COUR PERMANENTE D'ARBITRAGE PERMANENT COURT OF ARBITRATION

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH

THE AGREEMENT BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE CABINET OF MINISTERS OF UKRAINE ON THE ENCOURAGEMENT AND MUTUAL PROTECTION OF INVESTMENTS DATED NOVEMBER 27, 1998

- and -

THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, 1976

PCA CASE NO. 2015-21

- between -

(1) PJSC CB PRIVATBANK
(2) FINANCE COMPANY FINILON LLC

The Claimants

- and -

THE RUSSIAN FEDERATION

The Respondent

PROCEDURAL ORDER NO. 2

The Arbitral Tribunal
Professor Pierre-Marie Dupuy (Presiding Arbitrator)
Sir Daniel Bethlehem QC
Dr. Václav Mikulka

Registry
Permanent Court of Arbitration

March 19, 2016

1. Procedural Background

1.1 On August 18, 2015, the Tribunal issued Procedural Order No. 1 and Rules of Procedure for the conduct of this arbitration.

1.2 In Section 5 of Procedural Order No. 1, the Tribunal indicated that it considers that the Respondent's correspondence of June 16 and July 1, 2015 constitutes an objection to the jurisdiction of the Tribunal and to the admissibility of the Claimants' claims in this matter under Article 21 of the UNCITRAL Arbitration Rules 1976 ("**UNCITRAL Rules**").

1.3 In Section 2 of the Rules of Procedure, the Tribunal fixed a timetable for these proceedings. The timetable was subject to adjustment by the Tribunal, after affording the Parties an opportunity to be heard, for any reason concerning the efficient management of the proceedings.

1.4 [redacted]

1.5 Respondent did not communicate its Statement of Defence within the time limit granted in the Rules of Procedure (February 29, 2016).

1.6 [redacted]

1.7 On March 10, 2016, the Tribunal invited the Respondent to comment on the Claimants' requests by March 16, 2016. The Respondent did not submit its views on the Claimants' requests.

2. The Tribunal's Ruling

Continuation of proceedings

2.1 Pursuant to Article 28(1) of the UNCITRAL Rules, these proceedings shall continue notwithstanding the Respondent's failure to communicate a Statement of Defence within the time limit granted.

Bifurcation

2.2 Taking into account all of the relevant circumstances of this case, including that the Tribunal considers the Respondent's correspondence of June 16 and July 1, 2015 to constitute an objection to the jurisdiction of the Tribunal and to the admissibility of the Claimants' claims under Article 21 of the UNCITRAL Rules, the Tribunal shall proceed on the basis of a bifurcated proceeding that will address issues of jurisdiction and admissibility in a preliminary procedure.

Procedural Timetable

2.3 The Tribunal directs that the hearing on jurisdiction and admissibility in this arbitration be held concurrently with the hearing on jurisdiction and admissibility in *PCA Case No. 2015-07*, *i.e.*, from July 12-14, 2016.

Questions Posed by the Tribunal to the Parties

2.4 The Tribunal has reviewed the Claimants' submissions filed to date in this proceeding. The Tribunal deems it appropriate to pose certain questions to the Parties. These questions are posed without prejudice to the Parties' respective cases. They should not be taken to reflect any views held by or findings of the Tribunal regarding the subject-matter of the dispute.

2.5 In a letter dated March 8, 2016, the Claimants submitted, *inter alia*, that to the extent the Tribunal has the same questions about the jurisdictional issues in this proceeding as in *PCA Case No. 2015-07*, they are content to rely upon the answers submitted by the Claimants in that case on February 29, 2016. The Tribunal confirms that the Claimants in this case may rely on those answers. In such case, the Claimants are nevertheless requested to introduce evidence submitted in support of their answers into the record of this arbitration.

2.6 [redacted]

2.7 The Tribunal also poses the following questions to the Claimants, that are specific to this case:

Question 28: The Claimants are invited to provide documentary evidence showing that they were entities "constituted in accordance with the legislation in force in" Ukraine, during the period from 1 February 2014 to 1 May 2015 in the case of PJSC CB PrivatBank ("**PrivatBank**") and the period from 1 November 2014 to 1 May 2015 in the case of Finance Company Finilon LLC ("**Finilon**").

