UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JOINT STOCK COMPANY STATE SAVINGS BANK OF UKRAINE (ALSO KNOWN AS JSC OSCHADBANK), Petitioner, v. THE RUSSIAN FEDERATION, Respondent.	Case No. 1:23-cv-00764

PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO STAY

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Petitioner Joint Stock Company State Savings Bank of Ukraine ("**Oschadbank**") respectfully submits this memorandum of law in opposition to Respondent the Russian Federation's ("**RF's**") motion to stay (Dkt. 34) ("**Mot.**").

PRELIMINARY STATEMENT

RF's request to stay this case indefinitely pending a second round of annulment proceedings in France defies this Court's "virtually unflagging obligation ... to exercise the jurisdiction given [it]." *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 733 (D.C. Cir. 2012) (citation omitted). This obligation applies with special force to cases brought under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517 (the "**New York Convention**"). *Id*. A principal purpose of the New York Convention is to permit enforcement of arbitral awards in member states around the world "even when nullification proceedings are occurring in the country where the award was rendered." *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 367 (5th Cir. 2003). Against this backdrop, the Court of Appeals for the D.C. Circuit has held that stays in such cases are permissible only if they would further "the general objectives of arbitration—the expeditious resolution of disputes and the avoidance of protracted and expensive litigation," after taking into account "the status of the foreign proceedings and the estimated time for those proceedings to be resolved." *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 879–80 (D.C. Cir. 2021). RF barely engages with this applicable legal framework, and ignores the real-world consequence of its motion to stay—needless additional delay and severe prejudice to Oschadbank—which is no doubt what RF hopes to achieve.

RF's primary argument in support of its motion is that the French court ***might*** in the future annul the arbitration award at issue in this proceeding, and that this Court ***might*** conclude that a French court's annulment ruling precludes confirmation and enforcement of the Award under

Article V of the New York Convention. But these contingencies will only become potentially relevant a year or more from now if, and when, the Court reaches the merits of Oschadbank's recognition application. Before it can do so, the Court must first rule on whether it has subject matter jurisdiction over this case—which is the subject of RF's currently pending motion to dismiss—the disposition of which one party or the other is all but certain to appeal. This case posture means that there is no immediate need for a stay because enforcement is far from imminent. Moreover, RF will face no significant burden if the motion to stay is denied. RF has already submitted hundreds of pages of (largely irrelevant) declarations and filings in support of its dismissal motion. All that remains is for it to submit a 25-page reply memorandum and appear at oral argument, which will be held on the same date as this motion to stay is considered.

This is in stark contrast to the harm Oschadbank will suffer if these proceedings are halted at all—let alone indefinitely. Oschadbank's property was expropriated nearly a decade ago. It prevailed in the arbitration in 2018. Yet it is still, best case scenario, a year or more away from being able to enforce the Award. The first round of annulment proceedings pursued by RF in France took three and half years before they were ultimately rejected by the French Court of Cassation. RF now seeks to delay enforcement even further with a second round of annulment proceedings and a separate set-aside challenge to the Tribunal's refusal to revise the Award. Meanwhile, other litigants with arbitral awards against RF (and whose cases RF is not seeking to stay) will be unimpeded from having their awards confirmed in this District, notwithstanding that RF is asserting the exact same jurisdictional arguments it makes here. A stay would thus single

out Oschadbank among RF's growing number of award creditors in being unable to move its recognition and enforcement process forward in the U.S. courts.[1]

BACKGROUND

I. THE AWARD

On November 27, 1998, RF and the Cabinet of Ministers of Ukraine entered into an Agreement "on the encouragement and reciprocal protection of investments" known as the Russian-Ukrainian Bilateral Investment Treaty (the "**BIT**") (Dkt. 1-3). Dkt. 9-3 (Petition to Confirm Foreign Arbitration Award, hereafter, "**Pet.**") ¶12. The BIT entered into force on January 27, 2000. *Id*.

