

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

<p>Joint Stock Company State Savings Bank of Ukraine (a/k/a JSC Oschadbank)</p> <p>Petitioner,</p> <p>v.</p> <p>The Russian Federation,</p> <p>Respondent.</p>	<p>CIVIL ACTION</p> <p>NO. 1:23-cv-00764 (ACR)</p>
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EXPERT REPORT OF ELIZAVETA LAUTS

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INTRODUCTION

1. My name is Elizaveta Lauts. I am a citizen of the Russian Federation and reside in Moscow. I am an Associate Professor at Lomonosov Moscow State University, Faculty of Law, Department of Business Law.

2. I have been engaged by Marks & Sokolov, LLC on behalf of the Russian Federation to provide an expert opinion on Russian banking law in this case between Joint Stock Company State Savings Bank of Ukraine (a/k/a JSC Oschadbank) and the Russian Federation.

QUALIFICATIONS

3. In 2003, I graduated with honors from the Faculty of Law of Lomonosov Moscow State University. I have 19 years of experience in the legal profession. I received a PhD in Law in 2007. Since 2021, I have held the position of head of the “Center for Legal Research in the Field of Banking” of the Faculty of Law of Lomonosov Moscow State University.

4. I work as an expert for a number of consulting companies, including ConsultantPlus (Russian legal database provider) providing financial advice, consulting law firm “Shitkina and Partners”, and as a lecturer at the “Statute Law School”. I prepared legal opinions and research papers for Russian banks, the Association of Banks of Russia, the Deposit Insurance Agency, the Constitutional Court of the Russian Federation, including legal opinions on such topics as the impact of the U.S. National Defense Authorization Act for Fiscal Year 2021 (NDAA 2021) on the activities of Russia banks, the problems of assessing the ex-post evaluation of regulations of the Bank of Russia, revocation of a license from a credit institution, compliance with banking legislation on prudential supervision ratios, etc.

5. Between 2003 and 2011, I worked in the Moscow Main Territorial Administration of the Bank of Russia.

6. Since 2010, I have been an arbitrator at the Arbitration Center of the Institute of

Modern Arbitration for Dispute Resolution in the Nuclear Industry. Since 2022 I have been an arbitrator at the Arbitration Institution of the All-Russian industrial association of employers “Union of Machine Builders of Russia”.

7. I am a member of the Scientific Advisory Council of the State Corporation Deposit Insurance Agency, a member of the Commission on Anti-Crisis Regulation of the Association of Lawyers of Russia, a deputy chief editor or member of the editorial board of such magazines as “Entrepreneurial Law”, “Law and Business”, “Legal Work in a Credit Institution”. My full Curriculum Vitae is attached as Annex A.

8. I have good command of written English and chose to prepare this expert opinion in English.

9. I summarize my opinions below, and then provide my opinions in detail.

QUESTIONS PRESENTED

10. Did offices of the State Savings Bank of Ukraine (“**Oschadbank**”) in the Autonomous Republic of Crimea and the Federal City of Sevastopol (collectively “**Crimea**”) operate in conformity with applicable Russian legislation during the transition period between Crimea’s accession to the Russian Federation and Oschadbank’s terminating its operations in Crimea on May 26, 2014?

11. Did other Ukrainian banks with offices in Crimea conform to applicable Russian legislation during the transition period after Crimea’s accession to the Russian Federation?

SUMMARY OF OPINIONS

12. Following Crimea’s accession to the Russian Federation, offices of Oschadbank located in Crimea did not conform with the requirements of applicable Russian legislation, including the Accession Statute and the Transition Period Statute (both defined below). In particular, Oschadbank failed to perform the following actions required by the said statutes:

- a) perform its contractual obligations to its creditors (depositors);
- b) provide banking services to its clients using the Russian ruble;
- c) notify the Central Bank of the Russian Federation (**“Bank of Russia”**) of its decision to continue operations in Crimea;
- d) submit to the Bank of Russia a register of its obligations to creditors and depositors;
- e) submit to the Bank of Russia reports on its activities;
- f) provide a notice to the Bank of Russia of its intention to set up a subsidiary in Crimea;
- g) make a public announcement about setting up a subsidiary in Crimea;
- h) apply to the Bank of Russia for the registration of a subsidiary in Crimea;
- i) submit to the Bank of Russia copies of its constituent documents, existing National Bank of Ukraine (**“NBU”**) license, and information on its management bodies and shareholders.

13. Following Crimea’s accession to the Russian Federation, Public Joint-Stock Company Chernomorskiy Bank of Development and Reconstruction and Public Joint-Stock company Bank Morskoy, located in Crimea, conformed with the requirements of applicable Russian legislation and obtained banking licenses from the Bank of Russia.

