

IN THE MATTER OF AN ARBITRATION UNDER THE 1976 RULES OF THE UNITED
NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

SERGEI VIKTOROVICH PUGACHEV

Claimant

v.

THE RUSSIAN FEDERATION

Respondent

INTERIM AWARD

Tribunal

Dr. Eduardo Zuleta Jaramillo (Presiding Arbitrator)
Prof. Thomas Clay
Prof. Bernardo Cremades

Secretary

Mr. Rafael Rincón

Place of arbitration: Madrid, Kingdom of Spain

7 July 2017

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I. INTRODUCTION

1. Mr. Sergei Viktorovich Pugachev (the “**Claimant**”) is pursuing this arbitration against the Russian Federation (the “**Respondent**” or “**Russia**”) for alleged breaches of the Agreement Between the Government of the Republic of France and the Government of the United Socialist Republics on the Reciprocal Promotion and Protection of Investments (the “**France-Russia BIT**” or the “**Treaty**”).
2. Both Parties have submitted multiple applications and cross-applications before this Tribunal. In this regard, the Tribunal must decide on:
 - (i) Claimant’s Request for Interim Measures dated as of 19 December 2016 (the “**Claimant’s Request for Interim Measures**” or the “**Request for Interim Measures**”), including Claimant’s Security for Costs Application and Claimant’s Security for Claims Application (as defined below);
 - (ii) Respondent’s Security for Costs Application dated as of 10 February 2017 (the “**Respondent’s Security for Costs Application**”), including a request for disclosure of third party funders; and
 - (iii) Applications and cross-applications by both Parties on questions of confidentiality and alleged breaches of Procedural Order No. 1 (“**PO1**”).
3. Claimant requested this Tribunal to grant Claimant’s Request for Interim Measures in the form of an Interim Award.¹ Respondent, in turn, requested the Tribunal to grant additional relief for Claimant’s alleged breaches of PO1 in the form of a Partial Award.² Respondent considered that such relief may be deemed a request for interim measures in this arbitration.³
4. The Tribunal has carefully reviewed and considered the multiple applications and cross-applications submitted by the Parties. In this regard, the Tribunal observes that the alleged breaches of the confidentiality provisions of PO1 and the request for additional relief sought by Respondent are linked to several issues that must be resolved in the context of Claimant’s Request for Interim Measures and Respondent’s Security for Costs Application. The Tribunal notes that all these matters, as pleaded by the Parties, are inextricably linked to the question of preserving the integrity and efficiency of this arbitration.
5. Furthermore, the Tribunal notes that the Parties have consistently argued during this arbitration on questions pertaining to alleged breaches of PO1 and other orders issued by the Tribunal. Accordingly, and pursuant to the terms of Article 26.2 of the 1976 Arbitration

¹ Request for Interim Measures, ¶¶ 343-346.

² Respondent’s Letter dated 8 March 2017, ¶¶ 53-62.

³ Respondent’s Letter dated 8 March 2017, ¶ 60.

Rules of the United Nations Commission on International Trade Law (the “**UNCITRAL Rules**” or the “**1976 UNCITRAL Rules**”), the Tribunal deems it necessary to decide in the form of an Interim Award all the matters addressed in *para.* 2 above and to issue certain measures to preserve the integrity and efficiency of this arbitration.

6. For the reasons set out below, the Tribunal:
 - (i) Orders Respondent to take all actions necessary to suspend the France Extradition Request (as defined below);
 - (ii) Denies all other claims and requests made by Claimant in the Request for Interim Measures;
 - (iii) Denies all claims and requests made in Respondent’s Security for Costs Application;
 - (iv) Denies Respondent’s additional relief requested in the letter dated 8 March 2017;
 - (v) Orders each Party and their respective counsel to refrain from commenting or making any public statement to any third party (including reporters, news organizations or media networks) on any matter or fact regarding this arbitration, including any matter addressed in the Available Documents (as defined below), without prior leave from the Tribunal;
 - (vi) Orders each Party and their respective counsel to abstain from publishing or disclosing any Confidential Information (as defined below) regarding this arbitration without prior leave from the Tribunal. Accordingly, the Parties are only allowed to publish or disclose the Available Documents (as defined below) in strict accordance with the terms set forth in PO2 (as defined below) or any amendment thereto by the Tribunal;
 - (vii) Orders Claimant to refrain from posting or publishing, without prior leave from the Tribunal, any information concerning this arbitration other than the Available Documents (as defined below), on the website www.pugachevsergei.com, or on any other website or digital platform;
 - (viii) Orders Claimant to provide a statement to this Tribunal on or before 17 July 2017 accepting and acknowledging that any post or publication concerning this arbitration, other than the Available Documents (as defined below), have been removed from the website www.pugachevsergei.com; and
 - (ix) Reserves the question of costs associated with the Request for Interim Measures, Respondent’s Security for Costs Application and all applications and cross-applications concerning confidentiality to a future stage.

II. PROCEDURAL BACKGROUND

7. Claimant served a Notice of Arbitration dated 21 September 2015 (the “**Notice of Arbitration**”) on Respondent pursuant to Article 7 of the Treaty and the 1976 UNCITRAL Rules.
8. Pursuant to Article 3(2) of the UNCITRAL Rules, and as confirmed in *para.* 2.3 of the Terms of Appointment dated 1 March 2017 (the “**TOA**”), these arbitration proceedings are deemed to have commenced on 22 September 2015, the date on which the Respondent received the Notice of Arbitration.
9. By letter dated 17 June 2016 (received by Respondent on 21 June 2016), Claimant appointed Professor Thomas Clay, a French national, as the first arbitrator pursuant to Article 7(1) of the UNCITRAL Rules.
10. In the letter dated 17 June 2016, Claimant proposed that the Secretary General of the Permanent Court of Arbitration (the “**PCA**”) act as appointing authority in this arbitration. By letters dated 9 and 10 August 2016, Respondent agreed to the PCA Secretary General acting as appointing authority in this arbitration.
11. On 19 August 2016, the Secretary General of the PCA appointed Dr. Bernardo M. Cremades, a Spanish national, as the second arbitrator pursuant to Article 7(2)(b) of the UNCITRAL Rules.
12. On 31 October 2016, the Secretary General of the PCA appointed Dr. Eduardo Zuleta Jaramillo as the presiding arbitrator pursuant to Article 7(3) of the UNCITRAL Rules, as modified by agreement of the Parties.
13. On 9 November 2016, the Tribunal ordered the Parties to refrain from making public statements or disclosing any information related to this arbitration during their discussions on procedural matters, including the applicable confidentiality rules.
14. On 19 December 2016, Claimant submitted the Request for Interim Measures. As part of its Request for Interim Measures, the Claimant sought a Preliminary Order (the “**First Preliminary Application**”).
15. On 27 December 2016, Respondent submitted its Response to Claimant’s First Preliminary Application (the “**Response to the First Preliminary Application**”).
16. On 4 January 2017, the Tribunal issued its Decision on the First Preliminary Application (the “**First Preliminary Application Decision**”), rejecting Claimant’s request.
17. On 8 January 2017, Claimant submitted a Second Application for a Preliminary Order (the “**Second Preliminary Application**”).

18. On 10 January 2017, Respondent replied to the Second Preliminary Application (the “**Response to the Second Preliminary Application**”). Respondent submitted further information regarding the Second Preliminary Application in a letter dated 12 January 2017, to which Claimant replied on 14 January 2017.
19. On 20 January 2017, the Tribunal issued its Decision on the Second Preliminary Application (the “**Second Preliminary Application Decision**”) rejecting (i) Claimant’s Second Preliminary Application, and (ii) Claimant’s request for the Tribunal to revisit its Decision on the First Preliminary Application issued on 4 January 2017.
20. On 10 February 2017, Respondent filed its Response to the Request for Interim Measures opposing it (the “**Response to Claimant’s Request for Interim Measures**” or “**Response to Request for Interim Measures**”).
21. On the same date, it was submitted to the Tribunal the Respondent’s Security for Costs Application.
22. On 1 March 2017, the Tribunal issued the TOA. Pursuant to *para.* 6.1 of the TOA, the place of the arbitration is Madrid, Spain.
23. On 1 March 2017, the Tribunal issued PO1. As per the Tribunal’s order dated 9 November 2017, Article 10.5 of PO1 provides that the Parties shall refrain from making any public statements or disclosures that undermine the integrity and efficiency of this arbitration, including the disclosure of any confidential material submitted by either Party in the framework of this arbitral proceeding.
24. By letter dated 3 March 2017, Claimant raised to the attention of the Tribunal that Respondent had allegedly breached the confidentiality provisions contained in Article 10 of the PO1 by publishing a press release on the website of the Russian Federation’s Public Prosecutor related to the arbitration proceedings.
25. On the same date, Respondent informed the Tribunal of a series of public statements, press releases and interviews made by Claimant related to the arbitration, allegedly in breach of the Tribunal’s order of 9 November 2017 and PO1.
26. By email dated 3 March 2017, the Tribunal invited the Parties to comment on each other’s letter sent on that same date.
27. On 8 March 2017, Claimant responded to Respondent’s letter dated 3 March 2017 opposing it and requesting the Tribunal to order Respondent to refrain from making future communications that undermine the efficiency and integrity of this arbitration.

28. On the same date, Respondent commented on Claimant’s letter dated 3 March 2017 opposing it and seeking an additional relief by way of a Partial Award.
29. On 10 March 2017, Claimant submitted its Reply to Respondent’s Security for Costs Application (the “**Reply to Respondent’s Security for Costs Application**”).
30. On 13 March 2017, Claimant brought to the attention of the Tribunal a letter received on 8 March 2017 from Hogan Lovells London on behalf of the Deposit Insurance Agency (the “**DIA**”). Claimant alleged that this letter requested Claimant’s counsel to disclose information covered by the attorney-client privilege.
31. On 16 March 2017, the Respondent responded to Claimant’s 13 March 2017 letter and requested the Tribunal to reject all of Claimant’s requests.
32. On 17 March 2017, the Tribunal recalled that the place of the arbitration is Madrid, Spain, but that, pursuant to Section 6.2 of the TOA and Section 1.1 of PO1, the hearings may be held in other locations. The Tribunal considered all arguments put forward by the Parties, particularly in the submissions of 3 March 2017 and 8 March 2017, and decided to hold a hearing on 17 April 2017 in Paris, France exclusively devoted to Claimant’s Request for Interim Measures (the “**Hearing**”), and to reserve 18 April 2017 if needed. The Tribunal established that this decision is only applicable for the Hearing and shall not be construed in any way as a ruling on the location of any future hearing in this arbitration, or as a judgment on the merits of any of the applications put forward by the Parties in their submissions.
33. On 17 April 2017, the Hearing was held in the ICC Hearing Centre 112, avenue Kléber 75016 in Paris, France. The following persons participated in the Hearing:

Tribunal	
<ul style="list-style-type: none"> - Dr. Eduardo Zuleta Jaramillo – Presiding Arbitrator - Professor Thomas Clay – Arbitrator - Professor Bernardo Cremades – Arbitrator 	<ul style="list-style-type: none"> - Mr. Rafael Rincón – Secretary to the Tribunal
Claimant	Respondent
<ul style="list-style-type: none"> - Julien Fouret, Betto Seraglini law firm - Gaëlle Le Quillec, Betto Seraglini law firm - Elsa Nicolet, Betto Seraglini law firm 	<ul style="list-style-type: none"> - David Goldberg, White & Case - Thomas Vail, White & Case - Stephanie Stocker, White & Case

- Yasmina Najem, Betto Seraglini law firm	- Oleg Todua, White & Case
- Valeriya Tsekhanska, Betto Seraglini law firm	- Hadia Hakin, White & Case
- Natalia Dozortseva, Legal Consultant.	- Mikhail Vinogradov, Director, Department of International Law and Cooperation, Ministry of Justice of the Russian Federation.
- Anne-Jessica Fauré, De Baecque Fauré Bellec Law Firm	
- Marie Roumiantseva, Roumiantseva Law Firm	

34. During the Hearing, the Tribunal recalled that the Parties were bound by the confidentiality obligations provided for under PO1 and, accordingly, they could not hold press conferences, issue statements to the press or the likes related to this arbitration.⁴
35. Furthermore, the Tribunal closed the proceedings pertaining to Claimant’s Request for Interim Measures, Respondent’s Security for Costs, applications on confidentiality and any other interim measure. In this regard, the Tribunal noted that it would only receive additional submissions from the Parties “with prior leave” from the Tribunal in the event something new and urgent arose.⁵
36. On 20 April 2017, Respondent submitted an application alleging further breaches by Claimant of PO1 and the orders made by the Tribunal during the Hearing. On 24 April 2017, Claimant submitted its comments to Respondent’s application.
37. On 29 April 2017, the Tribunal invited the Parties to provide additional comments and information concerning the alleged breaches of PO1. As requested by the Tribunal, Respondent submitted its comments on 4 May 2017 and Claimant responded on 9 May 2017.
38. On 26 May 2017, the Tribunal sent a letter to the Parties whereby (i) it ordered specific measures in order to preserve the integrity and efficiency of the arbitration, and (ii) it submitted a proposal to the Parties to balance confidentiality and transparency concerns in this arbitration (the “**26 May 2017 Order**”). The Tribunal invited the Parties to submit joint or separate comments to the proposal on or before 5 June 2017.
39. On 6 June 2017, Respondent submitted its comments to the proposal put forward by the Tribunal and alleged that Claimant breached the specific orders made in the 26 May 2017 Order. Accordingly, the Respondent requested the Tribunal to take such steps as it considers necessary to ensure the Claimant’s compliance with its orders, including in particular the 26 May 2017 Order. In addition, Respondent expressed the view that, until the Claimant indicates willingness to comply with the Tribunal’s orders in this arbitration, it should not

⁴ Hearing, Tr., 3:23-25.

⁵ Hearing, Tr., 135:17-23.

be required to incur further time and expense in defending itself, including in relation to agreeing logistics for the publications of documents relating to the arbitration.