The BIT protects "Investments," defined broadly to include those "invested by an investor of one Contracting Party in the territory of the other Contracting Party in conformity with its laws[.]" BIT, Art. 1. Article 12 of the BIT entitled "Application of the Agreement" further describes the scope of the BIT's application and provides "[t]his Agreement shall apply to all investments, made by the investors of one Contracting Party in the territory of the other Contracting Party as of 1 January 1992." *Id*., Art. 12. Under Article 9 of the BIT, the parties consented to arbitrate any dispute "that arises in connection with the investments." *Id*., Art. 9.

In February 2014, RF invaded and occupied the Crimean Peninsula in violation of international law. Pet. ¶23. As part of its illegal occupation, RF expropriated Oschadbank's

[1] At least five confirmation proceedings are currently pending in this District against RF: *Yukos Capital Limited v. Russian Federation*, 1:22-cv-00798 (D.D.C) (J. Nichols) (RF's motion to dismiss based on FSIA jurisdiction pending; no stay in place); *Stabil LLC et al v. Russian Federation*, 1:22-cv-00983 (D.D.C) (J. McFadden) (same); *NJSC Naftogaz of Ukraine et al v.. Russian Federation* 1:23-cv-01828 (D.D.C) (J. Bates) (same); *JSC DTEK Krymenergo v. Russia Federation*, 1:23-cv-03330 (D.D.C.) (C. Nichols) (same); *Hulley Enterprises Ltd. et al v. Russian Federation*, 1:14-cv-01996 (D.D.C.) (J. Howell) (interlocutory appeal pending before the D.C. Circuit, at 23-07174).

business and assets in the Crimean Peninsula. *Id*. ¶¶23-28. On January 20, 2016, Oschadbank filed its request for arbitration pursuant to Art. 9 of the BIT. *Id*. ¶¶32, 36.

On November 26, 2018, the Tribunal issued its final award (the "**Award**"), finding that RF's expropriation violated the BIT and awarding Oschadbank $1,111,300,729 as compensation plus interests and fees. *Id*. ¶¶40-47. The entire Award remains unpaid.

II. THE FIRST FRENCH SET-ASIDE PROCEEDING

On February 19, 2019, RF sought to annul the Award before the Paris Court of Appeal arguing ***first***, that the Tribunal had wrongly upheld its jurisdiction, ***second***, that Oschadbank had committed "procedural fraud" such that the Award infringed the requirements of international public policy, and ***third***, that the Tribunal had ruled without complying with the mandate conferred upon it. *Id*. ¶48. With respect to jurisdiction, it argued, among other things, that the parties' dispute is not subject to arbitration under the BIT because (1) Oschadbank's subsidiary in Crimea existed prior to January 1, 1992; (2) the BIT is not territorially applicable to Crimea; and (3) the relevant investment was made in Crimea at a time when that territory was part of Ukraine. Declaration of Isabelle Michou, dated July 2, 2024 ("**Michou Decl.**") ¶2.

Over two years later, on March 30, 2021, the Paris Court of Appeal set aside the Award on the basis "that the temporal condition laid down in Article 12 of the Bilateral Investment Treaty containing the offer of arbitration has not been satisfied." Pet. ¶52. The Paris Court of Appeal did not determine the remaining grounds for annulment raised by RF. *Id*.

Oschadbank then challenged the Court of Appeal decision before the French Court of Cassation, the highest court in France. *Id*. ¶54. About a year and half later, on December 7, 2022, the Court of Cassation set aside the Court of Appeal decision, finding that Article 12 was "substantive" in nature, and thus its temporal restrictions did not affect the Tribunal's jurisdiction.

Id. ¶¶54-55. The Court of Cassation remanded the case to the Paris Court of Appeal for consideration by a different set of judges. Dkt. 9-1 (Cassation Judgment), ¶¶ 6, 13.