DOCUMENTS REVIEWED

14. I have reviewed the documents submitted by Oschadbank in the arbitration proceedings (PCA CASE NO. 2016-14) as listed below:

- a) Oschadbank Statement of Claim dated August 26, 2016;
- b) Ukrainian Statute dated April 15, 2014 (as amended on May 6, 2014), No. 1207-VII, “On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine”;
- c) NBU Resolution No. 260, dated May 6, 2014 “On the Revocation and Cancellation

of Bank Licenses and General Licenses for Carrying Out Currency Operations of Certain Banks and the Closure by Banks of Separated Units Located on the Territory of the Autonomous Republic of Crimea and City of Sevastopol”;

- d) Order of the Bank of Russia, dated May 26, 2014. No. OD-II50;
- e) Resolution of the Bank of Russia, No. PH-33/II, dated May 26, 2014;
- f) Oschadbank’s Management Board Resolution, dated May 8, 2014, No. 286;
- g) Minutes No. 3 of Oschadbank’s Supervisory Board, dated May 13, 2014;
- h) Oschadbank letter to NBU, dated May 19, 2014;
- i) Oschadbank letter to NBU, dated May 26, 2014;
- j) NBU Notice to Oschadbank, dated May 30, 2014;
- k) Arbitration Award dated November 26, 2018.

ASSUMPTIONS

15. I assume the authenticity and translation of the documents submitted by Oschadbank in the Arbitration, listed above.

16. Given that Oschadbank is owned by Ukraine, and given the Ukrainian legislation which prohibited Oschadbank from conforming with Russian legislation enacted after the accession of Crimea, I have assumed that Oschadbank did not conform with Russian legislation and Bank of Russia regulations as stated in this Report. As a Russian banking law expert, I add that it is common knowledge in Russia that Mainland Ukrainian Banks (defined below), including Oschadbank, did not conform with Russian legislation and Bank of Russia regulations after the accession of Crimea. Further, nothing in Oschadbank’s Statement of Claim or the Award suggests that Oschadbank attempted to conform.

17. Russian legislation related throughout the opinion is as effective from March through May 2014.

DISCUSSION

I. RUSSIAN BANKING LEGISLATION IN EFFECT IN 2014 CONTAINED CERTAIN LIMITATIONS ON BANKS WITH FOREIGN INVESTMENTS

A. General Overview of Russian Banking Legislation as of March 2014

a. Sources of law

i. Statute On Banks

18. Banking is a highly regulated industry in Russia. The main source of law regulating banking at the time of the accession of Crimea to the Russian Federation was Federal Statute dated December 2, 1990, No. 395-1, “On Banks and Banking Activities” (“**Statute on Banks**”). The Statute on Banks sets forth the rules for functioning of the banking system of the Russian Federation, registration and licensing of Russian banks and banks with foreign investments, ensuring the stability of the banking system, protecting the rights and interests of depositors and creditors of banks, interbank relations, savings business, accounting in banks, as well as the implementation of supervision of their activities.

ii. Statute on Bank of Russia

19. Federal Statute dated July 10, 2002, No. 86-FZ, “On the Central Bank of the Russian Federation (Bank of Russia)” (“**Statute on Bank of Russia**”), establishes the Bank of Russia’s functions, which include review of applications for banking licenses, issuance and revocation of banking licenses, supervision of banks, and enactment of regulations governing those activities. The Statute on Bank of Russia sets forth reporting requirements for banks operating in Russia and defines the monetary unit of Russia.

iii. Regulations by Bank of Russia

20. Among the main goals of the Bank of Russia are development, strengthening, increasing the efficiency, and ensuring the uninterrupted functioning of the country's banking and

payment systems, as well as maintaining the stability of the national currency. *See* Statute on Bank of Russia, Articles 3, 4, 82.2. EL Ex. 13.

21. To perform its functions, the Bank of Russia is vested with the powers of a government body that exercises certain powers on behalf of the state in the field of economic policy. The Bank of Russia is authorized to issue regulations that are mandatory for federal government bodies, government bodies of constituent territories of the Russian Federation and local governments; and all legal entities and individuals. *See* Statute on Bank of Russia, Art. 7. EL Ex. 13.

b. Areas of Banking Regulations

22. Banks are regulated in Russia in the following main areas:

- a) Licensing and Registration. Banking law establishes the procedures and requirements for obtaining and revoking banking licenses. The Bank of Russia provides its approval for state registration of banks and issues banking licenses. Banks must comply with the standards established by the Bank of Russia.¹
- b) Activities. This includes the rules and regulations relating to banking activities such as taking deposits, lending, bank transfers, asset management, etc.²
- c) Banking supervision. Banking law provides rules for supervision by the Bank of Russia, which is authorized to supervise the financial stability of banks and their compliance with established capital and liquidity standards.³

¹ *See* Statute on Bank of Russia, Art. 4(8), EL Ex. 13; Statute on Banks, Art. 1, 12, 13, EL Ex. 10.

² *See* Statute on Bank of Russia, Art. 4(4,5), EL Ex. 13; Statute on Banks, Art. 5(1), EL Ex. 10.

³ *See* Statute on Bank of Russia, Art. 3, 4(9), 56, 62, EL Ex. 13; Statute on Banks, Art. 24, EL Ex. 10.

- d) Protection of customer rights. Banking law establishes the rules for providing information to customers, the obligation of banks to maintain the confidentiality of data governed by bank secrecy and other confidentiality regimes, mechanisms for appealing administrative decisions, etc.⁴
- e) International Standards. The Russian banking system is aligned with international standards such as the Basel norms⁵ to ensure consistency and stability of financial services. These aspects of banking law ensure the reliability and stability of the banking system in Russia, and protect the interests of customers and financial institutions.⁶
- f) Other areas, such as, anti-money laundering rules, digitalization and electronic services.

c. Approval of Ownership and Management

23. Banks are required to disclose to the antimonopoly authority⁷ and/or the Bank of Russia⁸ information about persons who control or exercise significant influence⁹ over the banks,

⁴ See Statute on Bank of Russia, Art. 56, 74, EL Ex. 13; Statute on Banks Art. 26, EL Ex. 10.