40. On 9 June 2017, Claimant responded to Respondent's letter dated 6 June 2017. Claimant stated that he has complied with the 26 May 2017 Order and removed 103 pages from his website that contained publications concerning this arbitration. Claimant argued that Respondent failed to point out to any article, post or any publication, for the simple reason that Claimant removed from his website all articles and publications as per Tribunal's direction. Claimant urged this Tribunal to (i) acknowledge that Claimant has complied with the 26 May 2017 Order; (ii) order full transparency, in exchange for its extremely strict confidentiality provision; and (iii) decide on the body that should be designated to administer the website in order to avoid further obstructive attitude from Respondent in that respect.
41. On 12 June 2017, Respondent submitted a letter to the Tribunal alleging Claimant's further breaches of the 26 May 2017 Order. Respondent maintained that, in breach of the 26 May 2017 Order: (i) as of 2 June 2017 multiple publications and documents in respect of the arbitration had not been removed from Claimant's website; (ii) it was only after the Respondent's letter dated 6 June 2017 that Claimant started to remove such materials; and (iii) that, as of 12 June 2017, a number of further such materials remains on Claimant's website. Respondent repeated its request made in its letter dated 6 June 2017, *i.e.* that the Tribunal take whatever measures it deems necessary to ensure the Claimant's compliance with its orders.
42. On 12 June 2017, the Tribunal, after carefully reviewing the multiple applications and cross-applications submitted by the Parties related to breaches of the confidentiality orders and the additional relief sought, informed the Parties that such matters addressed several issues that needed to be resolved in the context of the Request for Interim Measures and Respondent's Security for Costs Application. However, the Tribunal noted, despite the fact that the proceedings were closed during the Hearing, the Parties continued submitting additional applications and cross-applications on these matters, the last one filed on 12 June 2017. Hence, the Tribunal informed the Parties that it would not issue an Interim Award by 17 June 2017 but during the last days of June or first days of July.
43. On 13 June 2017, the Tribunal requested the Parties to submit any objection on or before 14 June 2017 to the Tribunal's understanding of the procedural timetable and the resulting dates of issuance of the Interim Award. Neither Party submitted any objection to this effect.
44. Accordingly, the Tribunal issues the following Interim Award within the agreed term limits agreed on by the Parties.

III. THE PARTIES' SUBMISSIONS

45. The Tribunal summarizes below the arguments and positions of the Parties concerning (i) Claimant's Request for Interim Measures; (ii) the Respondent's Security for Costs Application and (iii) the alleged breaches of confidentiality provisions in PO1, the Tribunal's order dated 9 November 2016, and the 26 May 2017 Order. The Tribunal has taken into consideration all the arguments and evidence submitted by the Parties, including their presentations during the Hearing. The fact that an argument or a specific piece of evidence is not mentioned in the summary does not mean that the Tribunal has not considered it.

A. Summary of the positions of the Parties concerning Claimant's Request for Interim Measures

a) Claimant's position

46. Claimant requests the Tribunal to issue the following interim measures:

[1.] Measures related to civil proceedings which aimed at ensuring that Russia will not aggravate the dispute [...]

- i. Order Russia to suspend the pending proceedings for the enforcement of the unlawful Subsidiary Liability Judgment, the UK Default Judgment and the proceedings for the taking of interim measures in the same context, as well as to release the interim measures taken in this respect⁶. [...]
- ii. Order Russia to abstain from initiating any attachment, exequatur or enforcement proceedings against Mr Pugachev or any of his assets during the arbitration proceedings.

[2.] Measures related to criminal proceedings which aimed at ensuring that Russia will not prevent Mr Pugachev from participating and presenting his case in this arbitration

- i. Order Russia to suspend the criminal prosecution against Mr Pugachev, and against members of his family and individuals related to him, in Russia and Switzerland pending these arbitration proceedings;
- ii. Order Russia to suspend any existing requests for international cooperation in the context of such criminal proceedings, such as extradition requests, international arrest warrants, requests for

⁶ In its Request for Interim Measures, Claimant further details the specific orders that he requests from the Tribunal related to proceedings, interim judicial orders injunctions and other measures initiated or taken by Respondent in the UK, France, Luxembourg, and the Cayman Islands. See Request for Interim Measures, ¶ 347(2)(i).

*mutual legal assistance, pending these arbitration proceedings;
and*

- iii. *Order Russia to abstain from initiating any criminal prosecution against Mr Pugachev, and against members of his family and individuals related to him, and requesting measures of international cooperation in that context during these arbitration proceedings.*

[3.] Measures related to the protection of witnesses [...]

- i. *Order Russia to take all measures required to ensure that individuals who Mr Pugachev would need to call as witnesses in the present arbitration proceedings will be able to testify. This relates notably to Mr Ulyukaev and Mr Amunts, whose testimony Mr Pugachev will seek in the present arbitration proceedings and to any other witness already or later identified by Claimant as such;*
- ii. *Order Russia to stay any criminal proceedings against potential witnesses, notably Mr Ulyukaev and Mr Amunts.*

[4.] Measures related to the safety of Mr Pugachev and other individuals which aim at ensuring that Russia will not prevent Mr Pugachev from participating and presenting his case in the present arbitration

- i. *Order Russia to abstain from taking any action which is aimed at intimidating Mr Pugachev and the members of his family;*
- ii. *Order Russia to abstain from taking any action that could intimidate advisors, counsel and experts for Mr Pugachev in the present proceedings, and more generally any person who assists Mr Pugachev in the preparation of his claim in arbitration.*

[5.] Measures aiming at ensuring enforcement of a future award in the present proceedings

- i. *Order Russia alternatively, and at the discretion of the Tribunal, as a security for claim:*
 - *To put in an escrow account, held by the Tribunal, the amount of USD 6 billion [...] as security for his claim in the arbitration; or*
 - *To issue a letter of comfort indicating that it would abide by its international obligations deriving from the provisions of the BIT notably, but not exclusively, respect any international award rendered in the present arbitration by the Arbitral Tribunal including the pecuniary or non-pecuniary obligations contained therein.*
- ii. *Order Russia to post euro 10 million, as security for the costs in the present arbitration, to be also held in escrow. Such order*

*should be accompanied by a penalty of USD 100 000 for each day until Russia has complied with its obligation.*⁷

47. Claimant substantiates the requested interim measures on the reasoning summarized below.

1. Overview of the facts giving rise to the Request for Interim Measures

48. Claimant asserts that he was approached by President Putin and forced to sale his interest in two major shipyards in Russia (*i.e.*, Northern Shipyard and the Baltic Shipyard) under the threat of expropriation. The Central Bank of Russia (the “**Central Bank**”) was designated by President Putin to acquire the interests in the shipyards. The price was ultimately set in approximately USD 5 billion.⁸

49. Claimant argues that the Central Bank proposed a mechanism of pledges to acquire the interests in the shipyards and included in the transaction the CJSC International Industrial Bank (the “**IIB**”). As part of this mechanism, the Central Bank required IIB to assign its unsecured loans with the Central Bank to Mr. Pugachev and his companies. Moreover, Mr. Pugachev would be paid the difference between the purchase price agreed by him and the Russian Government (*i.e.* USD 5 billion) and IIB’s debt to the Central Bank (*i.e.*, approximately USD 4 billion), that is, approximately USD 1 billion. Furthermore, when the Central Bank signalled that it was ready to pay, the IIB had to notify the Central Bank that it would default on its loans to monetize the pledges over the interest in the shipyard. The Central Bank would then enforce the pledges, taking the shares in the shipyards and paying Mr. Pugachev.⁹

50. IIB proceeded to restructure its unsecured loans and concluded a special restructuring agreement between the IIB and the Central Bank. Mr. Pugachev then pledged the interest in the shipyards in favour of the Central Bank as security for the payments due under the restructuring agreement.¹⁰

51. After IIB defaulted, as planned, the Central Bank revoked IIB banking license. IIB was declared bankrupt by a Russian court and the DIA was appointed as receiver of IIB. Claimant alleges that his interest in the shipyards were transferred to United Shipbuilding Corporation (the “**USC**”), a company controlled by the Russian government.¹¹

52. Claimant states that to justify the revocation of IIB’s license, the DIA initiated “abusive and irregular” civil proceedings against Mr. Pugachev and other CEOs of IIB. In April 2015, the Commercial Court of the Moscow District found Mr. Pugachev liable for RUB

⁷ Request for Interim Measures, ¶ 347.

⁸ *Ibid.*, ¶¶ 133-137.

⁹ *Ibid.*, ¶¶ 138-141.

¹⁰ *Ibid.*, ¶¶ 142-143.

¹¹ *Ibid.*, ¶ 149.

75,642,466,311.39 (approximately, USD 1.3 billion) (the “**Subsidiary Liability Judgement**”).¹²

53. Claimant alleges that the Subsidiary Liability Judgement is tainted by irregularities, among others: (i) Mr. Pugachev did not own or control IIB, given that he had divested IIB and resigned his position as Chairman of the board before the bankruptcy proceedings; (ii) the improper constitution of a one-judge court, given that the Ninth Commercial Court of Appeal ruled that all decisions taken by one judge are illegal; (iii) the decision is based almost exclusively on witness statements given in parallel criminal proceedings that Russia initiated “opportunistically”, including false testimonies provided by Mr. Didenko, who was imprisoned and under duress at the time of his testimony; and (iv) Claimant’s challenges against the Subsidiary Liability Judgment were improperly denied.¹³

2. *This Tribunal has wide powers to order any appropriate interim measures*

54. Claimant affirms that, pursuant to Article 26 of the UNCITRAL Rules, this Tribunal has extensive powers to order “any interim measures it deems necessary in respect of the subject-matter of the dispute.” Claimant further argues, citing as an example *Chevron v. Ecuador*, that arbitral tribunals have the power to order any interim measure to preserve the *status quo* and to prevent an aggravation of the dispute until the final award is rendered.¹⁴
55. Against this background, Claimant explains that this Tribunal may suspend civil and criminal proceedings to preserve a party’s right to have its dispute decided by an international tribunal. To illustrate this point, Claimant notes that the tribunals in *Quiborax v. Bolivia* and *Hyrdo v. Albania* ordered the suspension of criminal proceedings because they impaired the Claimant’s rights in the arbitration.¹⁵ Claimant also refers to other international arbitration cases that according to Claimant demonstrate that tribunals have regularly granted interim measures to prevent enforcement proceedings before domestic courts.
56. Claimant further affirms that this Tribunal has the power to prevent the enforcement of a judgment already issued and to prevent the enforceability of decisions that would be issued in the future.¹⁶
57. Additionally, Claimant asserts that this Tribunal has the power to protect witnesses or other persons engaged in the arbitration to ensure that they would not be subject to coercive actions against them. Claimant explains, citing *Chevron v. Ecuador*, that tribunals may

¹² *Ibid.*, ¶ 158.

¹³ *Ibid.*, ¶ 166.

¹⁴ *Ibid.*, ¶¶ 33-38.

¹⁵ *Ibid.*, ¶¶ 49-51.

¹⁶ *Ibid.*, ¶ 62.

order States to facilitate and not to discourage claimant's engagement of legal experts, advisors, and representatives for the arbitration.¹⁷

58. Claimant also argues that security for costs and security for claims fall within the inherent powers of the tribunal to adopt measures safeguarding the enforcement of the award. In the case of security for costs, Claimant notes that UNCITRAL tribunals have recognized the power of tribunals to grant such measures. Moreover, Claimant states that there is nothing that prevents a Tribunal from granting security for costs to a claimant. In the case of security for claims, Claimant argues that, pursuant to Article 26 of the UNCITRAL Rules, security for claims is a measure available to the Tribunal for the "conservation of the goods forming the subject-matter in dispute."¹⁸

3. *The Applicable Requirements for Granting Interim Measures*

59. Claimant, citing *Paushok v. Mongolia*, identifies five requirements that must be met before a tribunal grants an order on interim measures, namely: (i) *prima facie* jurisdiction; (ii) *prima facie* establishment of the case; (iii) urgency; (iv) imminent danger of serious prejudice (*i.e.*, necessity); and (v) proportionality.¹⁹
60. Regarding *prima facie* jurisdiction, Claimant notes that the Tribunal must engage in a limited review to ensure that the requesting party provides sufficient evidence for the tribunal to retain provisional jurisdiction. Thus, fulfilling this requirement does not entail prejudging the question of jurisdiction.²⁰
61. With respect to *prima facie* establishment of the merits, the Tribunal must not prejudge the merits, but simply establish whether a reasonable case has been made which, if the facts alleged are proven, might possibly lead the tribunal to render an award in favour of Claimant. Therefore, Claimant argues that this Tribunal should undertake the *prima facie* analysis based on the documentary evidence provided with the Notice of Arbitration.²¹
62. Pertaining to urgency, Claimant explains that several investment tribunals have stated that urgency implies the existence of "serious risks that the rights of the applicants will be jeopardized if the measures are not taken rapidly."²² Claimant quotes *Biwater Gauff v. Tanzania* to note that the urgency requirement is satisfied when "there is a need to obtain the requested measure at a certain point in the procedure before the issuance of an award."²³

¹⁷ *Ibid.*, ¶¶ 65-70.

¹⁸ *Ibid.*, ¶ 75.

¹⁹ *Ibid.*, ¶ 86.

²⁰ *Ibid.*, ¶¶ 90-92.

²¹ *Ibid.*, ¶¶ 93-94.

²² *Ibid.*, ¶ 97.

²³ *Ibid.*, ¶ 98.

63. Claimant indicates, in connection with necessity, that a measure is necessary if it aims at preventing a substantial or irreparable harm to a party during the proceedings. Claimant cites *Paushok v. Mongolia* to illustrate that “irreparable harm” should not be construed as referring to harm not remediable by an award of damages. Moreover, arbitral tribunals have generally considered that the risk of aggravating the dispute is a risk of “substantial harm.”²⁴
64. Finally, as regards proportionality, Claimant notes that this Tribunal is called upon to determine that the inconvenience and harm to the requesting party substantially outweighs the harm that the measures are likely to cause to the other party if implemented.²⁵
65. At the Hearing, Claimant further developed the interpretation of the elements of urgency, necessity and proportionality.²⁶ Since Claimant’s interpretation reaffirmed what he elaborated in his Request for Interim Measures, as summarized above, Claimant’s submissions at the Hearing on this matter will not be reproduced herein.