III. THE SECOND FRENCH SET-ASIDE PROCEEDING

Despite having initiated and participated fully in the first set-aside proceedings, RF insisted that Oschadbank undertake the unnecessarily lengthy year-long process to formally serve the judgment of the Court of Cassation through diplomatic channels. Michou Decl. ¶4. Two months after the judgment was served on RF, on March 8, 2024, RF recommenced proceedings before the Paris Court of Appeal. *Id*. ¶¶4, 5. RF's first submission is due on July 8, 2024. Oschadbank's reply submission is due on November 8, 2024. The Paris Court of Appeal has set the hearing date on March 25, 2025. *Id*. ¶5. The briefing, hearing on the second set-aside proceeding, and final resolution by the Paris Court of Appeal are estimated to take approximately 16 months. *Id*.

RF has indicated that if the Paris Court of Appeal declines to set aside the Award, it may pursue a second appeal before the Court of Cassation. Dkt. 35 (Pinna Decl.) ¶14. Any appeal to the Court of Cassation is estimated to take approximately 18 months. Michou Decl. ¶5.

IV. THE FRENCH REVISION ACTION

In August 2019, RF made a "revision application" to the Tribunal seeking to revoke the Award based on the allegation that Oschadbank concealed certain evidence with respect to when the investments were made (the "**Revision Action**"). Pet. ¶57. On December 11, 2023, the Tribunal dismissed the Revision Action based on the Cassation Court decision, finding that any alleged concealment could not have implicated its jurisdiction. Michou Decl. ¶6.

On March 8, 2024, RF initiated a separate set-aside proceeding before the Paris Court of Appeal challenging the denial of its revision application. *Id*. ¶7. RF's detailed submission is due on August 8, 2024. The Paris Court of Appeal has not yet issued a briefing calendar or set a date for the final hearing in these proceedings. *Id*..

RF has indicated that if the Paris Court of Appeal sets aside the Tribunal's Revision decision, it intends to reinstate the Revision Action. Pinna Decl. ¶19.

V. THE INSTANT PROCEEDING

On March 21, 2023, Oschadbank commenced this proceeding to confirm the Award pursuant to the New York Convention and the Federal Arbitration Act ("**FAA**"). Dkt. 1. On October 11, 2023, the State Department served RF through delivery of a diplomatic note to RF's Embassy in Washington D.C. Dkt. 13. However, RF refused to accept service and issued a diplomatic note in response demanding that the State Department serve the same documents on it again through the Russian Ministry of Foreign Affairs in Moscow. Dkt. 19, 19-1. Without acknowledging any deficiency of its prior service, the State Department did so. Dkt. 30. On April 5, 2024, RF withdrew its service objection. Dkt. 29.

Meanwhile, on March 7, 2024, RF filed a notice of request for premotion conference regarding its motion to dismiss this action based on lack of subject matter jurisdiction. Dkt. 27. The next day, RF recommenced the second set-aside proceeding before the Paris Court of Appeal. Michou Decl. ¶5. RF's premotion notice failed to mention the set-aside proceeding or any intent to seek to stay this action pending foreign proceeding. On April 30, 2024, a week before the premotion conference, RF notified Oschadbank of its plan to amend its premotion conference request to include a motion to stay proceedings pending resolution of the French set-aside proceedings. On May 7, 2024, the Court held the premotion conference to discuss with the parties RF's contemplated motion to stay and motion to dismiss. The parties were ultimately directed to brief the stay motion and motion to dismiss simultaneously. May 14, 2024 Minute Order. A hearing on the motions is scheduled for September 18, 2024.

ARGUMENT

I. A STAY IS IMPROPER UNDER THE *STILEKS* FACTORS.

Under the law of this Circuit, as articulated in *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871 (D.C. Cir. 2021), this Court considers two factors when determining whether to grant a discretionary stay of a confirmation proceeding such as this before subject matter jurisdiction is established: ***First***, "the general objectives of arbitration—the expeditious resolution of disputes and the avoidance of protracted and expensive litigation," and ***second***, "the status of the foreign proceedings and the estimated time for those proceedings to be resolved." 985 F.3d at 879-880 (citing *Europcar Italia, S.p.A. v. Maiellano Tours, Inc.*, 156 F.3d 310, 317–18 (2d Cir. 1998)). Courts often consider these two factors together, as staying a case pending resolution of an extended annulment proceeding would undermine the expeditious resolution of disputes. *See, e.g.*, *Sci. Applications Int'l Corp. v. Hellenic Republic*, 2017 WL 65821, at *2-3 (D.D.C. Jan. 5, 2017).