⁵ The Basel norms are adopted by the Basel Committee on Banking Supervision (BCBS) - the global standard-setter for the regulation of banks. The Basel Committee has 45 members, including central banks and bank supervisory agencies from 28 jurisdictions, including the Russian Federation and the USA: <https://www.bis.org/bcbs/>

⁶ See Statute on Bank of Russia, Art. 4, 62, 64, EL Ex. 13; Statute on Banks, Art. 4, EL Ex. 10.

⁷ See Federal Statute dated July 26, 2006 No. 135-FZ “On Protection of Competition”, Art. 29, 31(2), 32, EL Ex. 14. Additional instructions on the submitted documents were provided in the Order of the Federal Antimonopoly Service of the Russian Federation dated April 17, 2008 No. 129 (as amended on April 20, 2010) “On approval of the Form for submitting information to the antimonopoly authority when filing petitions and notifications provided for in Articles 27 - 31 of the Federal Statute “On Protection of Competition”, EL Ex. 15.

⁸ See Instruction of the Bank of Russia No. 135-I dated April 2, 2010 (as amended on November 26, 2013) “On the procedure for the Bank of Russia to make decisions on state registration of credit organizations and issuance of licenses for banking operations”, EL Ex. 17, and Regulation of the Bank of Russia No. 437 dated April 23, 1997 “On the specifics of registering credit organizations with foreign investments”. EL Ex. 12.

⁹ See “Regulations on disclosure through the official web site of the Bank of Russia information on persons controlling or significantly influencing the banks – members of the system of

as well as information about the bank's senior management and board of directors.

24. Banks are required to disclose persons holding more than 1% of their shares (stock). Banks are required to obtain preliminary approval of the Bank of Russia for acquisition of more than 10% of their shares (stock)¹⁰.

25. Banks may appoint senior managers only with preliminary approval of the Bank of Russia. Such managers must satisfy certain qualification requirements set forth by the Bank of Russia.¹¹ Banks are required to ensure compliance by its senior managers and persons controlling over 10% of the capital of the bank with certain requirements for their business reputations. *See* Statute on Banks, Art. 11, 16, EL Ex. 10; Statute on Bank of Russia, Art. 60 EL Ex. 13.

d. Reporting Requirements

26. Banks must submit quarterly reports to the Bank of Russia with their accounting (financial) statements, information on their exposure to risks and procedures for their assessment, and management of risk and capital. Annual reporting must be audited. *See* Statute on Banks, Art. 8. EL Ex. 10. The procedure and timing for such disclosure are established by the Bank of Russia.

e. Currency Requirements (Russian rubles)

27. As the Russian ruble is the national currency of the Russian Federation,¹² all banks

mandatory insurance of deposits of individuals in the banks of the Russian Federation” approved by the Resolution of the Bank of Russia No. 345-P dated October 27, 2009. EL Ex. 16.

¹⁰ *See* Statute on Bank of Russia, Art. 61, EL Ex. 13; Instruction of the Bank of Russia No. 135-I dated April 2, 2010 (as amended on November 26, 2013) “On the procedure for the Bank of Russia to make decisions on state registration of credit organizations and issuance of licenses for banking operations”, par. 5. EL Ex. 17.

¹¹ *See* Statute on Bank of Russia, Art. 60, EL Ex. 13; Statute on Banks, Art. 11.1, EL Ex. 10; “Regulations on evaluation of the conformity with qualification requirements...” approved by the Resolution of the Bank of Russia No. 408-P dated October 25, 2013. par. 1.1. EL Ex. 20.

¹² *See* Art. 75(1) of the Russian Federation Constitution: “The monetary unit in the Russian Federation is the ruble. Monetary emission shall be carried out exclusively by the Central Bank of the Russian Federation. The introduction and emission of other money in the Russian Federation

in Russia must transact business in Russian rubles. Transactions in foreign currencies require a separate license. *See* Statute on Banks, Art. 5(5). EL Ex. 10.

28. As explained in detail in par. 43, an exception to this rule was set for Ukrainian banks operating in Crimea immediately following its accession to the Russian Federation.

B. Special requirements applicable to Banks with Foreign Investments as of March 2014

29. The Bank of Russia is authorized to set forth special regulations for banks with foreign investments. *See* Statute on Bank of Russia, Art. 52. EL Ex. 13. In addition, the Statute on Banks, Art. 17 and 18, provide for special rules of establishing, licensing, and business of banks with foreign investments. EL Ex. 10.

30. The Bank of Russia adopted its Regulation dated April 23, 1997 No. 437, “On the peculiarities of registration of credit institutions with foreign investments”.¹³ That Regulation required, *inter alia*, prior permission from the Bank of Russia to establish a bank with foreign investment, disclosure of information on non-resident founders, and in some instances written consent of a foreign supervisory body to its resident’s participation in the founding of a bank in Russia.

a. Foreign banks must set up Russian subsidiaries to operate in Russia

31. At the time of accession of Crimea to the Russian Federation, Russian law provided that foreign banks were allowed to operate in Russia only through subsidiaries registered as

shall not be allowed.” EL Ex. 11. *See* also Statute on Bank of Russia, Art. 27. EL Ex. 13.