Question 29: The Claimants are invited to provide a complete description of the corporate structure of Finilon during the period from 1 November 2014 to 1 May 2015.

Question 30: [redacted] The Parties are invited to elaborate and/or comment on this submission, including, but not exclusively, by discussing:

a. whether before February-March 2014 PrivatBank was authorized under Ukrainian law or competent in accordance with legislation of Ukraine to make investments on the Crimean peninsula; and,

b. whether after February-March 2014 Privatbank and Finilon were authorized under Ukrainian law or competent in accordance with legislation of Ukraine to make and/or maintain investments on the Crimean peninsula.

Question 31: [redacted] The Parties are invited to elaborate and/or comment on the content of this licensing requirement and its relevance (if any) to the issues of jurisdiction and admissibility in this arbitration.

2.8 At this stage, the Tribunal prescribes the following modified procedural timetable:

Date	Party/Tribunal	Submission/Event
April 22, 2016	Parties	One and/or both Parties submit responses to the Tribunal's questions
April 29, 2016	Parties	Each Party indicates whether it wishes to comment on the responses provided by the other Party to the Tribunal's questions
May 20, 2016	Parties	Any Party having indicated a wish to comment on the responses provided by the other Party to the Tribunal's questions files its comments

Confidentiality and transparency

2.9 Paragraph 4.2 of Procedural Order No. 1 provides that:

> For issues not dealt with in the UNCITRAL Rules, the Tribunal shall apply the rules that the Parties have agreed upon. In the absence of such agreement, the Tribunal shall apply the rules it deems appropriate, provided that the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity of presenting its case in accordance with Article 15(1) of the UNCITRAL Rules.

2.10 The Tribunal notes that, pursuant to Article 25(4) of the UNCITRAL Rules, "[h]earings shall be held *in camera* unless the parties otherwise agree." Article 32(5) provides that "[t]he award may be made public only with the consent of both parties."

2.11 No other provisions in the UNCITRAL Rules address confidentiality or transparency. The Netherlands Arbitration Act (Code of Civil Procedure, Book IV, 1 December 1986, as amended 1 January 2015) does not contain provisions relating to confidentiality or transparency. The Parties have not agreed on any other rules relating to confidentiality or transparency. Accordingly, while remaining within the confines of the UNCITRAL Rules, the Tribunal shall apply the rules that it deems appropriate in this regard.

2.12 The Tribunal has become aware that the fact of these proceedings, including the nature of the claim, as well as the composition of the Tribunal, is in the public domain. The Tribunal in the present case is identically composed in *PCA Case No. 2015-07* engaging apparently similar preliminary issues. The Tribunal is also aware through information in the public domain that a

number of other arbitral tribunals have been constituted in seemingly parallel proceedings commenced by claimant parties against the Russian Federation under the Ukraine-Russia BIT concerning the Russian Federation's alleged conduct on the Crimean peninsula. Considering that this Tribunal may be addressing procedural, preliminary and possibly substantive issues that may be proximate to and have a bearing on those that may be addressed by these other tribunals, the Tribunal considers that it is in the interests of the public administration of justice that, at the very least, basic information on procedural steps taken by this Tribunal should be made publicly available.

2.13 Accordingly, the Tribunal is currently minded to instruct the PCA to:

2.13.1 post on the PCA Case Repository (http://www.pcacases.com) the information contained in **Annex 1** to this Procedural Order;

2.13.2 issue the press release attached at **Annex 2** to this Procedural Order; and,

2.13.3 issue further press releases from time to time containing information on the procedural steps taken by this Tribunal, in which case, a copy of each press release would be provided to the Parties in advance of its being made publicly available.

2.14 Any comments that the Parties may have on the content of paragraph 2.13 should be submitted to the Tribunal by **March 28, 2016**.

Date: March 19, 2016

Place of Arbitration: The Hague, the Netherlands



On behalf of the Tribunal
Professor Pierre-Marie Dupuy
Presiding Arbitrator