Both of the *Stileks* factors weigh against the stay requested by RF. The open-ended stay RF seeks will prolong what is supposed to be a summary proceeding for many more years. RF expropriated Oschadbank's assets a decade ago in 2014. The parties then spent two years to arbitrate their dispute, three and half more years to litigate in France over the Award, and now, six years later, Oschadbank is no closer to enforcing its Award facing anew fresh rounds of annulment proceedings—both of which are in their early stages.

RF's estimate that the latest round of set-aside proceedings "will likely [conclude] in less than two years" gravely understates how long those proceedings are likely to take. Mot. 1. RF's estimate is apparently based on its expectation that "the Paris [Court of Appeal] will rule on the current set-aside proceedings within 25 months." Mot. 16. But it is almost certain that the losing party will continue to appeal to the Court of Cassation, the resolution of which is likely to take another year and half. Michou Decl. ¶4. To make matters worse, RF plans to reinstate the Revision

Action if the Paris Court of Appeal sets aside the Tribunal's revision decision, potentially adding more years to resolution. Dkt. 35 (Pinna Decl.) ¶19. Given RF's proclivity to pursue any available avenue to challenge the Award, a stay under these circumstances "would only protract [the] long-running and contentious dispute" and is thus improper under the two *Stileks* factors. *Iraq Telecom Ltd. v. IBL Bank S.A.L.*, No. 22-832, 2023 WL 2961739, at *1 (2d Cir. Apr. 17, 2023) (citation omitted); *see also Iraq Telecom Ltd. v. IBL Bank S.A.L.*, 597 F. Supp. 3d 657, 667 (S.D.N.Y. 2022), *aff'd*, No. 22-832, 2023 WL 2961739 (2d Cir. Apr. 17, 2023) ("The twin goals of arbitration, 'settling disputes efficiently and avoiding long and expensive litigation,' favor expeditious execution of the Award.") (quoting *Beijing Shougang Mining Inv. Co. v. Mongolia*, 11 F.4th 144, 160 (2d Cir. 2021)).

In *Stileks*, which was in a materially identical posture to this proceeding, the D.C. Circuit found that a stay cannot be extended where the parties already underwent a four-year "appeal-reversal-remand round" in the foreign set-aside proceedings, where arbitration was commenced "more than 10 years ago." 985 F.3d at 351. Similarly, in *Hulley*, this Court found a stay "unjustifiable" where the set-aside proceedings were "entering their fifth year" after the Cassation Court remanded. *Hulley Enterprises Ltd. v. Russian Fed'n*, No. CV 14-1996, 2022 WL 1102200, at *9 (D.D.C. Apr. 13, 2022). Other courts have found that a "five to eight month[]" delay caused by annulment proceedings "overwhelmingly weighs against adjourning enforcement of the Award." *Interdigital Commc'ns Corp. v. Samsung Elecs. Co., Ltd.*, 528 F. Supp. 2d 340, 361 (S.D.N.Y. 2007); *see also, e.g.*, *G.E. Transp. S.P.A. v. Republic of Albania*, 693 F. Supp. 2d 132, 139 (D.D.C. 2010) ("[T]he first *Europcar* factor plainly weighs in favor of confirmation" because "petitioners have yet to receive any satisfaction, nearly four years after commencing arbitration" and "the Italian appeal proceedings are likely to last until 2014"); *Rusoro Mining Ltd. v. Bolivarian*

Republic of Venezuela, 300 F. Supp. 3d 137 (D.D.C. 2018) (denying stay because "[m]ore than five years have passed" and "it is unclear when the French appellate process will conclude"). RF's contrary cases are easily distinguishable because in those cases, stays were granted pending the ***first level*** of set-aside proceedings in the primary jurisdiction. Moreover, in many of those cases, the primary jurisdiction's courts had also stayed enforcement.[2] Neither of those factors is present here. Indeed, when RF sought a stay of enforcement of the Award from the French courts in connection with its first round of set aside proceedings, its request was denied. Michou Decl. ¶2.