¹³ *See* Order of the Bank of Russia dated April 23, 1997 N 02-195 (as amended on May 17, 2012) "On the introduction into force of the Regulation on the specifics of registering credit organizations with foreign investments and on the procedure for obtaining preliminary permission from the Bank of Russia to increase the authorized capital of a registered credit organization at the expense of non-residents" (together with Bank of Russia Regulation No. 437 dated April 23, 1997 “On the specifics of registering credit institutions with foreign investments”). EL Ex. 12.

Russian legal entities and with a banking license from the Bank of Russia.¹⁴

32. In 2013, Russia prohibited foreign banks from operating in Russia through branches pursuant to international obligations it assumed under the Marrakesh Agreement Establishing the World Trade Organization (“WTO Agreement”). Russia signed the Protocol of Accession to the WTO Agreement on December 16, 2011, and ratified the same on July 21, 2012. *See* Federal Statute No. 126-FZ, dated July 21, 2012. EL Ex. 18. Contemporaneously with the accession to the WTO Agreement Russia signed Specific Commitments on Services providing for Russia’s commitments related to various economic sectors. In particular, the commitments related to banking services provide for commercial presence of foreign banks in Russia to be allowed only in the form of “a juridical person of the Russian Federation and in the form of a representative office of a foreign bank” (with representative offices not authorized to conduct banking business).¹⁵ *See* Protocol of Accession of the Russian Federation dated December 17, 2011 with the Schedule of Specific Commitments on Services, at 49. EL Ex. 1.

b. Limitations on banks with foreign investments

33. In accordance with the Statute on Banks, Art. 17, prior permission from the Bank of Russia was required to register a bank with foreign investments in addition to the procedure applicable to registration of Russian domestic banks. EL Ex. 10.

34. The Bank of Russia was also authorized, acting together with the Government of the Russian Federation, to restrict operations of banks with foreign investments if the respective

¹⁴ *See* Federal Statute dated March 14, 2013 No. 29-FZ “On Amendments to Certain Legislative Acts of the Russian Federation”, amending the Statute on Banks and establishing a ban on opening branches of foreign banks in the Russian Federation. EL Ex. 19.

¹⁵ According to the Schedule of Specific Commitments on Services “Representative offices are not allowed to perform any commercial activity, including the supply of services”. *See* Schedule of Specific Commitments on Services, at 3. EL Ex. 1.

foreign states restrict banks with Russian investments and branches of Russian banks. *See* Statute on Banks, Art. 18. EL Ex. 10.

35. The Bank of Russia was authorized to establish additional requirements for banks with foreign investments regarding reporting, approving the composition of management bodies, and the list of banking operations. *See* Statute on Banks, Art. 18. EL Ex. 10.

36. In addition, the Bank of Russia may take special control measures in relation to foreign investments in the banking system of the Russian Federation from non-resident founders with a place of registration in states with a preferential tax regime and the absence of tariff methods of customs regulation (*e.g.*, in offshore jurisdictions) or in relation to investments from a resident in which the share of such non-resident exceeds fifty percent.¹⁶

37. In March 2014, the minimum authorized capital of a Russian subsidiary of a foreign bank was 300 million Russian rubles. *See* Statute on Banks, Art. 11. EL Ex. 10.

38. The Bank of Russia imposed a number of supplementary requirements¹⁷ on banks with foreign investments. For example, at least 75% of positions in such banks must be occupied by Russian citizens, and if the president of the bank is a foreigner, at least 50% of the members of the executive body of the bank must be Russian citizens.

C. Special rules applicable to Ukrainian banks in Crimea after March 21, 2014

39. For the purpose of integration of Ukrainian banks operating in Crimea into the Russian banking system, the Russian Federation set forth certain special rules and exemptions from its standard banking regulations.

¹⁶ *See* Regulation of the Bank of Russia No. 437 dated April 23, 1997 “On the specifics of registering credit institutions with foreign investments”, par. 5. EL Ex. 12.

¹⁷ *See* Bank of Russia Regulation No. 437 dated April 23, 1997 “On the specifics of registering credit institutions with foreign investments”, paragraphs 29, 31. EL Ex. 12.

a. The Accession Statute

i. Overview

40. On March 16, 2014, a referendum was held in Crimea on the issue of Crimea's accession to the Russian Federation. On March 17, 2014, the Verkhovna Rada (legislature) of Crimea adopted the Declaration of Crimean Independence. On March 18, 2014, the Russian Federation, the Crimean Republic, and the Federal City of Sevastopol signed the Treaty on Accession of Crimea to the Russian Federation. EL Ex. 21.

41. On March 21, 2014, the Russian Federation adopted Federal Constitutional Statute No. 6-FKZ, "On the accession of the Republic of Crimea to the Russian Federation and the formation of the new constituent territory within the Russian Federation - the Republic of Crimea and the federal city of Sevastopol" ("**Accession Statute**"). EL Ex. 22.

42. The Accession Statute provided for a transition period during which Crimea would be integrated into Russia's economic, financial and credit system, its legal system, and its state power system. *See* Accession Statute, Art. 1, 6. EL Ex. 22.