4. *The Tribunal has prima facie jurisdiction to grant the interim measures requested*

66. Claimant affirms that this Tribunal has jurisdiction because, as required by the relevant provisions of the Treaty, this dispute concerns the effects of measures taken by Respondent in violation of the Treaty and relating to the management, maintenance, enjoyment or disposal of a series of investments made by Mr. Pugachev, a French national since 2009.
67. In particular, Mr. Pugachev’s shareholding investments in Russian companies and contractual rights and claims in projects in Russia fall under the broad definition of investment of Article 1.1 of the Treaty. Moreover, Claimant notes that, as required by the France-Russia BIT, he tried to settle the dispute amicably before initiating arbitration by delivering to President Putin a trigger letter dated 10 December 2014. However, no amicable settlement was reached.
68. At the Hearing, and in response to Respondent’s objection, Claimant argued that there is no evidence of abuse of process nor bad faith in invoking the jurisdiction of this Tribunal. Claimant explained that he became a national of France in November 2009 and, thus, prior to any breach of the France-Russia BIT.²⁷ Claimant stated that he indeed delivered a trigger letter to President Putin.²⁸ Third, Claimant asserted that it is hardly debatable that Claimant made investments and had assets in Russia, namely: (i) a renovation project of condominiums in the Red Square area (the so-called Red Square Project); (ii) the majority

²⁴ *Ibid.*, ¶¶ 105-108.

²⁵ *Ibid.*, ¶¶ 112-114.

²⁶ Hearing, Tr., 21:4-25:24.

²⁷ Hearing, Tr., 16:11-20.

²⁸ Hearing, Tr., 16:21-25; 17:1-7.

interest in two shipyards; (iii) interests in a coal mining project; and (iv) a plot of land in the Moscow area.²⁹

5. *Claimant's request to suspend civil enforcement proceedings satisfies the requirements for granting interim measures*

69. Claimant first identifies the civil enforcement proceedings that give rise to Claimant's Request for Interim Measures, as set out in detail below.
70. Claimant alleges that Respondent, through DIA and the IIB, initiated *ex parte* proceedings in the United Kingdom (the "**UK**") to obtain a freezing order against Mr. Pugachev's assets. These proceedings were based on the pending Russian proceedings against Mr. Pugachev for subsidiary liability in the bankruptcy of IIB, which later resulted in the "unlawful" Subsidiary Liability Judgment. On 11 July 2014, a freezing order was issued on Mr. Pugachev's assets for GBP 1,171,490,852 (the "**UK Freezing Order**" or "**UK Worldwide Freezing Order**"). In addition, Claimant explains that Respondent has attempted to enforce in the UK an additional freezing order against trusts in which Mr. Pugachev was the protector (the "**Trust Freezing Order**").
71. On 22 February 2016, the UK High Court issued a default judgment enforcing the Subsidiary Liability Judgment and ordered Mr. Pugachev to pay RUB 75,642,466,311.39 (approximately USD 1.2 billion), plus interest and costs (the "**UK Default Judgment**"). Claimant underscores that he did not participate in these proceedings and was not able to contest Russia's allegations, because he was no longer in the UK. This forced absence, according to Claimant, should be considered by the Tribunal.
72. Claimant alleges that Respondent has used English courts to harass Mr. Pugachev with "pernicious" judicial orders, such as an order requiring him to surrender his passport to the DIA and IIB's solicitors; and orders restraining him from leaving England and Wales. As a result, Claimant argues that he had no choice but to leave the UK and return to France. Since then, Russia has requested UK authorities' consent to extradite Mr. Pugachev and the UK Home Office decided to start extradition proceedings. In addition, Claimant explains that, despite being forced by Respondent to leave the UK, an English Court has found Mr. Pugachev liable for contempt of court for not complying with the Court's order not to leave the UK and Mr. Pugachev was thus sentenced to eight months of imprisonment.³⁰
73. Claimant also argues that Respondent initiated enforcement proceedings in the Cayman Islands, France and Luxembourg against Mr. Pugachev. Claimant identifies, among others, the following proceedings.

²⁹ Hearing, Tr., 9:24-25; 10:1-12.

³⁰ Request for Interim Measures, ¶¶ 190-193.

74. In the Cayman Islands, on 21 April 2016, Russia obtained an injunction against Mr. Pugachev preventing the disposal of assets and companies that DIA alleged belong to him. Moreover, on 9 June 2016, Respondent obtained a default order enforcing the Subsidiary Liability Judgement in the Cayman Islands (the “**Cayman Default Judgment**”).³¹
75. In Luxembourg, on 4 May 2016, Respondent requested interim measures ordering, among others, Mr. Pugachev’s legal counsel not to divest any amount or debt due to Mr. Pugachev. Claimant asserts that these proceedings clearly indicate Respondent’s aim to deprive Mr. Pugachev of proper legal representation. Moreover, on 12 May 2016, Respondent initiated proceedings to enforce the Subsidiary Liability Judgment in Luxembourg.³²
76. In France, on 26 April 2016, Respondent obtained from a French judge the right to register interim mortgages on a series of properties that Respondent alleges belong to Claimant. On 2 June 2016, Respondent, through the DIA and IIB, requested *exequatur* of the Subsidiary Liability Judgement before the Nice *Tribunal de Grande Instance*. Furthermore, on 2 August 2016, Respondent obtained from a French judge the right to register an additional judicial mortgage on property owned by Sand Club. Claimant asserts that many of the properties subject to judicial mortgages in France do not belong to him, including the property owned by Sand Club.³³
77. Claimant alleges that the above-mentioned proceedings aggravate the *status quo* of this dispute and hinder Mr. Pugachev’s rights in this arbitration. Therefore, interim measures aimed at suspending these pending civil proceedings are urgent and necessary to preserve the *status quo*, and thus to prevent the aggravation of the dispute.³⁴ Claimant cautions that absent the requested interim measures, the civil enforcement proceedings initiated by Respondent will have the following consequences.
78. First, the enforcement of the Subsidiary Liability Judgement aggravates the breaches of the Treaty by increasing the amount of damages suffered by Claimant. Second, the attachment of Mr. Pugachev’s assets and enforcement of the Subsidiary Liability Judgment will dramatically affect his capacity to protect his rights in this arbitration and defend his physical security. Third, an award on damages will not compensate Mr. Pugachev for his losses, because the enforcement of the corresponding award will take time, which will be fatal to Mr. Pugachev’s business. Fourth, the enforcement of the Subsidiary Liability Judgment and the judgments rendered by UK courts may result in the confiscation of the house where Claimant currently resides, and thus would deprive him of the enhanced protection offered by his place of residence.³⁵

³¹ *Ibid.*, ¶¶ 204-205.

³² *Ibid.*, ¶¶ 206-207.

³³ *Ibid.*, ¶¶ 208-212.

³⁴ *Ibid.*, ¶¶ 213-214.

³⁵ *Ibid.*, ¶¶ 214-228.

79. At the Hearing, and in response to Respondent's objections, Claimant further explained that DIA's acts are attributable to Respondent. Claimant argued that the DIA is a state company of Respondent, is financed by Respondent, and most members of its board are appointed by Respondent, including its general director.³⁶ Moreover, Claimant reaffirmed the reasons for granting the interim measures related to civil enforcement proceedings, set out in detail above. Thus, Claimant's submissions at the Hearing on this matter will not be reproduced herein.

6. *Claimant's request to suspend criminal proceedings satisfies the requirements for granting interim measures*

80. In Claimant's Request for Interim Measures, Claimant first identifies the criminal enforcement proceedings that give rise to the request for interim measures, as set out in detail below.

81. Claimant explains that, since 2013, Respondent has initiated criminal proceedings against Mr. Pugachev and directors and managers of IIB.³⁷ On 28 November 2013, Russian authorities formally prosecuted Mr. Pugachev for embezzlement and, subsequently, an arrest warrant and an international arrest warrant were issued against him. After a Russian court revoked the international arrest warrant, the Ministry of Interior of Russia issued a new international warrant notice.³⁸

82. On 10 April 2014, Russian authorities, again, charged Mr. Pugachev with embezzlement and, on 29 May 2015, another criminal case was opened against him for allegedly performing managerial functions against the interest of an organization.³⁹

83. On 5 and 25 November 2015, Russian authorities initiated two other criminal proceedings against Mr. Pugachev related to the release of a pledge of an apartment in Moscow, release of a pledge of shares in a mining company, 120 loans granted by IIB and transfer of funds from Mr. Pugachev's companies to Switzerland.⁴⁰

84. Claimant alleges that the above-mentioned proceedings have been conducted with serious irregularities, in violation of his due process right and his right to be heard.⁴¹

85. Claimant further explains that, to aid the abovementioned criminal investigations, Russia has also requested international assistance from Switzerland, the United States, France and

³⁶ Hearing, Tr., 18:13-20; 19:1-13.

³⁷ Request for Interim Measures, ¶ 233.

³⁸ *Ibid.*, ¶¶ 239-241.

³⁹ *Ibid.*, ¶¶ 243-244.

⁴⁰ *Ibid.*, ¶¶ 246-247.

⁴¹ *Ibid.*, ¶ 249.

Cyprus. As a result of such requests, among others, Swiss authorities froze several assets and bank accounts of Mr. Pugachev in Switzerland.⁴²

86. Claimant asserts that the request to suspend the above-mentioned criminal proceedings against him, his family and other individuals⁴³ is urgent and necessary to preserve the *status quo*, and thus to prevent the aggravation of the dispute.⁴⁴
87. Claimant cautions that absent the requested interim measures, the criminal enforcement proceedings initiated by Respondent may result in the extradition and incarceration of Mr. Pugachev, preventing him from properly pursuing his claims in the arbitration. Moreover, the pending criminal proceedings aggravate the dispute because they are aimed at obtaining witness statements against Mr. Pugachev from individuals under duress; cause Mr. Pugachev substantial moral harm; and are used to issue extradition orders against Mr. Pugachev.⁴⁵
88. At the Hearing, Claimant reaffirmed the reasons set out above for granting the suspension of criminal proceedings.⁴⁶ Thus, Claimant's submissions at the Hearing on this matter will not be reproduced herein.

7. *Claimant's request to order Respondent to refrain from threatening Mr. Pugachev's potential witnesses satisfies the requirements for granting interim measures*

89. In its Request for Interim Measures, Claimant first identifies the actions that Respondent allegedly instigated against Mr. Pugachev's potential witnesses, as set out below.
90. Respondent dismissed several individuals that were involved in the transactions that gave rise to this dispute, including Mr. Alexei Kudrin, Mr. Igor Sechin, Mr. Vladimir Lisin, Mr. Sergey Ignatyve and Mr. Vladimir Kozhin.⁴⁷ Respondent has also initiated criminal proceedings against several individuals that were also involved in such transactions, including against Mr. Alexey Ulyakaev, Minister of Economy at the time of the taking of the interest in the shipyards, and Mr. Didenko, former CEO of IIB. Claimant alleges that Mr. Didenko was arrested and forced to provide a statement against Mr. Pugachev during his arrest. He also asserts that Russia has elicited forced testimonies from Ms. Illarianova and Mr. Zlobin, both former CEOs of IIB, and that these testimonies were submitted as evidence during the Subsidiary Liability Judgment proceedings.⁴⁸

⁴² *Ibid.*, ¶¶ 235-237.

⁴³ For a detailed description of the request to suspend pending criminal proceedings see *Ibid.*, ¶ 347(3).

⁴⁴ *Ibid.*, ¶ 252.

⁴⁵ *Ibid.*, ¶¶ 253-255.

⁴⁶ Hearing, Tr. 31:20-35:15.

⁴⁷ Request for Interim Measures, ¶ 264.

⁴⁸ *Ibid.*, ¶¶ 264-272.

91. Claimant further alleges that Mr. Amunt, a key witness in this arbitration, is prevented from testifying in his favour, given that he is incarcerated and is being pressured to testify against Mr. Pugachev in exchange for his release. Moreover, Respondent has allegedly accelerated criminal proceedings against Mr. Amunt to convict him before this Tribunal issues its interim measures.⁴⁹
92. In light of the myriad of irregular proceedings against potential witnesses, Claimant alleges that the request to order Respondent to stay criminal proceedings against potential witnesses, in the terms set for in its Request for Interim Measures,⁵⁰ is both necessary and urgent by definition. Claimant alleges, based on the tribunal findings in *Quiborax v. Boliva*, that this Tribunal can preserve evidence by protecting both the identified witnesses and potential ones not yet identified.⁵¹
8. *Claimant's request to order Respondent to refrain from threatening or prosecuting Mr. Pugachev, his family, his counsels and advisors satisfies the requirements for granting interim measures*
93. Claimant argues that he and his family have been threatened on several occasions by persons connected to the Respondent. Claimant explains, for example, that, in June 2014, he was kidnapped by two officials of DIA, who attempted to extort money from Mr. Pugachev by threatening him and his family. Moreover, Claimant alleges that he, his family and members of his legal team have been under surveillance of Diligence LLC, a private investigation company hired by Respondent. He further argues that Diligence LLC even placed tracking devices on his vehicles that appeared to be explosive devices. Claimant also affirms that, on 9 October 2015, Ms. Kate Mallisson, an analyst at the security agency GPW Ltd. in London, informed his former partner that a professional killer had been hired to kill him.⁵²
94. Against this background, Claimant alleges that it is urgent and necessary to order Respondent to take all necessary actions to stop the above-mentioned threats against Mr. Pugachev and his family, in the terms set forth in Claimant's Request for Interim Measures.⁵³ In the case of legal advisors, Claimant argues, based on decisions of arbitral tribunals, that this Tribunal may order Respondent to facilitate and not to discourage Claimant's engagement of legal experts, advisers and representatives.⁵⁴
95. At the Hearing, Claimant argued, in response to Respondent's objections, that he has presented to this tribunal all the evidence available related to the above-mentioned threats,

⁴⁹ *Ibid.*, ¶ 271.

⁵⁰ For a detailed description of the request to suspend pending criminal proceedings see *Ibid.*, ¶ 347(4).

⁵¹ *Ibid.*, ¶¶ 274-276.

⁵² *Ibid.*, ¶¶ 281-285.

⁵³ For a detailed description of the request to suspend pending criminal proceedings see *Ibid.*, ¶ 347(5).