RF claims that a stay is appropriate because of the risk of having to unwind any enforcement proceedings if the Award is later annulled. Mot. 1-2. But even without a stay, Oschadbank will not obtain immediate confirmation and the ability to enforce the Award because RF refuses to raise its non-jurisdictional challenges now, preferring to defer those to a second round of briefing. At this juncture, the Court is only being asked to decide the resolution of RF's

[2] *Cef Energia, B.V. v. Italian Republic*, 2020 U.S. Dist. LEXIS 130291, at *4 (D.D.C. July 23, 2020) (first level of set-aside proceedings pending before Swedish Svea court; Svea court had stayed enforcement); *Novenergia II — Energy & Env't (SCA) v. Kingdom of Spain*, 2020 U.S. Dist. LEXIS 12794, at *2 (D.D.C. Jan. 27, 2020) (first-round set-aside pending before Svea court proceeding; Svea court stayed enforcement); *InfraRed Env't. Infrastructure GP Ltd. v. Kingdom of Spain*, 2021 U.S. Dist. LEXIS 120489, at *1 (D.D.C. June 29, 2021) (first-level review by ICSID annulment committee; ICSID committee initially stayed enforcement, but then lifted the stay on the condition that plaintiffs agree not to use, transfer, or distribute any portion of the award collected prior to the final decision of the annulment committee); *RREEF Infrastructure (G.P.) Limited v. Kingdom of Spain*, 2021 U.S. Dist. LEXIS 63261, at *8 (March 31, 2021) (first-level set-aside proceeding before the ICSID annulment committee; committee stayed enforcement); *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, 397 F. Supp. 3d 34, 38-39 (D.D.C. 2019) (ICSID award was at a first-level review before the ICSID annulment committee; the annulment committee stayed enforcement); *CPConstruction Pioneers Baugesellschaft Anstalt v. Gov't of the Republic of Ghana*, 578 F. Supp. 2d 50, 54 (D.D.C. 2008) (set-aside proceeding was a first-level review); *Cube Infrastructure Fund Sicav v. Kingdom of Spain*, 2021 U.S. Dist. LEXIS 256207, at *5 (D.D.C. May 17, 2021) (first-level annulment proceeding pending before the ICSID review board); *Getma Int'l v. Republic of Guinea*, 142 F. Supp. 3d 110 (D.D.C. 2015) (first-level annulment proceedings in the CCJA); *Jorf Lasfar Energy Co., S.C.A. v. AMCI Exp. Corp.*, 2005 U.S. Dist. LEXIS 34969, *8-9 (W.D. Pa. Dec. 22, 2005) (first-level set-aside proceedings were pending).

jurisdictional defenses under the Foreign Sovereign Immunities Act ("the "**FSIA**"). And as the Court correctly observed, the question of whether it has subject matter jurisdiction over this action will not be affected by the French proceedings (Transcript of May 7, 2024 Pre-motion Conference, 29:25-30:1) because "a foreign court's order ostensibly setting aside an arbitral award has no bearing on the district court's jurisdiction and is instead an affirmative defense properly suited for consideration at the merits stage." *Process & Indus. Dev. (P&ID) v. Fed. Republic of Nigeria*, 27 F.4th 771, 772 (D.C. Cir. 2022). Moreover, RF's right to interlocutory appeal of any finding of jurisdiction would virtually guarantee additional months—if not years—before the Court can reach the merits of RF's oppositions to confirmation under the FAA. Staying consideration of RF's pending jurisdictional defenses now would cause significant delay and prejudice to Oschadbank while other creditors pursue enforcement against RF in this District.