43. The Accession Statute, Art. 16(2), established the Russian ruble as the monetary unit in Crimea, although circulation of the national currency of Ukraine - the hryvnia - and settlements in cash and non-cash forms in hryvnia were allowed for a certain period of time. EL Ex. 22.

ii. Transition period

44. As explained in par. 32 above, the obligations assumed by the Russian Federation under the WTO Agreement prohibited Russia from allowing foreign banks to do business in Russia other than in the form of subsidiaries - Russian legal entities. However, for Ukrainian banks operating in Crimea at the time of Crimea's accession to the Russian Federation, certain exemptions were introduced to facilitate their integration into the Russian banking system, as

described below.

45. At the time of the accession of Crimea to Russia, banks (Ukrainian and foreign) operating on the territory of Crimea were licensed by the NBU. The Accession Statute, Art. 6, set forth a transition period until January 1, 2015 for the integration of Crimea (including banks operating on its territory) into the Russian Federation (“**Transition Period**”). EL Ex. 22. The Accession Statute provided, *inter alia*, for application of Russian legislation in Crimea from the date of accession, and Crimean legislation (which did not regulate banking) – insofar as it did not contradict the Russian Constitution – until the end of the Transition Period or until adoption of the relevant Russian legislation. *See* Accession Statute, Art. 23. EL Ex. 22.

iii. Art 17 set forth specific requirements and certain exemptions for Ukrainian banks in Crimea during the transition period

46. The Accession Statute, Art. 17(1), provided that from the day of accession, banks in Crimea must operate under a banking license granted by the Bank of Russia. EL Ex. 22.

47. However, the Accession Statute, Art. 17(2), provided that during the Transition Period, Ukrainian banks holding Ukrainian banking licenses as of March 16, 2014, were allowed to continue to operate in Crimea provided they comport to Russian legislation. *Id.*

48. These banks were allowed to apply for a license from the Bank of Russia before January 1, 2015 pursuant to the legislation of the Russian Federation. *Id.*

b. Transition Period Statute

i. Overview

49. On April 2, 2014, the Russian Federation adopted Federal Statute No. 37-FZ, “On peculiarities of the functioning of the financial system of Crimea Republic and Federal City of Sevastopol during the transition period” (“**Transition Period Statute**”). EL Ex. 23. The Transition Period Statute established the specifics of the activities for the transition period of banks on the

territory of Crimea, their state registration, their licensing, their inclusion in the state register of legal entities, the termination of their activities, and their issuance of issue-grade securities.

ii. Article 2: two groups of banks

50. For the purposes of re-registration of Ukrainian banks, the Transition Period Statute differentiated between two groups of banks based on the location of their head offices:

1. banks having their head office registered in Crimea and holding NBU licenses valid as of March 16, 2014 (“**Crimean Banks**”). *See* Transition Period Statute, Art. 2(1), EL Ex. 23; and
2. banks having their head office registered in mainland Ukraine, holding NBU licenses valid as of March 16, 2014, and operating in Crimea through their offices [like Oschadbank] (“**Mainland Banks**”). *See* Transition Period Statute, Art. 2(2) and 2(5). EL Ex. 23

iii. Article 3: Provisional operation under Ukrainian license until January 1, 2015 provided compliance with certain requirements

51. Both Crimean Banks and Mainland Banks were allowed to continue banking activities in Crimea until January 1, 2015, without obtaining a banking license from the Bank of Russia, subject to the following conditions:

- a. proper fulfillment of obligations under contracts, as well as provision of banking services using the Russian ruble as a means of payment (except for currency exchange);
- b. notification to the Bank of Russia of the continuation of the bank’s activities not later than April 17, 2014¹⁸;

¹⁸ *See* Order of the Bank of Russia dated April 4, 2014 No. OD-562 EL Ex. 25.

- c. submission to the Bank of Russia of a register of obligations (information about obligations) to creditors and depositors¹⁹;
- d. submission of reports and other information about the bank's activities to the Bank of Russia²⁰;
- e. submission not later than May 2, 2014²¹:
 - copies of the bank's constituent documents,
 - information about the management of the bank, including, *inter alia*, the bank's executive bodies, board of directors, chief accountant, etc.,
 - information about persons owning more than 10% of the bank's shares and persons exercising control or significant influence over the bank's shareholders,
 - copies of the NBU banking license,
 - for Mainland Banks – copies of documents regulating the activities of the bank's offices and information about the head and the chief accountant of the offices.
- f. satisfaction of other requirements of the Bank of Russia, with certain exemptions established specifically for Ukrainian banks, for example, more relaxed requirements for payment and composition of the charter capital as compared to the standard requirements²².

52. The procedure for transferring Crimean Banks and Mainland Banks to Russian

¹⁹ See Order of the Bank of Russia dated April 3, 2014 No. OD-525 EL Ex. 24.

²⁰ See Order of the Bank of Russia dated April 11, 2014 No. OD-658 EL Ex. 29.

²¹ See Order of the Bank of Russia dated April 4, 2014 No. OD-563 EL Ex. 26.