⁵⁴ *Ibid.*, ¶¶ 287-289.

given that all the threats have been done, as would be expected, with the utmost care not to leave any trace. Moreover, Claimant draws the attention of the Tribunal to the fact that Respondent has not even agreed to commit not to threaten Claimant, his counsel, his advisers or witnesses.⁵⁵

9. *Claimant requests the Tribunal to grant security for claim and security for costs in this arbitration*

96. Claimant argues that this Tribunal has the inherent powers to grant safeguarding measures for the enforcement of an award in the form of a security for claims⁵⁶ and security for costs.⁵⁷

97. Regarding the security for claims, Claimant affirms that this Tribunal should grant this request based on the following grounds:

(i) Russia has resisted the enforcement of all investment awards rendered against it;

(ii) the situation of Russia's creditors has deteriorated by (a) the enactment of laws aimed at protecting Russian assets abroad; (b) Russian pressure on foreign governments not to enforce any measure against its assets; and (c) the fact that Russia is a regular respondent in investment treaty matters, which results in more creditors trying to enforce their claims against it; and

(iii) Respondent has targeted Mr. Pugachev himself and all his business, and this "destructive" strategy warrants granting security for claims, otherwise Respondent would be free to ignore the final award.⁵⁸

98. Regarding the security for costs, Claimant affirms that this Tribunal should order security for costs based on the following grounds: (i) Russia's past record of not reimbursing costs ordered in arbitral awards; and (ii) the fact that Mr. Pugachev has already incurred considerable costs to defend the various proceedings initiated by Russia in several jurisdictions.⁵⁹

10. *Claimant established a prima facie case on the merits for the granting of the interim measures requested*

99. Claimant argues that the *prima facie* analysis on the merits required to grant interim measures is only aimed to dismiss frivolous claims. In this sense, the Tribunal solely needs

⁵⁵ Hearing, Tr., 36:3-15; 37:1-8.

⁵⁶ Request for Interim Measures, ¶ 347(6)(i).

⁵⁷ *Ibid.*, ¶ 347(6)(ii).

⁵⁸ *Ibid.*, ¶¶ 291-327.

⁵⁹ *Ibid.*, ¶¶ 328-333.

to evaluate the Notice of Arbitration, and the factual explanations in Claimant's Request for Interim Measures, to decide that the claims made are not on their face frivolous or outside of the competence of the Tribunal.⁶⁰

100. In this case, Claimant affirms that the breaches of the Treaty have been set out in the Notice of Arbitration and reaffirmed in Claimant's Request for Interim Measures. Thus, Claimant states that he has established a *prima facie* case on the merits for this Tribunal to grant the interim measures requested.⁶¹

11. Granting Claimant's Request for Interim Measures will not disproportionately burden Respondent

101. Claimant underscores that he would suffer substantial or irreparable harm without interim measures, whereas Respondent would not incur any meaningful harm if the Tribunal issues the interim measures.
102. Regarding the criminal and civil proceedings, suspending these baseless and illegitimate proceedings is not disproportionate to the harm they are causing Claimant. Claimant affirms that Respondent has no right to initiate and continue these proceedings for illicit purposes.⁶²
103. At the Hearing, Claimant argued, in response to Respondent's objection, that the interim measures requested are also proportionate because they solely seek the suspension of proceedings, not their definitive termination.⁶³
104. For these reasons, Claimant argues that the interim measures are proportionate because they are aimed at allowing Claimant to effectively defend and protect his rights for the duration of this arbitration.

b) Respondent's position

105. In its Response to Request for Interim Measures, Respondent requested the Tribunal to (i) reject the interim relief sought by Claimant and (ii) grant an order requiring Claimant to provide the submission of the parties in the proceedings listed in Appendix B of the Request for Interim Measures.⁶⁴
106. The Respondent argues that Claimant's Request for Interim Measures should be rejected by the Tribunal on the grounds summarized below.

⁶⁰ *Ibid.*, ¶¶ 334-336.

⁶¹ *Ibid.*, ¶ 337.

⁶² *Ibid.*, ¶ 340-341.

⁶³ Hearing, Tr., 25:15-21.

⁶⁴ Response to Request for Interim Measures, ¶ 201.

1. Claimant's Request for Interim Measures was made in bad faith and constitutes an abuse of process

107. Respondent claims that Claimant's Request for Interim Measures is an attempt to internationalize a domestic dispute and, thus, the Tribunal is not the appropriate forum to decide this request. Respondent asserts, citing different arbitration cases, that a tribunal has the right to dismiss a claim as an abuse of process when procedural rights have been used "for purposes that are alien to those for which the procedural rights were established." In this case, Respondent argues that Claimant is attempting to use this arbitration to challenge before an international forum the judgments issued by courts in different jurisdictions.⁶⁵
108. Additionally, this Tribunal should refuse to grant Claimant relief on the basis that his acquisition of French nationality constitutes an abuse of process aimed at benefiting from the protection of the BIT. Respondent cites a series of international arbitration cases to explain that a tribunal must consider whether a dispute was foreseeable at the time of any change in nationality. If this is the case, such change would be abusive and a tribunal would be barred from exercising jurisdiction. In this case, Respondent argues that the evidence suggests that Claimant foresaw this dispute in advance to his acquisition of French nationality. Respondent points to the fact that Claimant dissipated his assets in late 2008 and early 2009 prior to acquiring his French nationality (*i.e.*, in November 2009).⁶⁶
109. Furthermore, Respondent states that it is not clear whether there has been an attempt to settle the dispute amicably as required by the Treaty. Respondent notes that, in a letter dated 20 December 2016, it questioned the alleged delivery of a trigger letter to President Putin, and the Claimant has failed to provide any answer. Thus, Respondent argues that failure to address this basic preliminary issue raises "serious doubts" as to Claimant's right to commence this arbitration.⁶⁷
110. Respondent asserts that Claimant's requests rely on unsubstantiated allegations made in the Notice of Arbitration, among others, substantive and complex points related to its investment in the shipyards. Moreover, the issues in respect of which Claimant seeks relief have already been litigated in the English courts and, thus, Claimant seeks a "second bite at the cherry."⁶⁸
111. Finally, Respondent argues that Claimant's account of bankruptcy proceedings in respect of IIB and the Subsidiary Liability Judgment is inaccurate and misleading. Respondent highlights a series of inaccuracies in Claimant's submission, among others: (i) it was the actions of IIB –or Claimant– that resulted in the bankruptcy of IIB, not the actions of Respondent; (ii) the appointment of the DIA was triggered by the fact that IIB had a license

⁶⁵ Response to Request for Interim Measures, ¶ 17.

⁶⁶ *Ibid.*, ¶¶ 24-25.

⁶⁷ *Ibid.*, ¶ 26.

⁶⁸ *Ibid.*, ¶¶ 28-29.

in the past; (iii) the Ninth Commercial Court of Appeals only reversed a ruling dated 15 July 2016 and, thus, all other decisions concerning IIB's bankruptcy remain in full force;⁶⁹ (iv) Claimant seeks to downplay his responsibility and control with regard to IIB; (v) the Subsidiary Liability Judgment was not exclusively based on witness testimonies, but contains references to other types of evidence; and (vi) Claimant was not denied the opportunity to appeal the Subsidiary Liability Judgment, indeed he challenged this judgment in appellate and cassation proceedings.⁷⁰

112. For these reasons, Respondent requests the tribunal to consider Claimant's bad faith behaviour when deciding on the relief requested in Claimant's Request for Interim Measures.

2. *Claimant has failed to satisfy the requirements for granting any of the interim measures sought in his Request for Interim Measures*

113. Respondent argues, citing the arbitral tribunal in *Tallin v. Estonia*, that arbitration tribunals rely on five criteria for granting interim measures, namely: (i) *prima facie* jurisdiction of the tribunal, (ii) *prima facie* existence of a right susceptible of protection –*prima facie* case on the merits–; (iii) necessity of the measure requested; (iv) urgency of the measure requested; and (v) proportionality of the measure requested –balance of inconvenience–.⁷¹ At the Hearing, the Respondent further notes that recent arbitration tribunals have confirmed that all these five elements must be met to grant any interim measure.⁷²
114. Regarding the element of *prima facie* jurisdiction, Respondent argues that Claimant has the burden of establishing that this Tribunal has *prima facie* jurisdiction. However, even if *prima facie* jurisdiction is established, this Tribunal has the discretion to refrain from exercising jurisdiction to issue interim measures based on the applicant's bad faith.⁷³
115. In the present case, Respondent refers as examples to a series of alleged jurisdictional questions, some of which arise from the request itself, that would evidence that this Tribunal lacks *prima facie* jurisdiction. First, Claimant's Request for Interim Measures seeks to suspend civil proceedings where the applicant is not a party to this arbitration, and thus it is not within the power of this Tribunal to order such a suspension.⁷⁴ Second, several measures related to Claimant's investments are alleged to have taken place before the Claimant became a French national (*i.e.*, 30 November 2009), thus are *prima facie* not within the Tribunal's jurisdiction. Third, many of the proceedings referred to in Claimant's Request for Interim Measures took place well before the Notice of Arbitration (*i.e.*, 21 September

⁶⁹ Hearing, Tr., 85:3-16.

⁷⁰ Hearing, Tr., 85:24-86:11.

⁷¹ Response to Request for Interim Measures, ¶ 60.

⁷² Hearing, Tr., 59:20-61:19.

⁷³ Response to Request for Interim Measures, ¶¶ 64-66.

⁷⁴ *Ibid.*, ¶ 67.

2015), thus it is questionable whether the relief sought in this request qualifies for protection under the BIT.⁷⁵

116. At the Hearing, Respondent questioned the evidence presented by Claimant to establish the *prima facie* jurisdiction of this Tribunal. In particular, Respondent questioned that Mr. Pugachev became a French national prior to the alleged breaches of the BIT. Respondent notes that Claimant's own Notice of Arbitration refers to events that occurred before he became a French national (*i.e.*, November 2009). As an example, the decree that gives rise to Claimant's complaint related to his investment in the renovation project in the Red Square area was issued in April 2009, before Mr. Pugachev became a French national (*i.e.*, November 2009).⁷⁶
117. Additionally, Respondent identifies several problems with the trigger letter that allegedly was handed to President Putin. Respondent argues that Claimant has failed to provide any evidence that this letter was delivered, the trigger letter submitted as an exhibit in this arbitration contains no printed date and seems more like a draft document.⁷⁷
118. As for the *prima facie* existence of a right susceptible of protection, Respondent argues that Claimant has the burden to demonstrate that he has a right susceptible of protection and a reasonable possibility of success on the merits of the claim. In addition, Respondent points to legal authorities that illustrate that arbitral tribunals may not grant the requesting party more rights than it ever possessed. In this case, Claimant's unsubstantiated case fails to establish a *prima facie* existence of a right susceptible of protection under the BIT.⁷⁸ Claimant seeks to suspend enforcement proceedings that have been initiated by entities other than Respondent and in jurisdictions outside of Respondent's control. Thus, Respondent argues that the appropriate forum for such claims are the relevant domestic courts.
119. Regarding the necessity of the measures requested, Respondent argues that, as explained by the tribunal in *Tokios Tokelés*, interim measures are necessary where the actions of a party can cause "irreparable prejudice to the right involved." Respondent cites several arbitration tribunals that allegedly have adopted the position according to which harm or prejudice is not irreparable if it can be remedied or compensated by monetary damages. Respondent cautions that even if this Tribunal considers that a harm that can be remedied by monetary damages justifies interim measures, Claimant shall establish that specific characteristics in this case warrant such decision.⁷⁹ Respondent refers the Tribunal to its previous responses regarding the preliminary order for its arguments on the point of imminent harm.

⁷⁵ *Ibid.*, ¶¶ 68-73.

⁷⁶ Hearing, Tr., 64:15-67:18.

⁷⁷ Hearing, Tr., 71:5-72:13.

⁷⁸ Response to Request for Interim Measures, ¶ 78.

⁷⁹ *Ibid.*, ¶¶ 80-87.

120. Respondent then argues, citing several arbitration awards, that arbitral tribunals have interpreted urgency to mean that actions prejudicial to the rights of the requesting party are likely to occur before an award on the merits has been issued. Respondent refers to Claimant's "less restrictive" interpretation of urgency; one that does not require that "harm must be immediately likely."⁸⁰ Respondent does not consider that there is any ground to adopt such interpretation in this case.
121. Respondent argues that Claimant has failed to address the issue of how the acts of DIA are attributable to Respondent. Moreover, Respondent claims that, even if attribution is established, Claimant has failed to demonstrate that the acts of DIA meet the standard of urgency. In particular, Respondent argues that time is not of the essence in this case, given that many of the proceedings mentioned in Claimant's Request for Interim Measures have been initiated long before the initiation of this arbitration.⁸¹
122. As for the element of proportionality, Respondent argues that, following the decision in *Quiborax v. Bolivia*, Claimant must establish that the harm caused to him from not granting the interim measures substantially outweighs the harm that Respondent will suffer from the interim measures. The reasons for not complying with this element are explained in the next Section.⁸²
123. Respondent concludes that Claimant has failed to establish that all the five requirements for granting interim measures are met in the present case for each of the measures sought.
3. *Claimant has failed to satisfy the requirements for requesting the suspension of civil and criminal proceedings*
124. Respondent argues that the Tribunal should reject Claimant's request to suspend civil and criminal proceedings, given that Claimant has failed to satisfy the requirements for granting interim measures.
125. First, Respondent asserts that suspending the civil and criminal proceedings by granting the interim measures is not appropriate nor proportionate. Respondent underscores that Claimant's difficulties arising from the local civil and criminal proceedings are of his own making, namely, from Claimant's failure to comply with local court orders and procedures. Thus, any inconvenience caused can be remedied by Claimant's compliance with his obligations owed to local courts. Moreover, suspending proceedings would be a disproportionate burden to Respondent because Respondent is not a party to the civil and criminal proceedings.⁸³

⁸⁰ *Ibid.*, ¶¶ 89-90.

⁸¹ *Ibid.*, ¶¶ 88-93.

⁸² *Ibid.*, ¶¶ 94-97.

⁸³ *Ibid.*, ¶¶ 106-108.

