be achieved by affording the Respondent one final opportunity to present its case. Accordingly, by its Procedural Order No. 6, the Tribunal granted the Respondent until 5 September 2019 to file a single, comprehensive submission on all issues of jurisdiction, admissibility, responsibility and quantum (the “Comprehensive Submission”). Following the Respondent’s request, the Tribunal extended the deadline for the filing of the Comprehensive Submission until 17 October 2019. The Tribunal also subsequently confirmed that the Comprehensive Submission could be accompanied by expert and witness evidence.

On 8 July 2019, the Respondent appointed Schellenberg Wittmer, led by Mr. Elliott Geisinger, Dr. Christopher Boog, Dr. Anna Kozmenko and Ms. Julie Raneda, and Ivanyan & Partners, led by Mr. Khristofor Ivanyan, to represent it in these proceedings.

On 17 October 2019, the Respondent filed its Comprehensive Submission, accompanied by eight expert reports.

#### *Claimants' Application for Costs and Security for Costs*

By letters dated 19 July and 8 August 2019, the Claimants requested that the Tribunal order the Respondent to (i) pay all of their costs in the present phase of the proceedings dedicated to the filing of

the Respondent's Comprehensive Submission; and (ii) provide security for their costs of the present phase of the proceedings in the amount of EUR 200,000 (the "Claimants' Application").

The Respondent objected to the Claimants' Application by letters dated 2 and 13 August 2019.

On 30 August 2019, the Tribunal issued Procedural Order No. 7, rejecting the Claimants' request for security for costs and deferring its decision on the allocation of costs as between the Parties until the conclusion of the proceedings.

### **Background on the Arbitration**

The above-referenced arbitration was commenced by Limited Liability Company Lugzor, Limited Liability Company Libset, Limited Liability Company Ukrinterinvest, Public Joint Stock Company DniproAzot and Limited Liability Company Aberon Ltd against the Russian Federation pursuant to the Ukraine-Russia BIT and in accordance with the UNCITRAL Arbitration Rules 1976 by Notice of Arbitration dated 26 May 2015. The Claimants contend that the Russian Federation breached its obligations under Articles 2, 3 and 5 of the Ukraine-Russia BIT by interfering with and expropriating their investments in real estate located in the Crimean Peninsula. The Respondent contends that the Tribunal constituted under the Ukraine-Russia BIT does not have jurisdiction to adjudicate the Claimants' claims, and that the claims in any event lack any merit and are significantly inflated.

The Tribunal was constituted on 9 October 2015. It is comprised of Professor Donald M. McRae (Presiding Arbitrator), Judge Bruno Simma (appointed by the Claimants), and Dr. Eduardo Zuleta Jaramillo (appointed by the appointing authority, Dr. Andrés Rigo Sureda, for 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 <https://pca-cpa.org/en/cases/124/>.

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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 inter-state 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](http://www.pca-cpa.org).

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