

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>Joint Stock Company State Savings Bank of Ukraine (a/k/a JSC Oschadbank),</b>  Petitioner,  v. <b>The Russian Federation,</b>  Respondent.	CIVIL ACTION  NO. 1:23-cv-00764 (ACR)
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**DECLARATION OF ANDREA PINNA IN SUPPORT OF MOTION TO STAY  
OF RESPONDENT RUSSIAN FEDERATION**

I, ANDREA PINNA, declare as follows:

1. I am over the age of eighteen and make this declaration from personal knowledge based on information reviewed and/or referenced herein.
2. I am a lawyer admitted to practice law in France. I am with Pinna Goldberg, an international law firm alliance with operations in Paris, France, London, U.K., and Washington, D.C. My practice focuses on international commercial, sport and investment arbitration. I frequently appear as counsel in civil litigation matters in the French Courts, in the context of post-arbitration set-aside applications and enforcement of arbitral awards. I am fluent in French, Italian and English.
3. I submit this Declaration to provide a summary description of post-arbitration proceedings in the French courts arising from the arbitration proceedings brought on the basis of the Russia-Ukraine BIT before the Permanent Court of Arbitration (“PCA”) by Joint Stock Company State Savings Bank of Ukraine (JSC Oschadbank) (“Oschadbank”) and the Russian Federation (“RF”), that resulted in the Tribunal’s “Award” dated November 26, 2018, in favor of Oschadbank. The seat of arbitration is Paris, France. I am counsel to the RF in these and other proceedings.

## THE PENDING FRENCH PROCEEDINGS

### The Set-Aside Action

4. On February 19, 2019, pursuant to the French Code of Civil Procedure (“FCCP”), the RF initiated set aside proceedings before the Paris Court of Appeal (“Paris COA”) against the Award (Art. 1520 FCCP), (“Set-Aside Action”). The RF put forward several grounds for annulment of the Award and notably the fact that the Tribunal wrongly determined it had jurisdiction. See February 28, 2019 “*Declaration De Saisine*” and certified translation, **Ex. AP 1**.

5. The parties’ submissions to the Paris COA were as follows:

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|-----------------------|-----------------------------|
| 1. July 18, 2019:     | RF Submission No. 1         |
| 2. January 16, 2020:  | Oschadbank Submission No. 1 |
| 3. June 30, 2020:     | RF Submission No. 2         |
| 4. December 15, 2020: | Oschadbank Submission No. 2 |
| 5. January 21, 2021:  | RF Submission No. 3         |
| 6. February 1, 2021:  | Oschadbank Submission No. 3 |
| 7. February 4, 2021:  | RF Submission No. 4         |
| 8. February 6, 2021:  | Oschadbank Submission No. 4 |

6. The RF’s fourth and final submission notably argued that it did not offer to arbitrate with Oschadbank for numerous reasons, including: **(a)** the BIT does not apply to investments made before January 1, 1992 (*ratione temporis* jurisdiction), Art.12; **(b)** the BIT does not apply over Crimea because of the existence of a territorial dispute between the RF and Ukraine and no agreement between the two States on the applicability (*ratione loci* jurisdiction), Arts. 1(1), 1(2) and 1(4); and **(c)** Oschadbank’s alleged investment was made in Crimea prior to its accession to the RF in March 2014 (*ratione materiae* jurisdiction), Arts. 1(1) and 9(1). See RF’s February 4, 2021 submission, and certified translation, **Ex. AP 2**.

7. With regard to set aside ground related to *ratione temporis* jurisdiction based on Article 1520 1° FCCP - the only one it examined - the Paris COA reviewed the jurisdiction of the arbitral tribunal *de novo*, i.e. it exercised the power to (re)examine all elements in fact and in law

pertaining to the consent to arbitrate. As a constant line of case law in France states, including in the present case: “According to Article 1520(1) of the Code of Civil Procedure, an action for annulment is possible if the tribunal has wrongly declared itself as having or not having jurisdiction. It is up to the annulment court to review the arbitration tribunal's decision on its jurisdiction, whether it has declared itself as having jurisdiction or not, by looking at all the legal and factual elements that make it possible to assess the scope of the arbitration agreement.” *See Russian Federation v. Oschadbank*, Paris Court of Appeal, Case No. 23/2021, Judgment of March 30, 2021 (“Set-Aside Judgment”), ¶62 (ECF1-4).

8. On March 30, 2021, the Paris COA set aside the Award, upholding the first set-aside ground put forward by the RF that the Tribunal lacked jurisdiction to hear a dispute over investments made prior to January 1, 1992 under Art. 12 of the BIT. *See Set-Aside Judgment*.