126. Respondent affirms, moreover, that it is disproportionate to suspend the proceedings because Claimant has failed to demonstrate sufficient urgency. Respondent notes that many of the proceedings listed by Claimant were initiated well before –in some cases, years before– the commencement of this arbitration. Furthermore, and contrary to Claimant’s statement, there is nothing that suggests in this case that events have only become “extremely urgent or preoccupying since very recently” or that “time is of the essence.” Respondent draws the attention of the Tribunal to the fact that Claimant has still failed to explain why Claimant’s Request for Interim Measures was submitted two months after the constitution of the Tribunal, and more than a year after the Notice of Arbitration.⁸⁴
127. At the Hearing, Respondent asserted that Claimant has failed to substantiate that the civil proceedings are politically motivated. Respondent notes that the decisions against Mr. Pugachev have been reviewed by Russian and English courts and so far, no court has been willing to suspend enforcement proceedings. Likewise, the courts of all jurisdictions where enforcement proceedings have been initiated against Mr. Pugachev have not been persuaded by his allegations.⁸⁵
128. Second, Respondent points to the fact that she is not the applicant in the civil proceedings Claimant seeks to suspend. Claimant has failed to substantiate his claim that Respondent is “synonymous” with the DIA and/or IIB. Claimant’s assertion that DIA is a “hire gun of the Russian Federation” based on the financial contributions of the latter to the former is incorrect. Respondent claims that DIA has varied sources of funding, including payment from banks that are members of DIA. Furthermore, the DIA acts a liquidator or bankruptcy receiver in the civil proceedings and intervenes on behalf of the relevant bank rather than on behalf of the government.⁸⁶
129. In particular, Respondent explains that it is neither the applicant in the Russian court proceedings related to the Subsidiary Liability Judgment, nor the applicant in the English court proceedings and other enforcement proceedings identified by Claimant in Claimant’s Request for Interim Measures. Instead, these proceedings have been initiated by the DIA and/or IIB, and thus is not within the jurisdiction of the Tribunal to suspend such proceedings.⁸⁷
130. Respondent also alleges that Claimant has made certain misrepresentations with respect to the civil proceedings, including the following: (i) the UK Freezing Order does not impact Claimant’s ability to finance this arbitration, given that such order provides for a reasonable amount to be spent on legal proceedings;⁸⁸ and (ii) the Luxembourg proceedings do not prevent Claimant from paying legal fees because Claimant’s legal advisor, Mr. Thielen, is

⁸⁴ *Ibid.*, ¶¶112-117.

⁸⁵ Hearing, Tr., 51:12-52:14.

⁸⁶ Response to Request for Interim Measures, ¶¶ 118–119; Hearing, Tr., 86:21-87:16.

⁸⁷ Response to Request for Interim Measures, ¶¶ 118-144.

⁸⁸ *Ibid.*, ¶ 131.

solely impacted by the proceedings by virtue of his role as “custodian of the bearer shares,” rather than in his capacity as Claimant’s legal representative.⁸⁹

131. Third, Claimant has failed to substantiate his request to suspend criminal proceedings. Respondent points out that ICSID tribunals have generally exercised self-restraint for a stay of criminal proceedings and require a high threshold to grant provisional measures regarding criminal investigations. Respondent then argues that such reasoning equally applies in the UNCITRAL context.⁹⁰
132. In this case, Respondent affirms that Claimant’s request is disproportionate because criminal proceedings should not be suspended without substantiating whether there is a real issue to be tried in such proceedings. Moreover, Claimant has failed to raise any reasons that suggest that the criminal proceedings lack a foundation or are contrary to an international duty of the State. Likewise, Claimant has failed to identify any means whereby Respondent could suspend the criminal proceedings.⁹¹
133. Additionally, Respondent alleges that Claimant’s account of the “serious irregularities” in the Russian criminal proceedings are unsubstantiated. As an example, Respondent notes that Claimant’s allegation that he could not appeal the Subsidiary Liability Judgement falls apart by the fact that Claimant did appeal in various occasions such judgment. Likewise, Claimant fails to explain why the second international warrant notice is “illegal” or how such alleged illegality is related to the principle of due process and the right to be heard.⁹²
134. Respondent further argues that proceedings may not be suspended when the Claimant has failed to establish how the criminal proceedings could aggravate the dispute. In particular, Claimant has not explained how the risk of extradition would prevent him from pursuing his claims in this arbitration or aggravate the dispute. Respondent also underscores that, even if Claimant were extradited, his ability to defend himself in this arbitration is not “impossible” since he could still appear in hearings and instruct his counsel via videoconference.⁹³
135. At the Hearing, Respondent also noted that Claimant’s arguments on extradition are contradictory because he argues that such extradition would dramatically undermine his ability to defend his rights, however, at the same time, he does not consider that France would extradite him because he is a French national.⁹⁴

⁸⁹ *Ibid.*, ¶¶ 132-133.

⁹⁰ *Ibid.*, ¶ 145.

⁹¹ *Ibid.*, ¶¶ 147-148.

⁹² *Ibid.*, ¶ 149.

⁹³ *Ibid.*, ¶¶ 154-155.

⁹⁴ Hearing, Tr., 81:20-82:11.

136. Respondent adds that Claimant’s request to suspend criminal proceedings is “indeterminately far-reaching” and notes that the request requires the suspension of the criminal proceedings in Russia and all related international assistance measures that may exist. Respondent claims that this broad request evidences that Claimant does not even know the exact proceedings he seeks to suspend.⁹⁵

4. *Claimant has failed to satisfy the requirements for requesting the protection of witnesses and other individuals*

137. Respondent argues that Claimant has failed to satisfy the requirements for granting interim measures related to (i) the “protection of witnesses to protect the integrity of the proceedings” and (ii) the “safety of Mr. Pugachev and other individuals which aim at ensuring that Russia will not prevent Mr. Pugachev from participating and presenting his case in the present arbitration.”⁹⁶

138. Respondent argues that Claimant’s requests should be denied in principle and on substance. In particular, it claims that the first request must fail in principle since Claimant has not provided evidence that Respondent has in any way prevented Claimant from obtaining testimonies from potential witnesses, or has obtained false testimonies. Likewise, Claimant’s second request must fail in principle because Claimant has not provided any evidence that suggests that Respondent has indeed taken or intends to take any action that will prevent Claimant from fully participating and presenting his case.⁹⁷

139. In addition, Respondent argues that Claimant’s request must fail on substance because it is “extremely vague and overly broad in scope.” It requires Respondent to adopt measures to ensure that any witness “already or later identified by Claimant as such” will be able to testify. Thus, this request refers to a limitless category of individuals. Respondent also argues that the petition to “stay any criminal proceeding against potential witnesses” is equally broad. Thus, Respondent concludes that it would be disproportionate to grant the interim measures requested.⁹⁸

140. Respondent further asserts that Claimant’s allegations that Respondent has threatened witnesses are unsubstantiated. Respondent cites *Churchil Minig v. Indonesia* to claim that allegations that the dispute has been aggravated needs to be buttressed by “concrete instances of intimidation and harassment” and there must be an “element on record showing any pressure or intimidation against Claimant and their witnesses.”⁹⁹

⁹⁵ Response to Request for Interim Measures, ¶ 157.

⁹⁶ *Ibid.*, ¶ 159.

⁹⁷ *Ibid.*, ¶¶ 164-165.

⁹⁸ *Ibid.*, ¶¶ 164-167.

⁹⁹ *Ibid.*, ¶ 171.

141. In this case, Claimant has complained about the “dismissal” and the initiation of criminal proceedings against a number of individuals identified in Claimant’s Request for Interim Measures.¹⁰⁰ However, Respondent argues that Claimant has failed to (i) provide any evidence of such dismissals; (ii) provide any evidence of the relationship between the dismissal and the Respondent; (iii) discuss the content of the criminal proceedings and their relevance to this arbitration; (iv) explain, and even to provide evidence, that the actions of Respondent have or will prevent the individuals from testifying in support of Claimant; and (v) demonstrate the willingness of any of these individuals to testify in support of Claimant in this arbitration.¹⁰¹
142. In addition, Respondent argues that Claimant failed to substantiate his allegations that Mr. Didenko, Ms. Illarionova and Mr. Zlobin provided forced testimonies against him in criminal proceedings and that Respondent is currently trying to force the testimonies of other witnesses. In particular, Respondent notes that Claimant has failed to attribute these alleged actions to Respondent.¹⁰² At the Hearing, Respondent also noted that, contrary to Claimant’s allegations, the criminal proceedings against Mr. Amnust have not been accelerated by Respondent; they have been pending for at least three years.¹⁰³
143. Respondent also argues that Claimant’s allegations of threats by Respondent to Mr. Pugachev, his family, his counsel and advisors are unsubstantiated. Respondent argues that Claimant has failed to provide any evidence related to his alleged kidnapping by two officials of DIA and has not explained why actions of DIA’s officials are attributable to Respondent. Claimant has also failed to provide any evidence that Diligence LLC, a private investigations company that allegedly engage in surveillance of Claimant, his family and legal team, was employed by Respondent. Likewise, Claimant has not provided any evidence of the alleged surveillance in French territory nor has explained the connection between the alleged surveillance and Respondent. Respondent also underscores that there is no proof that Mr. Pugachev was warned by a security analyst of an alleged attempt on his life and, even if such warning was made, Claimant has not established a link between this alleged attempt and Respondent.¹⁰⁴
144. As Claimant has failed to provide any evidence on the alleged threats, Respondent alleges that the basis for granting interim measures has not been established, and thus it would be disproportionate for the Tribunal to grant such measures. At the Hearing, Respondent further alleged that Claimant has failed to demonstrate that the potential witnesses identified in his Request for Interim Measures have any connection to his claims.

¹⁰⁰ Request for Interim Measures, ¶¶ 264 and 268.

¹⁰¹ Response to Request for Interim Measures, ¶¶ 171-173.

¹⁰² *Ibid.*, ¶ 174.

¹⁰³ Hearing, Tr., 92:2-15.

¹⁰⁴ Response to Request for Interim Measures, ¶¶ 178-187.

5. *Claimant has failed to establish the necessary conditions for granting security for costs and security for claims*

145. Respondent notes that while an arbitral tribunal has the power to grant a security for claims, no tribunal has done so to date. Respondent explains that Claimant incorrectly relies on *Burimi v. Albania* as an example of a request for security for claims. In that case, the claimant requested security for costs, not for claims. In this case, Respondent argues that Claimant has failed to establish why the extraordinary measure of security for claims should be granted. Moreover, it argues that Claimant has failed to establish how his request for security for claims satisfies the five elements for granting provisional measures.¹⁰⁵
146. Respondent then argues that security for costs are rarely granted and solely in exceptional circumstances. Respondent cites, among others, the tribunal in *Burimi v. Albania* to illustrate that a request for security for costs should be rejected when it is based on “hypothetical harm ... from uncertain, future actions, not imminent harm from actions likely to occur.” Respondent then concludes that Claimant request is based on hypothetical harm and uncertain future actions and, thus, must be rejected by the Tribunal.¹⁰⁶

B. Summary of the positions of the Parties concerning Respondent’s Security for Costs Application

a) Respondent’s position

147. In Respondent’s Security for Costs Application, Respondent requests the Tribunal to issue an order “(i) requiring the Claimant to provide security for costs in the amount of USD 800,000; and (ii) requiring the Claimant to disclose the name of any third-party funders as well as the terms of any funding agreement.”¹⁰⁷ Respondent substantiates its application on the arguments summarized below.
148. Respondent notes that it has made several requests regarding information on the Claimant’s financial situation and has not received any response as of this date. Respondent further notes that it is likely to spend USD 800,000 in fees up to the first round of substantive written submissions.¹⁰⁸ Against this background, Respondent argues that Respondent’s Security for Costs Application is justified because an award on costs in its favour would be of no use if Claimant lacks the necessary funds to comply with the order.¹⁰⁹
149. In support of Respondent’s Security for Costs Application, Respondent argues that UNCITRAL arbitration tribunals have considered requests for security for costs under their

¹⁰⁵ *Ibid.*, ¶ 193.

¹⁰⁶ *Ibid.*, ¶ 194.

¹⁰⁷ Respondent’s Security for Costs Application, ¶ 43.

¹⁰⁸ *Ibid.*, ¶¶ 1 and 3.

¹⁰⁹ *Ibid.*, ¶ 4.

authority to order “any interim measure” pursuant to Article 26(1) of the 1976 UNCITRAL Arbitration Rules, and their authority to further order the moving party to provide “appropriate security for potential costs related to the interim measures.”¹¹⁰

150. Respondent elaborates on the factors that the Tribunal must consider in evaluating its Security for Costs Application. Respondent quotes an article of A. Redfern and S. O’Leary that advances the position that tribunals must start by verifying the “dual requirements” of interim measures, namely, urgency and risk of serious or irreparable harm to the applicant, and then “go further than this.” However, Respondent also points to commentators that advocate for not applying the standard criteria for interim measures to security for costs applications.¹¹¹
151. Respondent underscores that, in commercial arbitration, Redfern and O’Leary have argued that three criteria must be established to grant a security for costs application: (i) a reasonable possibility that the requesting party will succeed in its defence; (ii) if the requesting party succeeds it is likely to be awarded costs; and (iii) a risk that those costs will not be paid unless some form of security is ordered.¹¹²
152. Respondent also suggests the Tribunal to consider the Chartered Institute of Arbitrators’ (the “**CIArb**”) Practice Guidelines in evaluating its Security for Costs Application, as these guidelines illustrate the best practices in commercial arbitration. Pursuant to Article 2(1) of the CIArb Practice Guidelines, Respondent argues that the Tribunal must consider: (i) claimant’s prospect of success in its claims and defences; (ii) claimant’s ability to satisfy an adverse costs award and the availability of claimant’s assets to enforce such award; (iii) whether it is fair in all the circumstances to require one party to provide security for the other party’s costs. Respondent argues that Claimant has failed to satisfy these criteria, for the following reasons.¹¹³
153. First, Claimant’s failure to substantiate Claimant’s Request on Interim Measures evidences its low prospect of success in this arbitration. Claimant has failed to *prima facie* establish his case and presents no evidence that there is urgency or necessity in the interim measures requested. Additionally, Claimant’s overall claims have “serious problems” in respect of both jurisdiction and merits. Accordingly, Respondent argues that is unfair for it to continue defending such claims with no prospects of recovering its costs.¹¹⁴
154. Second, Claimant is subject to the UK Worldwide Freezing Order issued by Mr. Justice Henderson on 11 July 2014 and his financial situation is uncertain. Pursuant to the UK Freezing Order, which can be enforced worldwide, up to GBP 1.2 billion (approximately

¹¹⁰ *Ibid.*, ¶ 5.

¹¹¹ *Ibid.*, ¶ 6.

¹¹² *Ibid.*, ¶ 8.

¹¹³ *Ibid.*, ¶ 10.