²² Order of the Bank of Russia dated April 10, 2014 No. OD-640 "On the state registration of banks, the issuance of licenses to them by the Bank of Russia and on the peculiarities of the issue of equity securities by banks created in the territory of Crimea in accordance with parts 3 and 4 of Article 3 of the [Transition Period Statute]". EL Ex. 28.

jurisdiction was different. Crimean Banks were allowed to apply for registration with the Bank of Russia as an existing legal entity, while the Mainland Banks were required to reorganize their offices in Crimea as separate legal entities and register them in Crimea by January 1, 2015.

iv. Article 4 and 5: Setting up local subsidiaries of Mainland Banks

53. Mainland Banks were required to set up a subsidiary in Crimea either in the form of a new 100% owned subsidiary or by spinning off from the Mainland Bank. To set up a subsidiary, Mainland Banks were required to:

- a. notify the Bank of Russia before July 1, 2014 of their intention to set up a subsidiary;
- b. make a public notice of intention to form a new bank not later than one month before registration;
- c. transfer assets and liabilities to the subsidiary and provide to the Bank of Russia the documents and information required to evaluate the assets and liabilities being transferred;
- d. provide to the Bank of Russia a set of documents required for registration, *i.e.*, application for state registration and banking license, the current charter and a new charter drafted in accordance with Russian law, a copy of the existing banking license issued by NBU, a business plan, information on the bank's offices, information on senior management and controlling persons of the bank including information on their business reputation, a valuation report prepared pursuant to Russian legislation, documents required for issue of securities if the bank applies for registration as a joint-stock company, and compliance of the newly created bank with Russian legislation and Bank of Russia regulations at the time of acceptance of assets and liabilities.

54. In the event a Mainland Bank was unable to provide particular documents or information, such as those required to confirm the business reputation of its senior management and controlling persons, Mainland Banks were exempted and allowed to provide a written statement instead²³.

v. Article 7: Appointment of representatives and termination of activity

55. Pursuant to the Transition Period Statute, Art. 7(1), the Bank of Russia could appoint its representatives to Mainland Banks continuing to perform operations in Crimea under NBU licenses in accordance with the Transition Period Statute, Art. 3. EL Ex. 23. Such representatives would be appointed for a term not exceeding three years, would be authorized to obtain information and documents from the bank regarding the bank's loans, guarantees, and asset management, and could participate in the bank's management meetings with no voting rights. *See* Statute on Bank of Russia, Art. 76. EL Ex. 13.

56. Pursuant to the Transition Period Statute, Art. 7(2), the Bank of Russia could terminate operations of Mainland Banks in Crimea if they failed to perform their obligations to creditors (depositors) or if they failed to meet requirements specified in the Transition Period Statute, Art. 3(1), as described in par. 51 above. Failure of a Mainland Bank to perform obligations to creditors (depositors) was established on the basis of applications filed by the creditors (depositors) to the Bank of Russia and accompanied by documents confirming the respective obligations. *See* Transition Period Statute, Art. 7(3). EL Ex. 23.

57. Under the Transition Statute, after the Bank of Russia issued a decision on

²³ Order of the Bank of Russia dated April 10, 2014 No. OD-640 "On the state registration of banks, the issuance of licenses to them by the Bank of Russia and on the peculiarities of the issue of equity securities by banks created in the territory of Crimea in accordance with parts 3 and 4 of Article 3 of the [Transition Period Statute]" EL Ex. 28.

termination of operations of Mainland Banks, they were prohibited from further performance of banking operations in Crimea. Upon termination of their operations in Crimea, Mainland Banks were allowed to transfer equal amounts of their assets and liabilities to Crimean Banks and notify the Bank of Russia of such transfer. *See* Transition Period Statute Art. 7(4), 7(6). EL Ex. 23.

c. Bank of Russia regulations and other acts

58. The Accession Statute, Art. 18.1, confirmed the right of the Bank of Russia to issue regulations binding on all state and local authorities, all legal entities, and all individuals.²⁴

59. The Bank of Russia issued several Orders implementing the provisions of the Accession Statute and the Transition Period Statute regarding the functioning of the banking system in Crimea²⁵, as well as letters in which it explained the fulfillment of obligations by banks, legal entities, and individuals pursuant to Russian legislation for the transition period in Crimea.

II. UKRAINIAN LEGISLATION WHICH PROHIBITED OSCHADBANK FROM COMPLYING WITH RUSSIAN LEGISLATION

A. April 15 Statute

60. From Oschadbank's Statement of Claim in the arbitration, I understand that on April 15, 2014, Ukraine adopted Statute No. 1207-VII, "On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine". The statute affirmed that Crimea and Sevastopol remain an integral part of Ukraine. *See* Statement of Claim, at 90, EL Ex. 31; Statute No. 1207-VII, EL Ex. 2.

B. NBU Resolution No. 260

²⁴ *See* Federal Constitutional Statute dated May 27, 2014 No. 7-FKZ. EL Ex. 30.

²⁵ Main orders include: Order of the Bank of Russia dated April 10, 2014, No. OD-640, EL Ex. 28; Order of the Bank of Russia dated April 4, 2014, No. OD-562, EL Ex. 25; Order of the Bank of Russia dated April 4, 2014, No. OD-563, EL Ex. 26; Order of the Bank of Russia dated April 3, 2014, No. OD-525, EL Ex. 24; Order of the Bank of Russia dated April 4, 2014, No. OD-561, EL Ex. 27.