Moreover, RF makes no showing that its latest gambit to annul the Award in France is likely to succeed. Having lost its primary argument in the first around, RF simply has no basis to justify staying this action in light of the mere hypothetical that the French courts ***may*** annul the Award and that any enforcement process to have occurred by that time ***may*** need to be unwound. As the D.C. Circuit held in *Stileks*, RF's "*ipse dixit*" assertion that "it would be "premature" to proceed with confirmation "because of the 'high probability' that the [A]ward will be overturned," with "no evidence of a fair probability—much less a 'high probability'—other than the fact of the remand itself" was "insufficient" to justify extending the stay. 985 F.3d at 880-881. *See also IBL*, 2023 WL 2961739, at *1 (denial of stay was proper where "IBL ha[d] not shown that it [was] likely to succeed on either of the two grounds on which it relies in its annulment proceeding") (citation omitted).

II. OTHER *EUROPCAR* FACTORS DISFAVOR A STAY.

The D.C. Circuit in *Stileks* expressed "doubt that a six-factor balancing test—enforced by appellate review—is consistent with the district court's 'broad discretion to stay proceedings as an incident to its power to control its own docket.'" 985 F.3d at 880 (citation omitted). Instead, it determined that a stay was improper without addressing the remaining four *Europcar* factors. This Court therefore need not reach these factors. But even if considered, each disfavors a stay.

First, stay is disfavored because the annulment action "to set the award aside" was brought only after this confirmation action—and RF's tactic to "hinder or delay resolution of the dispute" at every chance it can is no secret. *Europcar*, 156 F.3d at 318. As the D.C. Circuit noted in *Hulley*: "The Russian Federation has repeatedly advanced permutations of the same arguments in attempts to avoid enforcement of the Final Awards in these different fora around the world, and though succeeding in delaying enforcement of the Final Awards, these efforts have achieved little success on the merits." *Hulley*, 2023 WL 8005099, at *2. Precisely the same thing is happening here.

RF did not commence the new "set-aside" proceeding before the Paris Court of Appeal until March 8, 2024—well over a year after the French Cassation Court's reversal in December 2022, a year after this confirmation proceeding was filed in March 2023 and just two days before its deadline for doing so expired. More than a year was lost because RF waited for formal notice of the Cassation Court's decision to renew its Court of Appeal challenge despite its undisputed actual notice of the decision. Michou Decl. ¶4. Although RF is free to pursue any renewed set-aside proceedings available under the relevant rules, its choice to sit on the Cassation Court's judgment instead of acting promptly supports a reasonable inference of its intent to delay enforcement. *IBL*, 2023 WL 2961739, at *2 (the fact that "the enforcement proceeding was indisputably filed before the Lebanese annulment proceeding" disfavors a stay). The Court should not reward this dilatory conduct with a stay.

Second, the balance of hardships to the parties weighs against a stay. *Europcar*, 156 F.3d at 318. RF's complaints of litigation burden ring hollow. Mot. 12. Having already prepared and filed hundreds of pages of submissions in support of its motion to dismiss, the only "burden" RF will incur if that motion proceeds is to prepare a short reply brief (limited by LCvR 7(e) to 25 pages), participate in oral argument, and litigate any resulting appeal. *Hulley*, 2022 WL 1102200, at *8 (RF would have "little identifiable hardship by proceeding to, at least, the threshold jurisdictional issue."). The "routine litigation burden" RF claims its sovereign status insulates it against obviously does not encompass litigation over whether it is entitled to sovereign immunity at all. Mot. 12.

RF also complains of burden resulting from having to potentially recover any seized assets if confirmation is granted and enforcement is allowed and the Award is later vacated. Mot. 13. This argument disingenuously assumes that enforcement is imminent. As discussed above, Oschadbank still faces bifurcated briefing and an interlocutory appeal before confirmation is granted and enforcement can commence. RF is also protected by Section 1610(d) of the FSIA, which permits enforcement against a sovereign only after "a reasonable period of time has elapsed" following entry of judgment, and which most Courts have found calls for a stay of enforcement for at least three to four months. Further, identifying assets not subject to FSIA immunity itself could take years, and will be particularly difficult against RF which is the subject of economic sanctions and penalties following its invasion of Ukraine. *Hulley*, 2022 WL 1102200, at *9 (finding hardship to shareholders' ability to locate and execute on Russian assets in the US impaired in light of sanctions).