¹¹⁴ *Ibid.*, ¶¶ 13-14.

USD 2 billion at that time) have been frozen. Respondent claims that the UK Freezing Order allows Claimant to pay security for costs, however, it is not confident that an order for costs at the conclusion of this arbitration would be easily enforceable.¹¹⁵

155. In addition, Respondent argues that Claimant presents a “shadowy” picture of his financial situation.¹¹⁶ Respondent notes that it has no confidence in Claimant due to his failure to respond to Respondent’s queries and his propensity to engage in underhand dealings involving holding companies.
156. Respondent points to judgments in English proceedings that allegedly demonstrate that Claimant uses “elaborate structures” to hold assets and “shield assets from view.”¹¹⁷ In addition, Respondent points out that Claimant asserted in his Request for Interim Measures that he has “already lost all of what he built over a lifetime.”¹¹⁸ Finally, Respondent further argues that the existence of the UK Freezing Order demonstrates that the English court considered that Claimant is not likely to comply with an adverse cost order and that a risk of dissipation of Claimant’s assets exists.¹¹⁹
157. Third, Respondent asserts that a risk of non-enforcement of any costs award also arises from Claimant’s failure to comply with at least twelve orders issued by the English High Court and the Tribunal’s request to refrain from making public statements and disclosing information. As an example, Claimant violated the Freezing Order by obtaining funds for legal services without seeking the appropriate authorization from the opposing party in the proceedings or the English High Court.¹²⁰
158. Fourth, Respondent claims that in this case it is fair to require Claimant to provide for the Respondent’s costs in this arbitration, given that Claimant has (i) a low prospect of success in this arbitration; (ii) a lack of liquidity due to the Freezing Order; and (iii) an uncertain financial situation that suggests a risk of unenforceability of any future adverse costs award.¹²¹
159. Respondent notes that it has not received from Claimant any assurances that he will be able to reimburse the Respondent for its legal fees and expenses should it succeed. Moreover, Claimant has failed to substantiate his requests and his claims have been made in a vague and haphazard manner. Claimant has also failed to respond to several of Respondent’s letters and requests, and has distributed false information and statements regarding Respondent and this arbitration, in breach of the Tribunal’s order prohibiting public statements and disclosures. Respondent argues that in the aforementioned circumstances it

¹¹⁵ Respondent’s Security for Costs Application, ¶ 15.

¹¹⁶ *Ibid.*, ¶ 16.

¹¹⁷ *Ibid.*, ¶ 18.

¹¹⁸ *Ibid.*, ¶ 19.

¹¹⁹ *Ibid.*, ¶¶ 21-22.

¹²⁰ *Ibid.*, ¶¶ 23-25.

¹²¹ *Ibid.*, ¶ 26.

“would be fair to require the Claimant to provide for the Respondent’s costs in this arbitration.”¹²²

160. Respondent suggests that if the Tribunal were to grant its application, the security should take the form of (i) a payment of USD 800,000 into an account of White & Case LLP within 14 days of the Tribunal’s order; and (ii) an undertaking by White & Case LLP to hold those monies subject to further directions of the Tribunal and to pay these monies to Respondent upon the Tribunal’s order. The sum of USD 800,000 is an initial estimate of the Respondent’s costs prior to the first round of submissions, however, it should be possible to increase this amount by an application as necessary.¹²³
161. In addition, Respondent requests the Tribunal to order Claimant to disclose any third party funders. Respondent alleges that it has requested Claimant in several occasions to disclose the names and any agreement with third party funders. Respondent has requested clarification on the role of Mr. Michael McNutt, an alleged Senior Litigation Advisor for Claimant that allegedly has no legal background. Respondent states that it is not clear on whether this individual is financing the arbitration proceedings and on whether he has a financial interest in the outcome of the case. In this context, Respondent argues that disclosure of the name of any third party funder and the terms of any third party funding agreement are warranted in the present dispute.¹²⁴

b) Claimant’s position

162. In its Reply to the Security for Costs Application, Claimant requests the Tribunal to (i) reject Respondent’s Security for Costs Application; and (ii) order Respondent to immediately reimburse Claimant for all costs related to defending himself against the “frivolous” Respondent’s Security for Costs Application, together with any interests over such costs.¹²⁵
163. Claimant argues that Respondent’s Security for Costs Application should be denied as security for costs can only be granted in extraordinary circumstances, which Respondent failed to prove. Claimant also requests the Tribunal to reject Respondent’s request for disclosure of any third party funding agreement.¹²⁶
164. Claimant argues that Respondent’s Security for Costs Application is a mere dilatory tactic to put undue pressure on Claimant and to prevent him from participating and defending himself in the present arbitration.¹²⁷ Moreover, Respondent has obtained a Freezing Order and, thus, has already a clear vision of Claimant’s assets and his current financial situation. Respondent is also the beneficiary of conservatory measures in France that constitute a

¹²² *Ibid.*, ¶¶ 27-29.

¹²³ *Ibid.*, ¶¶ 30-32.

¹²⁴ *Ibid.*, ¶¶ 27-29.

¹²⁵ Reply to Respondent’s Security for Costs Application, ¶ 95.

¹²⁶ *Ibid.*, ¶ 95.

¹²⁷ *Ibid.*, ¶¶ 3-6.

guarantee, notwithstanding their illegality, against Mr. Pugachev. For these reasons, Claimant argues that the Tribunal cannot grant Respondent's Security for Costs Application.¹²⁸

165. Claimant does not dispute that UNCITRAL tribunals have the power to grant security for costs, however, it points to the fact that security for costs are rarely granted in investment arbitration.¹²⁹ Claimant agrees with Respondent that the requesting party, in a security for costs application, must establish (i) that there is a reasonable possibility that it will succeed in its defence to the claim, and it is likely to be awarded costs; (ii) that there exist extreme and exceptional circumstances warranting a security for costs; and (iii) that granting its request would not disproportionately burden the party against whom the measure is sought.¹³⁰ Claimant contends that none of these elements are present in Respondent's Security for Costs Application.
166. Regarding the first requirement, Claimant argues that the requesting party must establish a plausible defence on the merits and a likelihood that it will be awarded costs. In this case, Claimant argues that Respondent's Security for Costs Application does not provide any substantiated defence besides mere assertions. Respondent claims that Claimant has a "low prospect of success in the arbitration" but provides neither factual nor legal basis to support his claim. Claimant states that Respondent's success is "impossible" considering the numerous breaches of the Treaty it committed.¹³¹
167. In addition, Claimant states that Respondent mistakenly assumes that if it wins on the merits, the Tribunal will automatically award Respondent costs based on the "costs follow the event principle" or "Loser Pay Principle", which Respondent alleges is "unanimously" followed by investment tribunals. However, Claimant states that the trend in investment arbitration is the contrary, investment tribunals have not followed this rule and costs awards against unsuccessful Claimants "are exceedingly rare and the standard to be met is extremely high." In fact, Article 40(1) of the UNCITRAL Rules expressly provides that tribunals retain the discretion no to apply the "Loser Pay" principle.¹³²
168. Claimant further explains that, as noted by an author, the shift of costs onto the unsuccessful claimant may exceptionally apply in cases of abuse of process, fraud or other misconduct by claimants. In this case, Claimant argues that there is no reason that the Tribunal will deem his case to be of such nature as to require him to pay Respondent costs and, in any event, Respondent has not asserted that Claimant has incurred in any of the aforementioned misconducts.¹³³

¹²⁸ *Ibid.*, ¶¶ 1-11.

¹²⁹ *Ibid.*, ¶ 13.

¹³⁰ *Ibid.*, ¶¶ 14-15.

¹³¹ *Ibid.*, ¶¶ 48-49.

¹³² *Ibid.*, ¶¶ 18-20.

¹³³ *Ibid.*, ¶¶ 21, 52-54.

169. Regarding the second requirement, Claimant explains, citing several investment arbitration awards, that investment tribunals have held that (i) financial distress of a party or the risk that an adverse costs award will go unpaid do not justify ordering security for costs; (ii) the mere existence of a third party funding agreement does not warrant security for costs; (iii) the history of unpaid adverse costs awards in similar circumstances is relevant; and (iv) claimant's timely payment of the advance on the tribunal's costs militates against an order for security for costs.¹³⁴
170. In this case, Claimant notes that Respondent relies on Claimant's alleged lack of available assets, however, Claimant's financial situation deteriorated after he was illegally deprived of his most valuable and promising investment in Russia. Since then, Respondent has attempted to seize all the assets of Claimant by initiating illegal enforcement and interim proceedings worldwide. Accordingly, Claimant argues that "[g]ranted Respondent the requested security for costs would allow Russia to benefit from its improper and illicit conduct, which is the subject matter of the present arbitration proceedings."
171. Moreover, in this case, Claimant further argues that allegations of third party funding are not "*exceptional circumstances*" in investment arbitration and, in any event, "no such third-party funding agreement exists in the present case and this argument is therefore moot."¹³⁵
172. In addition, Claimant has no history of unpaid awards. Respondent may not rely on Claimant's alleged failure to comply with orders issued by the English High Court and the other proceedings initiated by Respondent, since these proceedings form "the core of the present arbitration" and Respondent cannot rely on them to justify its illegitimate request for security for costs. Claimant argues that he was merely trying to protect his rights and his access to international justice. Furthermore, Respondent failed to point to any arbitral award that Claimant has not respected as a basis for its request.¹³⁶
173. Claimant also highlights that he has timely performed all his financial obligations since the outset of this arbitration, whereas Respondent has failed to timely pay its share of the deposit of costs nor indicated the date of such future payment. Respondent's conduct shows that Respondent "lacks good faith" and thus cannot request a security for costs in this arbitration. Respondent has failed to demonstrate that Claimant is unwilling or unable to pay the costs.¹³⁷
174. Finally, Claimant states that the form of the security for costs envisaged by Respondent is contrary to all principles regulating security for costs aimed at obtaining cash deposits. In the present case, Claimant argues that the security for costs cannot be at the full discretion

¹³⁴ *Ibid.*, ¶¶ 25-41.

¹³⁵ *Ibid.*, ¶ 77.

¹³⁶ *Ibid.*, ¶¶ 57-62.

¹³⁷ *Ibid.*, ¶¶ 63-65, 68.

of the requesting party, as intended by Respondent. Therefore, Claimant notes that this is a further reason to deny Respondent's request.¹³⁸

175. Regarding the third requirement, Claimant alleges that Respondent failed to demonstrate that the risk of an unpaid adverse costs award substantially outweighs the harm that an order for security for costs would impose on Claimant. The harm imposed on Claimant would be immediate and significant, and would create an unfair imbalance between the Parties, imposing further financial pressure and harm on an investor already "suffering" from Respondent's illegal financial measures.¹³⁹
176. For the above-mentioned reasons, Claimant argues that Respondent failed to demonstrate the three elements required to grant a security for costs request, and thus requests the Tribunal to reject its Security for Cost Application.
177. As for the third party funder request, Claimant explains that there is no general duty to disclose information relating to the financial situation of the parties nor the financing of an international arbitration. Indeed, Claimant asserts, citing an investment arbitral award, that disclosure of such information may only be required in exceptional circumstances, where there exists a significant risk of disruption to the proceedings.¹⁴⁰
178. In the present case, Claimant alleges that "there is no reason to warrant the disclosure by Claimant of any third-party funding arrangement, since there is none." Claimant further asserts that, in any event, Respondent failed to demonstrate that such disclosure would be necessary to preserve the integrity of this arbitration and the parties' rights. In this sense, Claimant states that Respondent's request is another attempt to put undue pressure on Claimant and to obtain information to further the damage done to Claimant in domestic enforcement proceedings.¹⁴¹

C. Summary of the positions of the Parties concerning the alleged breach of confidentiality provisions in PO1, the Order issued on 9 November 2016 and the 26 May 2017 Order

a) Claimant's position

179. By letter dated 3 March 2017 to the Tribunal, Claimant alleged that Respondent violated the confidentiality provision contained in PO1.
180. Claimant draws the attention of the Tribunal to an official press release published on the website of the Russian Federation's Public Prosecutor, quoting the Deputy Prosecutor of

¹³⁸ *Ibid.*, ¶¶ 66-67.

¹³⁹ *Ibid.*, ¶¶ 69-71.

¹⁴⁰ *Ibid.*, ¶¶ 84-90.

¹⁴¹ *Ibid.*, ¶¶ 91-94.

the Russian Federation. This press release explains that Respondent has requested from the French authorities the “politically motivated” extradition of Mr. Pugachev. Claimant further argues that this press release has been dispatched to the French Press Agency and has been further reproduced by Russian, French and international newspapers and has been widely reported in TV channels.¹⁴²

181. Claimant notes that the information disclosed by Respondent in the press release is both erroneous and partially privileged. Indeed, it is information relating to enforcement measures undertaken in France that is not public and solely known by Claimant and Respondent.¹⁴³
182. Claimant alleges that by this press release Respondent breached Article 10.5 of PO1 and such action seriously undermines the integrity and efficiency of the arbitration proceedings. Additionally, the public disclosure of extradition proceedings was exclusively aimed at pressuring and threatening Claimant.¹⁴⁴
183. For these reasons, Claimant requested the Tribunal to order Respondent to (i) comply with the TOA and PO1; (ii) refrain from taking any actions undermining the integrity and efficiency of this arbitration; and (iii) refrain from taking any actions that would deprive Claimant of his due process rights in this arbitration.¹⁴⁵
184. In his letter dated 8 March 2017, Claimant responds to Respondent’s allegations that he has breached the confidentiality provision in PO1 and the Tribunal’s order dated 9 November 2016. Claimant notes that all the publications that form the basis of Respondent’s complaint, except for an article published in Challenges Magazine on 24 November 2016, were reactions to Respondent’s violations of Article 10.5 of the PO1, and thus were solely intended to be protective measures.¹⁴⁶
185. Claimant affirms that the press releases appearing on Claimant’s website in March 2017 were published in reaction to public statements by the Presidential Press Officer of the Russian Federation, Mr. Dimitri Peskov. Likewise, Claimant’s interview with RBC Television Channel dated 3 March 2017 and Claimant’s interview with Radio Liberty dated 3 March 2017 were solely commenting on Respondent’s request for extradition.
186. As for the article published in Challenges Magazine, Claimant argues that this article has been in the public domain for more than three months and has not had any adverse impact on the arbitration. Thus, Claimant states that this publication complies with Article 10.5 of PO1.

