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 -

JSC CB PRIVATBANK

The Claimant

- and -

THE RUSSIAN FEDERATION

The Respondent

PROCEDURAL ORDER NO. 26

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

Registry
Permanent Court of Arbitration

11 June 2024

1. Procedural Background

1.1 On 17 April 2023, the Parties filed their respective submissions on costs at the invitation of the Tribunal.

1.2 [redacted] the High Court of England and Wales (the "**High Court**") trial in a case initiated by the Claimant against Messrs. Kolomoisky and Bogolyubov (the "**English Proceedings**") [redacted]

1.3 On 10 July 2023, the Tribunal invited the Claimant to comment on the Respondent's applications of 27 June 2023.

1.4 [redacted]

1.5 [redacted]

1.6 [redacted]

1.7 On 1 August 2023, the Tribunal ordered that the Claimant (i) seek the permission of the High Court to disclose in the present arbitration the skeleton arguments it had filed in the context of the trial in the English Proceedings; and (ii) promptly report to the Tribunal on the outcome of its request to the High Court.

1.8 [redacted]

1.9 On 22 September 2023, the Claimant provided a redacted version of a document entitled "The Bank's Written Opening Submissions," indicating that this document constituted its skeleton argument in the English Proceedings (the "**Skeleton Argument**"). [redacted]

1.10 [redacted]

1.11 By letter dated 22 February 2024, the Tribunal invited the Respondent to comment on the Claimant's Costs Request.

1.12 [redacted]

1.13 [redacted]

1.14 [redacted]

1.15 [redacted]

1.16 On 26 March 2024, the Tribunal invited the Claimant to comment on the Respondent's letter dated 25 March 2024, indicating that it would subsequently rule on the Claimant's Costs Request and the Respondent's Deferral Request.

1.17 [redacted]

[redacted]

2. The Tribunal's Decision

2.1 The pending phase of this arbitration is dedicated to the Illegality Objection raised by the Respondent and issues of quantum, as follows from Procedural Order No. 7 dated 12 September 2019. In this phase, the Parties have made two rounds of substantive written submissions and two hearings have been held to hear the Parties' opening and closing statements as well as for the examination of witnesses and experts.[1] There have been two rounds of document production requests, and additional requests for documents have been made outside that formal process. The Tribunal has appointed its own expert on quantum, who has rendered a report and has appeared for cross-examination by the Parties. The Parties have also filed post-hearing written submissions,[2] as well as submissions on costs. The latter were filed on 17 April 2023, as noted in the above procedural history. Following these events, the steps foreseen under the Tribunal's procedural calendar for the proceedings were complete, and no further procedural steps were foreseen pending the Tribunal's award on the Illegality Objection and issues of quantum.

2.2 [redacted]

2.3 As noted in the procedural history above, at the request of the Tribunal, the Claimant subsequently produced its Skeleton Argument from the English Proceedings in this arbitration, and both Parties provided comments on that document and its relevance to this arbitration. [redacted]

2.4 Having carefully considered the Parties' submissions and studied the Skeleton Argument, the Tribunal concludes that the requirements of fairness and efficiency militate against the deferral of its award pending the outcome of the English Proceedings.

2.5 This arbitration, commenced in January 2015, has been ongoing for more than nine years. As noted above, the pending phase of the arbitration has gone through a full cycle of arguments and presentation of evidence, and has included the opportunity for each Party to seek information from

1 [redacted]

2 [redacted]

the other through document production. The Tribunal does not see why the arguments made and evidence presented by the Parties (including the Skeleton Argument and the Parties' comments thereon) would not be capable of forming the basis for determination of the outstanding issues of the Illegality Objection and quantum.

2.6 While it cannot be altogether excluded that a judgment in the English Proceedings might address issues that are also engaged by the present arbitration, it is by no means clear that it will. According to the Skeleton Argument, the claim in the English Proceedings relates to the alleged extraction of more than USD 1.9 billion from PrivatBank by Messrs. Kolomoisky and Bogolyubov via loans originated in PrivatBank's Head Office to 50 borrowers "with no genuine credit or trading history, no business activity and no prospect of making legitimate repayment of the sums they received," which were subsequently dissipated through a chain of different transactions. The Tribunal's understanding is that there is no dispute in these proceedings regarding the scheme just described. In contrast, the questions before the Tribunal are whether that scheme (or any other illegality) affected PrivatBank's Crimean business in a manner that deprives the Tribunal of jurisdiction or should be taken into account in the quantification of damages.

2.7 Moreover, any judgment of the High Court would also be subject to appeal, such that to await finality in the English Proceedings might be a matter of years.

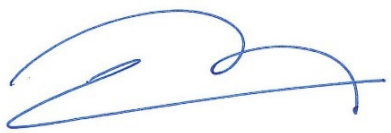
2.8 In the light of the foregoing considerations, the Tribunal considers it unwarranted to defer its award on the Illegality Objection and issues of quantum until the outcome of the English Proceedings.

2.9 Without prejudice to the above, should a judgment be rendered by the High Court before the issuance of the Tribunal's forthcoming award, the Claimant is requested promptly to inform the Tribunal and to produce a copy of such judgment.

2.10 Having regard to the Tribunal's decision not to suspend the proceedings, both Parties are invited to update their costs submissions by **Thursday, 11 July 2024**.

Date: 11 June 2024

Place of Arbitration: The Hague, the Netherlands.



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