#### **The Court of Cassation Proceeding**

9. On April 19, 2021, Oschadbank appealed to the Court of Cassation, the highest court in France for this purpose (“Cassation Court”). The subsequent filings were:

- |                       |                                 |
|-----------------------|---------------------------------|
| 1. October 15, 2021:  | Oschadbank Grievance            |
| 2. February 14, 2022: | RF Statement of Defence         |
| 3. March 17, 2022:    | Oschadbank Reply to the Defence |
| 4. April 7, 2022:     | RF Rejoinder                    |
| 5. October 11, 2022:  | RF Additional Comments          |
| 6. October 12, 2022:  | Oschadbank Response             |

10. On December 7, 2022, the Cassation Court reversed, holding: (a) Articles 1 and 9 on their face contained no temporal restrictions, and (b) Article 12’s temporal limitation of January 1, 1992 was not related to jurisdiction and was outside of the scope of review by the French set-aside judge. Accordingly, it held the Paris COA concerning *ratione temporis* jurisdiction was only required to ascertain that the dispute had arisen after the BIT entered into force in 2000. *See JSC Oschadbank v. The Russian Federation*, French Court of Cassation, Appeal No. 21-15.390,

Judgment of December 7, 2022 (“Cassation Judgment”), ¶13 (ECF 1-5). The Cassation Court remanded the case to the Paris COA, for consideration by a different set of judges.

### **The Paris COA Proceedings On Remand**

11. On March 8, 2024, the RF “seized” the Paris COA to renew the Set-Aside Action. See March 25, 2024 “*Declaration De Saisine*”, and certified translation; **Ex. AP 3**. The Paris COA will be asked to decide on all set-aside grounds put forward by the RF, including the lack of jurisdiction ground *ratione temporis* (Art. 12 BIT). As a matter of French law, the Paris COA is not bound to comply with the Cassation Judgment and is allowed make its own determination *de novo* regarding jurisdiction based on Article 1520 1° FCCP.

12. The RF’s first submission is due to be filed ultimately on July 8, 2024. The Paris COA has not yet issued a procedural calendar and not yet fixed a date for the final hearing in these proceedings.

13. Under Art. 1037-1 of the FCCP, these proceedings before the Paris COA are subject to expedited procedure, which means that these may take shorter than the initial set aside proceedings which took 25 months.

14. If the Paris COA sets aside the Award a second time, Oschadbank may appeal before the Cassation Court. If the Paris COA declines to set aside the Award, the RF may appeal before the Cassation Court.

### **The PCA Revision Action**

15. On August 19, 2019, the RF filed a “*Révision*” application seeking to revoke the Award with the Tribunal setting forth that Oschadbank concealed from the Tribunal the date at which the alleged investment had been made and that the RF gained access to archives in Kiev and obtained decisive documents showing that the alleged investment had been made prior to January 1, 1992, and therefore not protected by the BIT, (“Revision Action”).

16. On December 23, 2019, the Tribunal stayed the Revision Action pending resolution of the Set-Aside Action. After the Cassation Court's ruling on December 7, 2022, Oschadbank applied to the Tribunal requesting that it "*dismiss the Revision Application with prejudice.*" After Parties' submissions, which were completed by April 3, 2023. On December 11, 2023, the Tribunal dismissed the Revision application based on the Cassation Court decision. *See* Revision Decision, **Ex. AP 4.**

**The Proceedings to Set-Aside the Tribunal's Denial of the Revision Proceeding**

17. On March 8, 2024, the RF "seized" the Paris COA to set aside the dismissal of the Revision application, ("Revision Set-Aside Action.") *See* March 25, 2024 "*Declaration De Saisine*" and certified translation, **Ex. AP 5.** The Paris COA will review the Revision Decision based upon Article 1520 3° FCCP regarding the Tribunal having not complied with the mandate conferred upon it and Article 1520 4° FCCP regarding the Tribunal violating the RF's procedural due process right for reasons including, that the Tribunal disregarded the RF's request for hearing, and issued the Revision Decision without holding a hearing.

18. The RF's first submission is due to be filed ultimately on August 8, 2024. The Paris COA has not yet issued a procedural calendar and not yet fixed a date for the final hearing in these proceedings. If the duration of these proceedings is thus not known yet, the undersigned is not aware of elements suggesting that their duration will differ considerably from the Set-Aside Action against the Award dated November 26, 2018, i.e. 25 months.

19. In the Revision Set-Aside Action, the RF is seeking the annulment of the Revision Decision. If the Revision Decision is annulled, the RF will be able to reinstate the Revision Action.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Paris, May 29, 2024



Andrea Pinna



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