61. From Oschadbank's Statement of Claim in the arbitration, I understand that on May 6, 2014, NBU issued Resolution No. 260, "On the Revocation and Cancellation of Bank Licenses and General Licenses for Carrying Out Currency Operations of Certain Banks and the Closure by Banks of Separated Units Located on the Territory of the Autonomous Republic of Crimea and City of Sevastopol" ("**NBU Resolution No. 260**"). EL Ex. 4.

62. NBU Resolution No. 260 prohibited Ukrainian banks from: (1) conducting any banking activities in Crimea; (2) maintaining any correspondent relations with any other banks (Ukrainian or foreign) and financial institutions located or operating in Crimea; (3) providing financial services to their customers in Crimea through their commercial agents with whom the Ukrainian banks concluded agency agreements; and (4) opening branches in Crimea. The Ukrainian banks were obliged to immediately cease any activities of their existing Crimean branches and to close them within one month from the date of NBU Resolution No. 260, *i.e.*, by June 6, 2014. *See* Oschadbank Statement of Claim, at 200, EL Ex. 31; NBU Resolution No. 260 dated May 6, 2014. EL Ex. 4.

63. Oschadbank complied with the requirements set forth by NBU Resolution No. 260. *See* Oschadbank Statement of Claim, at 206. EL Ex. 31.

III. OSCHADBANK'S INVESTMENT IN ITS OPERATIONS IN CRIMEA DID NOT CONFORM WITH RUSSIAN LEGISLATION FOLLOWING CRIMEA'S ACCESSION

A. Oschadbank's Investment in its Crimean Offices Was Not In Conformity With Russian Banking Law at the Time of Crimea's Accession to the Russian Federation

64. After Crimea became part of the Russian Federation pursuant to the Accession Statute, and before certain exemptions were given to Ukrainian banks operating in Crimea during the Transition Period, Oschadbank, being a foreign bank, was required to receive prior approval of the Bank of Russia to register its subsidiary in Russia. Oschadbank did not obtain such prior

approval from the Bank of Russia.

65. Following preliminary approval by the Bank of Russia, Oschadbank was to sign a letter of intent with the Bank of Russia and obtain permission to register its subsidiary in Russia. Oschadbank did not sign such a letter of intent and did not obtain the permission.

66. Oschadbank was to comply with the minimum authorized capital requirement set by the Bank of Russia at 300 million Russian rubles. No documents were provided by Oschadbank to the Bank of Russia to confirm compliance with this requirement.

67. Oschadbank was also to comply with a number of other requirements, such as the 75% quota for positions in foreign banks to be occupied by Russian citizens and the requirements for the composition of the executive body. As described above in par. 38, if the president of the bank was a foreigner, at least 50% of positions in the executive body of the bank were required to be filled by Russian citizens. Oschadbank was not in compliance with those requirements.

68. Despite this non-conformity, the Accession Statute and the Transition Period Statute provided a Transition Period for banks in Crimea to conform with Russian law.

B. Oschadbank's Investment in its Crimean Offices Was Not In Conformity With the Accession Statute and Transition Period Statute

69. As explained in detail in par. 51, pursuant to the Accession Statute and Transition Period Statute, Mainland Banks were allowed to continue banking activities in Crimea without a Russian banking license until January 1, 2015 if they would comply with the requirements set forth by the Transition Period Statute. Oschadbank did not comply with those requirements as set forth below.

a. Failure to honor obligations under contracts with creditors and depositors and no provision of services in Russian Rubles

70. Banks in Crimea were allowed to continue operations there if they properly fulfilled their obligations under contracts and provided banking services using the Russian ruble as a means

of payment (except for currency exchange).

71. Oschadbank failed to perform its contractual obligations or provide banking services using the Russian ruble as a means of payment.

b. No notice to Bank of Russia by April 17, 2014 about its intention to continue business

72. Banks operating in Crimea were allowed to continue operations in Crimea provided they notify the Bank of Russia of their intention to continue banking activity in Crimea not later than April 17, 2014.

73. Oschadbank never provided a notice to the Bank of Russia on a decision to continue operations in Crimea, and did not submit the required documents for continuing operations to the Bank of Russia.

c. Non-compliance with reporting requirements

74. Oschadbank did not submit to the Bank of Russia a register of its obligations (information about obligations) to creditors and depositors.

75. Oschadbank did not submit to the Bank of Russia any reports on its activities.

76. Oschadbank did not submit to the Bank of Russia by May 2, 2014 copies of its constituent documents, information on its management bodies, information about persons owning over 10% of Oschadbank's shares and persons exercising control or significant influence over Oschadbank's shareholders, copies of its NBU banking license, copies of rules for the activities of Oschadbank's Crimean offices, or information on their head and their chief accountant.

d. Failure to set up a separate legal entity in Crimea

77. As explained in detail in par. 53, Ukrainian Mainland Banks operating in Crimea through offices, such as Oschadbank, were required to set up a separate legal entity in Crimea to continue their operations. In particular, Ukrainian Mainland Banks were required to notify the

Bank of Russia before July 1, 2014, of their intention to set up a subsidiary, make a public announcement of such an intention, and transfer assets and liabilities to the subsidiary.