Unless RF unequivocally commits to comply with a money judgment entered by this Court, it should not be heard to speculate on the risks to it of collection. And even if that risk becomes

real one day, other means such as stay of execution could mitigate the risk without unduly delaying this action now. One need only look at the *Hulley* case, where the court ultimately lifted the stay in 2022 to hear RF's jurisdictional defenses, after "eight years of delay" pending foreign annulment proceedings. *Hulley*, 2023 WL 8005099, at *8. There, a decade has now passed, RF's jurisdictional defenses are still on interlocutory appeal before the D.C. Circuit, and RF has yet to pay a cent of the $50 billion plus award at issue.

In contrast, Oschadbank will suffer severe harm if enforcement is further delayed for years. Such a delay will give RF even more time to move its non-immune assets beyond Oschadbank's reach. Moreover, there are at least five cases concurrently pending in this District to confirm arbitration awards against RF.[3] None of these cases is stayed or subject to a pending stay motion. To grant RF's stay motion here will thus place Oschadbank at a serious disadvantage with respect to other claimants against RF, and will gravely undermine its ability to maintain priority against other creditors pressing similar claims. This is in contrast to the series of *Spain* cases where this Court's unanimous decisions to stay proceedings put the investor claimants on equal footing so as not to disturb claim priority amongst creditors through inconsistent, discretionary stays.[4]

Third, because the Award will not "receive greater scrutiny" in the French proceedings "under a less deferential standard of review," a stay is disfavored. *Europcar*, 156 F.3d at 317. RF claims that the French courts will review its jurisdictional challenges *de novo*, but it will insist on the same *de novo* review of these issues under the FSIA by this Court. Dkt. 38 (Mot. to Dismiss),

[3] *See supra*, n. 1.

[4] *Cube Infrastructure Fund SICAV v. Kingdom of Spain*, 2021 WL 7447978 (D.D.C. May 17, 2021); *Hydro Energy 1, S.a.r.l. v. Kingdom of Spain*, 2022 WL 2315519 (D.D.C. June 28, 2022); *InfraRed Env't Infrastructure GP Ltd. v. Kingdom of Spain*, 2021 WL 2665406 (D.D.C. June 29, 2021); *RREEF Infrastructure (G.P.) Limited v. Kingdom of Spain*, 2021 U.S. Dist. LEXIS 63261 (March 31, 2021).

11, n.11. Since the French courts will not apply a "much more exacting" standard than the one applied by this Court, a stay is not warranted under this *Europcar* factor. *Chevron Corp. v. Republic of Ecuador*, 949 F. Supp. 2d 57, 72 (D.D.C. 2013). *See also Rusoro Mining Ltd.*, 300 F. Supp. 3d at 150 (same).

Finally, other factors strongly counsel against a stay. *Europcar*, 156 F.3d at 318. RF's illegal annexation of Crimea was followed by the full-scale ongoing illegal invasion of Ukraine in 2022. RF should not be rewarded with the luxury of another yearslong delay to litigate this dispute against Oschadbank, when it is actively at war with the government that owns Oschadbank.

III. A STAY WOULD NOT PROMOTE JUDICIAL ECONOMY AND WOULD UNDULY PREJUDICE OSCHADBANK.

RF urges this Court to stay this proceeding under the traditional test set out in *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). Mot. 10. That legal standard does not apply to this case. The *Europcar*/*Stileks* test adapted the *Landis* factors to the specific New York Convention context. But to the extent the Court considers the *Landis* factors as a separate test, *Landis* required a party seeking the stay to bear the burden of proving any "hardship or inequity" that would result if the litigation continued unabated "if there is even a fair possibility that the stay . . . will work damage to [someone] else." *Hulley Enterprises Ltd. v. Russian Fed'n*, 502 F. Supp. 3d 144, 152 (D.D.C. 2020) (quoting *Landis*, 299 U.S. at 255). RF did not show so here.