¹⁴² Claimant’s letter to the Tribunal dated 3 March 2017, ¶¶ 2-4.

¹⁴³ *Ibid.*, ¶ 7. See also Claimant’s letter to the Tribunal dated 8 March 2017, ¶¶ 9-11.

¹⁴⁴ Claimant’s letter to the Tribunal dated 3 March 2017, ¶¶ 6-10.

¹⁴⁵ *Ibid.*, ¶ 17.

¹⁴⁶ Claimant’s letter to the Tribunal dated 8 March 2017, ¶ 12.

187. For these reasons, Claimant requests the Tribunal to (i) reject Respondent’s request dated 3 March 2017, which is further explained below; (ii) order Respondent to refrain from future communication undermining the efficiency and integrity of this arbitration; and (iii) order Respondent to reimburse Claimant all costs related to the defence against Respondent’s frivolous request, together with interest on such costs.¹⁴⁷
188. In his letter dated 13 March 2017, Claimant informed the Tribunal that, on 8 March 2017, he received a letter from Hogan Lovells London, pursuant to the instruction of DIA. In this letter, Claimant’s counsel is requested to disclose information covered by the attorney-client privilege (*i.e.*, information on whether counsel has received payments from, or on behalf, of Mr. Pugachev related to their engagement). Claimant cautions that deferring to such request would amount to a violation of the ethical rules applicable to Claimant’s counsel. Additional, Claimant further argues that this letter was sent “with a perfect timing” to disrupt Claimant’s preparation of his filing on the security for costs.
189. For these reasons, Claimant requests this Tribunal to, among others, (i) order Respondent to refrain from interfering with Claimant’s right to prepare his defence in this arbitration; and (ii) take any measures it deems appropriate to preserve the integrity and efficiency of this arbitration.¹⁴⁸
190. In his letter dated 24 April 2017, Claimant presented five comments on Respondent’s letter dated 20 April 2017:
- (i) Claimant argued that Respondent’s letter breached Tribunal’s order to ask permission before submitting the actual memorandum;
 - (ii) Claimant asserted that Respondent’s insinuation in paragraph 4 of the said letter questioning Claimant’s health is unacceptable;
 - (iii) in Claimant’s view, Respondent’s letter did not contain anything new and urgent, but just a further disruption. Claimant added that Mr. Pugachev is a politician and therefore a public figure and cannot refuse to talk to any media;
 - (iv) Claimant insisted that Respondent still has to take a decision on the transparency issue raised during the Hearing since Claimant agreed to have full transparency; and

¹⁴⁷ *Ibid.*, ¶ 28.

¹⁴⁸ Claimant’s letter to the Tribunal dated 13 March 2017, ¶ 12.

(v) Claimant held that Respondent, or at least its counsel, has elected to answer journalists' questions on the very day of the Hearing on 17 April 2017, in breach of confidentiality measures.¹⁴⁹

191. By letter dated 9 May 2017, Claimant submitted five comments on Respondent's letter dated 4 May 2017:

(i) in the first place, Claimant argued that Respondent breached the Tribunal's order that Parties' should not send further submissions without permission. In its view, Respondent's letter breached that order;

(ii) likewise, Claimant stressed that Respondent breached PO1 and the Tribunal's order during the Hearing by answering journalists' questions referring to this arbitration on 17 April 2017;

(iii) on Respondent's assertion that some translations of Claimant's interviews were incorrect, Claimant indicated that it has hired a professional external translator and provided the Tribunal with the accurate translations of the interviews;

(iv) Claimant maintained that the quotes provided by Respondent on its letter do not constitute a disclosure of specific information about the present case or of the content of the Hearing; and

(v) Claimant drew the attention of the Tribunal to the fact that Respondent's letter contains various inaccurate allegations pertaining to the merits of the Request for Interim Measures. Against this background, Claimant requested this Tribunal to order an exchange of written submission between the Parties limited to the new allegations presented for the first time by Respondent that pertain to the merits of the Request for Interim Measures, and not to confidentiality issues.¹⁵⁰

192. In his letter dated 9 June 2017, Claimant asserted that he has complied with the Tribunal's order and removed 103 pages and publications concerning the ongoing arbitration proceedings from his website. Thus, Claimant affirmed that Respondent's allegations that he has not removed all information related with the ongoing arbitration only aim at defaming him in the present procedure.¹⁵¹

193. Claimant maintained that Respondent wants to prevent him from being able to express freely. Claimant further argued that Respondent is only using excuses to renege on its own transparency commitments now that it has achieved its aim of silencing him through

¹⁴⁹ Claimant's letter to the Tribunal dated 24 April 2017, PP. 1-3.

¹⁵⁰ Claimant's letter to the Tribunal dated 9 May 2017, PP. 1-4.

¹⁵¹ Claimant's letter to the Tribunal dated 9 June 2017, ¶¶ 10-13.

shutting down most of his website. In Claimant's view, Respondent simply wishes to erase the present case from any source of information in order to act as if it did not exist since nothing will be reported on it anymore, and since no official information could ever be made available to the public.¹⁵²

194. In consequence, Claimant requested this Tribunal to (i) acknowledge that Claimant has complied with the 26 May 2017 Order regarding the publications on his website; (ii) order full transparency, in exchange for its extremely strict confidentiality provision, as per its proposal indicated in paragraph 7 of the 26 May 2017 Order; and (iii) decide on the body that should be designated to administer the website in order to avoid further obstructive attitude from Respondent in that respect¹⁵³ (requests from letters dated 3 March 2017, 8 March 2017, 13 March 2017, 9 May 2017 and 9 June 2017, together the "**Claimant's Confidentiality Request**").

b) Respondent's position

195. In its letter dated 3 March 2017, Respondent draws the attention of the Tribunal to a series of public statements of Claimant related to this arbitration, allegedly in violation of Article 10.5 of PO1 and the Tribunal's order dated 9 November 2016.
196. Respondent argued that Claimant breached confidentiality measures by making public statements regarding this arbitration in "Challenges" Magazine, by issuing a press release on his website, and by giving interviews in Radio Liberty and RBC Television Channel.
197. Respondent requested the Tribunal to order Claimant: (i) to cease making public statements and disclosing information, pursuant to PO1; (ii) to remove the relevant material from the Claimant's website www.pugachevsergei.com; (iii) to identify any publicly available sources to which Claimant or his representatives have provided information since he filed its Notice of Arbitration on 21 September 2015; (iv) to take steps (and provide an account of the steps taken) to retract any information about these proceedings which the Claimant or his representatives have made publicly available, including in the Russian media; and (v) to the extent that such retraction is not possible, to take steps (and provide an account of the steps taken) to correct the false and misleading information about these proceedings which the Claimant or his representatives have made publicly available, including in the Russian media, to preserve the integrity of the arbitration.¹⁵⁴
198. In its letter dated 8 March 2017, Respondent alleged additional breaches to PO1 by Claimant since their submission dated 3 March 2017. In this new letter, Respondent argued that Claimant disclosed the Request for Interim Measures in an application made before the

¹⁵² *Ibid.*, ¶¶ 17-24.

¹⁵³ *Ibid.*, ¶ 26.

¹⁵⁴ Respondent's letter to the Tribunal dated 3 March 2017, P. 4.

French courts to stay proceedings brought in connection with the enforcement of certain judgments arising out of the DIA Proceedings.

199. Respondent requested the following additional relief by way of a Partial Award: (i) the granting of permission for Respondent to share the Response with the DIA, and for the DIA to exhibit the Response in the French Proceedings; (ii) a declaration that the Claimant's Public Statements consist of incorrect and misleading information and have been made in breach of the Tribunal's order of 9 November 2016 and PO1 (the "**Tribunal's Declaration**"); and (iii) any such other relief as the Tribunal sees fit.¹⁵⁵
200. Respondent argues that public dissemination of information about the arbitration risks undermining its integrity and efficiency. According to Respondent, Article 15(1) of the 1976 UNCITRAL Rules provides a basis for the Tribunal to protect the integrity of the proceedings, by issuing a Partial Award. In this regard, Article 15(1) provides that "the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case."
201. Furthermore, and to the extent that such additional relief may be deemed an interim measure, Respondent alleges that such relief is justified as: (i) the Tribunal has *prima facie* jurisdiction to grant relief in respect of the Claimant's breach of PO1, and to grant relief to remedy the alleged harm caused by the Claimant's failure to comply with PO1; (ii) there is a *prima facie* existence of a right susceptible to protection where the right is clearly enshrined in PO1; (iii) the relief sought is necessary and essential as the Claimant's ongoing breaches of PO1 are capable of causing irreparable harm given the Claimant's continuing and systematic press campaign, and the dissemination of confidential information about the arbitration; (iv) the relief sought is urgent as the Claimant continues to disseminate false and misleading information about the arbitration in breach of PO1 on a regular basis, requiring immediate action by the Tribunal prior to the issuance of a final award; and (v) the relief requested is proportionate as the Claimant will suffer no harm if ordered (again) to comply with the order of the Tribunal and if ordered to perform the relief requested by the Respondent to remedy the harm caused by the Claimant's failure to comply with the Tribunal's order dated 9 November 2016 and PO1.¹⁵⁶
202. In its letter dated 4 May 2017, Respondent alleged that Claimant posted on his website inaccurate translations of the TV Rain and Radio Liberty interviews. Respondent considered that, by making all of this material available on his own website, Claimant has remained consistent in his approach to comment publicly on the proceedings in breach of the confidentiality order. In addition, Respondent sustained that statements made by Claimant on the bankruptcy of IIB and the English proceedings infringed the Tribunal's orders.

¹⁵⁵ Respondent's letter to the Tribunal dated 8 March 2017, ¶ 53.

¹⁵⁶ *Ibid.*, ¶ 60.

Accordingly, Respondent requested this Tribunal to (i) take new evidence into account provided in **Exhibit R-52** and **Exhibit R-53**; and (ii) dismiss Mr. Pugachev's Request.¹⁵⁷

203. In its letter dated 6 June 2017, Respondent affirmed that Claimant, in breach of the 26 May 2017 Order, did not remove all posts and publications from his website concerning this arbitration. Thus, given Claimant's repeated failure to comply with the Tribunal's orders, Respondent maintained that she could not agree to the proposals made by the Tribunal in relation to confidentiality and transparency. In particular, Respondent did not agree to the Tribunal's proposal that a third party administer a website on which documents relating to this arbitration can be published.
204. Regarding the 26 May 2017 Order, Respondent asserted that, according to the circumstances of that moment, she does not agree with the disclosure of documents related to the arbitration. However, Respondent affirmed that if Claimant's conduct changes, she would be willing to consider the publication of certain documents, namely orders and decision of this Tribunal. Respondent maintained that in its view, agreeing to publication of documents relating to the arbitration at the current time would be counterproductive. Respondent argued that publishing submissions and evidence will create unnecessary distractions, detract from the substance of the arbitration, and jeopardise its integrity.
205. Respondent reiterated that it would be willing to agree to the disclosure of the Tribunal's awards and decisions, since they are different from the parties' submissions and evidence. Lastly, Respondent requested this Tribunal to take the measures it deems necessary to ensure Claimant's compliance with its orders, including in particular the 26 May 2017 Order.¹⁵⁸
206. By letter dated 12 June 2017, Respondent called the attention of this Tribunal that, allegedly in breach of the 26 May 2017 Order, as of 2 June 2017 multiple publications and documents in respect of the arbitration had not been removed from the Claimant's website. Respondent alleged that it was only after the letter dated 6 June 2017 that the Claimant started to remove such materials. Moreover, Respondent maintained that as of 12 June 2017, a number of such materials remain on Claimant's website. Respondent repeated its request that the Tribunal take whatever steps that it considers necessary to ensure Claimant's compliance with its orders¹⁵⁹ (requests from letters dated 3 March 2017, 8 March 2017, 4 May 2017, 6 June 2017 and 12 June 2017, together the "**Respondent's Confidentiality Request**").

¹⁵⁷ Respondent's letter to the Tribunal dated 4 May 2017, ¶ 17.

¹⁵⁸ Respondent's letter to the Tribunal dated 6 June 2017, PP. 2-3.

¹⁵⁹ Respondent's letter to the Tribunal dated 12 June 2017, P. 1.

IV. THE TRIBUNAL'S ANALYSIS

207. Having carefully considered the various submissions of the Parties, the Tribunal has decided to:
- (i) Order Respondent to take all actions necessary to suspend the France Extradition Request (as defined below);
 - (ii) Deny all other claims and requests made by Claimant in the Request for Interim Measures;
 - (iii) Deny all claims and requests made in Respondent's Security for Costs Application;
 - (iv) Deny Respondent's additional relief requested in the letter dated 8 March 2017;
 - (v) Order each Party and their respective counsel to refrain from commenting or making any public statement to any third party (including reporters, news organizations or media networks) on any matter or fact regarding this arbitration, including any matter addressed in the Available Documents (as defined below), without prior leave from the Tribunal;
 - (vi) Order each Party and their respective counsel to abstain from publishing or disclosing any Confidential Information (as defined below) regarding this arbitration without prior leave from the Tribunal. Accordingly, the Parties are only allowed to publish or disclose the Available Documents (as defined below) in strict accordance with the terms set forth in PO2 (as defined below) or any amendment thereto by the Tribunal;
 - (vii) Order Claimant to refrain from posting or publishing, without prior leave from the Tribunal, any information concerning this arbitration other than the Available Documents (as defined below), on the website www.pugachevsergei.com, or on any other website or digital platform;
 - (viii) Order Claimant to provide a statement to this Tribunal on or before 17 July 2017 certifying that any posts or publications concerning this arbitration, other than the Available Documents (as defined below), have been removed from the website www.pugachevsergei.com; and
 - (ix) Reserve the question of costs associated with the Request for Interim Measures, Respondent's Security for Costs Application and all applications and cross-applications concerning confidentiality to a future stage.
208. All arguments and allegations by the Parties have been considered and the fact that any of the arguments of the Parties summarised above are not referred to below, should not be taken to mean that the argument has not been considered.