78. Oschadbank never provided a notice to the Bank of Russia of its intention to create a subsidiary in Crimea, never made a public announcement to do so, and never applied to the Bank of Russia for registration or a banking license.

e. Decision not to comply with Russian legislation and court orders

79. On April 30, 2014, Oschadbank's Management Board adopted Resolution No. 277, ordering Oschadbank's Crimean office, *inter alia*, not to recognize "the procedure of consideration and resolution of cases in the courts of [Crimea] . . . , and the judgments that were rendered by the courts of [Crimea]" and prohibiting "intended voluntary collaboration of any kind" with Russian authorities. *See* Oschadbank's Management Board Resolution No. 277, dated April 30, 2014. EL Ex. 3.

f. Decision to discontinue operations in Crimea

80. On May 8, 2014, Oschadbank's Management Board decided to comply with NBU Resolution No. 260, described above in par. 63, and to discontinue its operations in Crimea. *See* Oschadbank's Management Board Resolution No. 286. EL Ex. 5. On May 13, 2014, the decision was upheld by Oschadbank's Supervisory Board. *See* Minutes No. 3 of Oschadbank's Supervisory Board. EL Ex. 5.

81. On May 19, 2014, Oschadbank informed NBU of its decision to terminate operations in Crimea, and on May 26, 2014, Oschadbank reported on the actual termination of operations. *See* Oschadbank letters to NBU dated May 19, 2014 and May 26, 2014. EL Ex. 5, 6.

82. Following notification by Oschadbank, on May 27, 2014, NBU removed the Crimean office of Oschadbank from the registry of Ukrainian banks. *See* NBU Notice to Oschadbank dated May 30, 2014, EL Ex. 9.

C. Actions by the Bank of Russia Following Oschadbank's May 26, 2014 Notice

83. As a result of Oschadbank's failure to comply with Russian legislation applicable during the Transition Period, the Bank of Russia, acting pursuant to the Transition Period Statute, Art. 7(1), appointed its representative to Oschadbank. *See* Bank of Russia Order dated May 26, 2014, No. OD-II50. EL Ex. 7.

84. As explained above in par. 56, pursuant to the Transition Period Statute, Art. 7(2), non-performance of obligations towards creditors (depositors) constituted grounds to terminate the activity of Oschadbank in Crimea. On May 26, 2014, the Bank of Russia adopted a decision to terminate the activity of Oschadbank's offices in Crimea for failure to perform obligations to creditors (depositors). *See* Resolution of the Bank of Russia No. PH-33/II dated May 26, 2014. EL Ex. 8.

85. Pursuant to the Transition Period Statute, Art. 7(4), 7(6) upon termination of activity, Oschadbank was allowed to enter into a contract to transfer assets and liabilities of its Crimean offices to Crimean Banks and to notify the Bank of Russia of such transfer. Oschadbank never notified the Bank of Russia of any such transfer.

IV. OTHER BANKS OPERATING IN CRIMEA COMPLIED WITH RUSSIAN LEGISLATION INTRODUCED AFTER MARCH 21, 2014

86. As shown above, Russian legislation introduced upon Crimea's accession to the Russian Federation allowed Ukrainian banks operating in Crimea to continue their operations and eventually obtain a Russian banking license. At least two Ukrainian banks followed this procedure, obtained Russian banking licenses, and continued their operations in Crimea: Public Joint-Stock Company "Chernomorskiy Bank of Development and Reconstruction" ("CBDR") and Public Joint-Stock company "Bank Morskoy" ("Morskoy").

87. According to information published by the Bank of Russia, at the time of Crimea's

accession to the Russian Federation both CBDR and Morskoy held valid banking licenses issued by NBU. *See* Press Release by the Bank of Russia dated May 6, 2014, EL Ex. 32.

88. On April 7, 2014, CBDR notified the Bank of Russia of its intention to continue banking activities in Crimea. Morskoy notified the Bank of Russia of the same on April 10, 2014. *Id.*

89. Both banks successfully used provisions of the Accession Statute and the Transition Period Statute, converted themselves into Russian banks, and continued banking business in Crimea.

90. On August 20, 2014, the Bank of Russia published official notification in its News Bulletin²⁶ on 1) registration of CBDR as Joint-Stock Company “Chernomorskiy Bank of Development and Reconstruction” under registration number 3527 and issuance of a Russian banking license for operations in Russian rubles and foreign currency, and 2) registration of Morskoy under the name Joint-Stock Company “Sevastopolsky Morskoy Bank” with registration number 3528 and issuance of a Russian banking license for operations in Russian rubles and foreign currency. *See* News Bulletin of the Bank of Russia dated August 20, 2014, EL Ex. 33.

91. The above shows the procedure for obtaining a Russian banking license was available to all banks operating in Crimea at the time of Crimea’s accession to the Russian Federation. If duly followed, the procedure allowed such banks to continue their operations in Crimea after its accession to the Russian Federation.

²⁶ The News Bulletin (“Vestnik”) of the Bank of Russia is the official bulletin of the Bank of Russia publishing, *inter alia*, information on banking licenses issued by the Bank of Russia. *See* Statute on Bank of Russia, Art. 7, 18, EL Ex. 13; Instruction of the Bank of Russia No. 135-I dated April 2, 2010 (as amended on November 26, 2013) “On the procedure for the Bank of Russia to make decisions on state registration of credit organizations and issuance of licenses for banking operations”, par. 8.6, EL Ex. 17.

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

Executed on February 29, 2024
Moscow, Russia

A handwritten signature in blue ink, appearing to read 'Elizaveta Lauts', is written over a horizontal line. The signature is stylized and cursive.

Elizaveta Lauts