First, judicial economy weighs against a stay.[5] As explained above, *supra*, I., RF's *ipse dixit* assertion that the award might be annulled after successful enforcement "is insufficient."

[5] There is no need to stay the case pending the D.C. Circuit's decision in the consolidated *Blasket* appeals, as RF suggests. Mot. 18-20. The *Blasket* appeal will not be dispositive. There, the district court narrowly held that it need not defer to the tribunal on the narrow issue of whether "the parties were *incapable* of entering into an agreement to arbitrate anything at all." *Blasket Renewable Invs., LLC v. Kingdom of Spain*, 665 F. Supp. 3d 1, 10 (D.D.C. 2023). In contrast, the court found whether "a particular investment fell within the scope of an arbitration provision"—

Stileks, 985 F.3d at 880-881; *IBL*, No. 22-832, 2023 WL 2961739, at *1 (denial of stay was proper where "IBL ha[d] not shown that it [was] likely to succeed on either of the two grounds on which it relies in its annulment proceeding") (citation omitted). Accepting that argument would effectively lead to the reflexive imposition of a stay any time an annulment proceeding is pending—frustrating "the entire purpose of the New York Convention" to promote rapid confirmation of arbitral awards "in third countries without first having to obtain either confirmation of such awards or leave to enforce them from a court in the country of the arbitral situs." *CBF Industria de Gusa S/A v. AMCI Holdings, Inc.*, 850 F.3d 58, 72 (2d Cir. 2017) (citing *Karaha Bodads*, 335 F.3d at 366-367).

Moreover, most of "this Court's determinations" will not be affected by "the outcome of the judicial proceedings in [the foreign forum]." *Cef Energia, B.V*, 2020 U.S. Dist. LEXIS 130291, at *15-16. RF has elected to defer its merits defenses and asks that the Court determine jurisdictional issues first. "[A] foreign court's order ostensibly setting aside an arbitral award has no bearing on the district court's jurisdiction and is instead an affirmative defense properly suited for consideration at the merits stage." *P&ID*, 27 F.4th at 772. Nor would the set-aside proceedings alter any merits issues such as the applicability of grounds for non-recognition or the statute of limitations under the FAA. At a minimum, there is no reason to defer resolution of the jurisdictional issues and wait for the French Proceedings to conclude first.

Second, as explained above, a stay would impose unreasonable years long delays. *Supra*, I. And ***third***, as explained above, the balance of hardships disfavors a say. *Supra*, II.

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the same jurisdictional arguments RF makes here—goes to the "scope of arbitrability" under *Stileks* and *Chevron*. *Id*. at 10-11.

IV. IN THE ALTERNATIVE, THIS COURT SHOULD ORDER RF TO POST BOND.

If the Court were to grant a stay, Oschadbank requests that it also order RF give "suitable security" by depositing the full amount of the Award. *IBL*, 2023 WL 2961739, at *2 ("In *Europcar*, we explained that when analyzing this factor, district courts should "keep[ ] in mind that if enforcement is postponed under Article VI of the Convention, the party seeking enforcement may receive 'suitable security.'" 156 F.3d at 318).

CONCLUSION

For the foregoing reasons, Oschadbank respectfully requests that the Court deny RF's motion for a stay.

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Respectfully submitted,

QUINN EMANUEL URQUHART
& SULLIVAN, LLP

By: /s/

Dennis H. Hranitzky (Bar No. NY0117)
Tanner Lyon (*pro hac vice forthcoming*)
2755 E. Cottonwood Parkway, Suite 430
Salt Lake City, UT 84121
801-505-7300 Main Office Number
801-515-7400 FAX

Debra O'Gorman (Bar No. NY0499)
Yvonne Yi Zhang (*pro hac vice forthcoming*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
212-849-7000 Main Office Number
212-849-7100 FAX

Alex Loomis (*pro hac vice forthcoming*)
111 Huntington Ave, Suite 520
Boston, MA 02199
617-712-7100 Main Office Number
617-712-7200 FAX

Attorneys for Petitioner