209. This Tribunal will perform the analysis in the following order: (A) Interim measures related to civil proceedings; (B) Interim measures related to criminal proceedings and requests for international cooperation, including international arrest warrants, extradition requests and mutual legal assistance requests; (C) Interim measures related to the protection of witnesses; (D) Interim measures related to the protection of Mr. Pugachev and other individuals; (E) Security for costs applications from both Parties; (F) Respondent's application for disclosure of third party funders; (G) Claimant's Security for Claims Application; and (H) the alleged breach of confidentiality provisions in PO1, the Order issued on 9 November 2016 and the 26 May 2017 Order.

A. Interim measures related to civil proceedings

210. Claimant has requested this Tribunal to suspend all civil enforcement proceedings initiated by Respondent in order to protect the integrity of this arbitration.¹⁶⁰ In particular, Claimant requested the Arbitral Tribunal to order Respondent to suspend the pending proceedings for the enforcement of the Subsidiary Liability Judgment, the UK Default Judgment and the proceedings for the taking of interim measures in the same context, as well as to order Russia to abstain from initiating any attachment, exequatur, or enforcement proceedings against Mr. Pugachev or any of his assets during the arbitration proceedings.¹⁶¹ Claimant alleges that "it is therefore necessary and urgent to stop the imminent danger of serious prejudice if enforcement occurs."¹⁶²
211. On the other hand, Respondent argued that Claimant failed to satisfy the requirements for requesting a suspension of all civil proceedings.¹⁶³ Specifically, Respondent states that suspending proceedings by granting an interim measure would not be appropriate or proportionate, and that the Claimant is not the applicant in the civil proceedings.¹⁶⁴
212. The 1976 UNCITRAL Rules do not specifically provide for the requirements that must be satisfied for an arbitral tribunal to issue an interim measure.¹⁶⁵ Nevertheless, both Claimant and Respondent accept that arbitral tribunals generally rely on five requirements for granting interim measures.¹⁶⁶ These requirements are: (i) *prima facie* jurisdiction of the tribunal; (ii) *prima facie* existence of a right susceptible of protection; (iii) necessity of the

¹⁶⁰ Request for Interim Measures, ¶ 41.

¹⁶¹ *Ibid.*, ¶ 347.

¹⁶² *Ibid.*, ¶ 174.

¹⁶³ Response to Request for Interim Measures, ¶ 100.

¹⁶⁴ *Ibid.*, ¶ 100.

¹⁶⁵ **Exhibit RL-35**, 2010 UNCITRAL Arbitration Rules, Article 26(3) ("The party requesting an interim measure under paragraphs 2(a) to (c) shall satisfy the arbitral tribunal that: (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination").

¹⁶⁶ Request for Interim Measures, ¶ 86; Response to Request for Interim Measures, ¶ 60.

measure requested; (iv) urgency of the measure requested; and (v) proportionality of the measure requested.¹⁶⁷

213. Claimant, relying on *EnCana v. Ecuador*, argues that some tribunals have not retained all five requirements.¹⁶⁸ However, more recent investment arbitration tribunals such as *Tallin v. Stonia*, *Paushok v. Mongolia* and *Lao Holding v. Lao* confirm that all five elements must be met for granting interim measures.¹⁶⁹
214. This Tribunal considers that the Claimant has the burden of demonstrating that his request meets all of the five requirements previously mentioned for issuing an interim measure.¹⁷⁰ This Tribunal reaffirms, as it did in its Decision on Claimant's Second Request for an Immediate Interim Order, that the standard to issue an interim order is high.¹⁷¹ As the *Hydro v. Albania* tribunal acknowledged, "it is also right to acknowledge that there is a high threshold for the Tribunal to recommend the making of provisional measures."¹⁷²
215. For the reasons explained in the following paragraphs, this Tribunal finds that Claimant has failed to satisfy the requirements for purposes of issuing an interim order to suspend all civil proceedings initiated by the Respondent. In particular, this Tribunal considers that Claimant failed to demonstrate that: (a) the Tribunal has *prima facie* jurisdiction to decide on the requested interim measures; and (b) the requested measures are necessary.
- a) Claimant failed to demonstrate that the Tribunal has *prima facie* jurisdiction to decide on the requested interim measures**
216. Claimant has the burden of establishing that this Tribunal has *prima facie* jurisdiction over the dispute. As the International Court of Justice asserted in *Nicaragua v. United States* "[a Court] ought not to indicate such measures unless the provisions invoked by the applicant appear, *prima facie*, to afford a basis on which the jurisdiction of the court might be

¹⁶⁷ These criteria are both found in the decisions presented by Claimant and Respondent. **Exhibit RL-36**, *United States (Tallim) B.V. and Aktisielts Tallinna Vesi v. Republic of Estonia*, ICSID Case No. ARB/14/24, Decision on Respondents Application for Provisional Measures, 12 May 2016, ¶ 78; and **Exhibit CL-4**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*. Order on interim measures, September 2, 2008, ¶ 40.

¹⁶⁸ Request for Interim Measures, ¶ 87. See also **Exhibit CL-27**, *EnCana Corporation v. Republic of Ecuador*, UNCITRAL, LCIA Case No UN3481, Interim Award, Request for Interim Measures of Protection, 31 January 2004, ¶ 13.

¹⁶⁹ **Exhibit RL-36**, *United States (Tallim) B.V. and Aktisielts Tallinna Vesi v. Republic of Estonia*, ICSID Case No. ARB/14/24, Decision on Respondents Application for Provisional Measures, 12 May 2016, Request for Interim Measures, ¶ 78; **Exhibit CL-4**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*. Order on interim measures, 2 September 2008, ¶ 40; **Exhibit RL-37**, *Lao Holding N.V. v Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, Decision on the merits, 10 June 2015, ¶ 109.

¹⁷⁰ **Exhibit CL-4**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*. Order on interim measures, 2 September 2008, ¶ 40.

¹⁷¹ Decision on Second Request for an Immediate Interim Order, ¶ 37.

¹⁷² **Exhibit CL-15**, *Hydro S.r.l and others v. Republic of Albania*, ICSID Case No. ARB/15/28. Order on provisional measures, 3 March 2016, ¶ 3.12.

founded.”¹⁷³ Thus, Claimant must prove, not only that this Tribunal has *prima facie* jurisdiction over the general dispute, but also that it has *prima facie* jurisdiction for the requested interim measures.¹⁷⁴

217. Claimant asserts that it is well established that fulfilling this requirement is not prejudging the question of jurisdiction, but it is rather simply ensuring that: (i) there is an offer to arbitrate in the applicable BIT; (ii) the investor has a documentary proof of its nationality; (iii) the investors economic activities appear to meet the definition of an investment under the BIT; and (iv) the dispute is related to an investment in the host State.¹⁷⁵
218. In the case at hand, Claimant considers that this Tribunal has *prima facie* jurisdiction, “because this dispute concerns the effects of the measures taken by Russia in violation of the BIT and relating to the management, maintenance, enjoyment or disposal of numerous investments made by Mr. Pugachev, a French national as of 2009.”¹⁷⁶
219. Article 7 of the France-Russia BIT provides:

Any dispute between one Contracting Party and an investor of the other Contracting Party concerning the effects of a measure taken by the first Contracting Party and relating to the management, maintenance, enjoyment or disposal of an investment made by such investor, including but not limited to the effects of a measure relating to the transportation and sales of goods, an expropriation or the transfers set forth in Article V of this Agreement, shall be settled if at all possible amicably by the two parties concerned.

[...]

*This dispute shall then be settled definitively in accordance with the arbitration rules of the United Nations Commission for International Commercial Law as adopted by the General Assembly of the United Nations in its resolution 31/98 of December 15, 1976.*¹⁷⁷

220. Claimant alleges that Mr. Pugachev is an investor and his assets in Russia are investments within the meaning of the France-Russia BIT. Article 1.2 of the Treaty defines an investor as:

a) [A]ny natural person who is a national of one of the Contracting Parties and

¹⁷³ **Exhibit CL-28**, Military and Paramilitary Action in and against Nicaragua (*Nicaragua v. United States*), Provisional Measures Order, 10 May 1984, ICJ Reports, 1984, ¶ 169.

¹⁷⁴ As the *Paushok v Mongolia* tribunal explained, the Tribunal must address whether the claims made are “on their face, frivolous or obviously outside the competence of the Tribunal”. **Exhibit CL-4**. *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*. Order on interim measures, 2 September 2008, ¶ 55.

¹⁷⁵ **Exhibit CL-10**, *Tokios Tokelés v. Ukraine*, ICSID Case No ARB/02/18, Procedural Order No. 1, 1 July 2003, ¶ 6.

¹⁷⁶ Request for Interim Measures, ¶ 120.

¹⁷⁷ **Exhibit CL-1**, Agreement Between the Government of the Republic of France and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 7.

*who is allowed, in accordance with the laws of that Contracting Party, to make investments on the territory or in the maritime zone of the other Contracting Party.*¹⁷⁸

221. On that basis, Claimant argues that this Tribunal has *prima facie* jurisdiction, and requests to suspend the enforcement of all civil proceedings worldwide, as noted above.
222. On the other hand, Respondent affirms that this Tribunal has no *prima facie* jurisdiction to decide on the requested interim measures.¹⁷⁹ Respondent asserts that this Tribunal should not grant relief where the Claimant is attempting to create artificial jurisdiction over a pre-existing domestic dispute.¹⁸⁰
223. Respondent, relying on *Occidental Petroleum v. Ecuador* states that even though a tribunal need not definitely satisfy itself that it has jurisdiction in respect of the merits of the case, it will not order such measures unless there is, *prima facie*, a basis upon which the Tribunal's jurisdiction might be established.¹⁸¹
224. Respondent further argues that several measures relating to the Red Square Project and the Shipyards are alleged to have taken place prior to 30 November 2009, when according to Claimant Mr. Pugachev became a French national, so are *prima facie* not within this Tribunal's jurisdiction.¹⁸²
225. Accordingly, in order to grant the requested interim measures, the Tribunal must find that such measures appear to be, *prima facie*, under its jurisdiction.
226. As an initial matter, this Tribunal finds that some of the civil proceedings that Claimant requests the Tribunal to suspend are being carried out in States other than France and Russia (the State parties to the France-Russia BIT), particularly the UK, Luxemburg and the Cayman Islands.¹⁸³ Although Claimant structures its Request for Interim Measures under the premise that Russia is the State involved in the aforesaid proceedings, it is not clear *prima facie* that, pursuant to Article 7 of the France-Russia BIT transcribed above, this Tribunal has jurisdiction to suspend proceedings in third States.
227. In addition, based on the very limited evidence submitted in this arbitration and the arguments put forward by both Parties, this Tribunal is not convinced that *prima facie* it can

¹⁷⁸ **Exhibit CL-1**, Agreement Between the Government of the Republic of France and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 1.2.

¹⁷⁹ Response to Request for Interim Measures, ¶ 73.

¹⁸⁰ *Ibid.*, ¶ 73.

¹⁸¹ *Ibid.*, ¶ 65.

¹⁸² *Ibid.*, ¶ 68.

¹⁸³ Request for Interim Measures, ¶ 231.

be held that the DIA and IIB –the parties involved in the civil proceedings– are the same as or are synonymous with the Respondent.

228. As evidenced in the Request for Interim Measures, the applicants in the civil proceedings that Claimant requested this Tribunal to suspend are the DIA and IIB.¹⁸⁴ In particular, the DIA and IIB are individually or jointly referred to as applicants in the context of the enforcement proceedings of the (i) Subsidiary Liability Judgment, (ii) the UK proceedings, (iii) the Luxemburg proceedings, and (iv) the Cayman Islands proceedings.¹⁸⁵

(i) The Subsidiary Liability Judgment does not appear *prima facie* to be a judgment relating to proceedings between the Claimant and the Respondent. The evidence submitted by Claimant in this regard is **Exhibit C-12**, namely the Decision of the Moscow City Commercial Court rendered upon an application of the bankruptcy receiver of IIB to declare M.E. Illarionova, S.V. Pugachev, A.A. Didenko and A.S. Zlobin liable in respect of IIB’s obligations.¹⁸⁶ Neither the evidence in the record, nor the arguments put forward by Claimant, allow this Tribunal to be satisfied, *prima facie*, that Respondent is the applicant in the case resulting in the Subsidiary Liability Judgment.

(ii) In the UK proceedings, the applicants are IIB and DIA. On the one hand, the UK Worldwide Freezing Order, presented by the Claimant as **Exhibit C-20**, states that “this is a freezing injunction against Sergei Viktorovich Pugachev on 11 July 2014 by Mr. Justice Henderson on the application of IIB and DIA.”¹⁸⁷ On the other hand, the UK Default Judgment, as can be seen in **Exhibit C-35**, has as Claimants IIB and DIA; and as defendant Mr. Pugachev.¹⁸⁸

(iii) The applicants in the Luxemburg proceedings, as evidenced in **Exhibit C-40**, and **Exhibit C-41**, are IIB and DIA. Those proceedings are related to the exequatur of the Moscow Commercial Court judgment dated 30 April 2015.¹⁸⁹

(iv) The Cayman Island Freezing Order, as evidenced in **Exhibit C-37**, has as plaintiffs IIB and DIA, and as defendants Mr. Pugachev, Arcadia Nominees Limited and DB Marine.¹⁹⁰

229. In accordance with the foregoing, this Tribunal reiterates that it is clear from the record in this arbitration that the applicants in all the civil proceedings that Claimant requested to suspend are the DIA and IIB.

¹⁸⁴ *Ibid.*, ¶ 347.

¹⁸⁵ *Ibid.*, ¶¶ 181-212, and Appendix B.

¹⁸⁶ **Exhibit C-12**, Subsidiary Liability Judgment, 30 April 2015.

¹⁸⁷ **Exhibit C-20**, UK Worldwide freezing order, 11 July 2014.

¹⁸⁸ **Exhibit C-35**, UK Default Judgment, 22 February 2016.

¹⁸⁹ **Exhibit C-40**, Summon to appear before the Luxemburg Tribunal, 12 May 2016; **Exhibit C-41**, Summon to appear before the Luxemburg Tribunal and make disclosure.

¹⁹⁰ **Exhibit C-37**, Cayman Islands Freezing Order, 21 April 2016.

230. Based on the evidence submitted in this arbitration and the arguments put forward by both Parties, this Tribunal is not convinced, *prima facie*, that the DIA and IIB are the same as or as synonymous to the Respondent. In other words, at this point and with the limited evidence available, the Tribunal is not in a position to state, not even *prima facie*, that the acts of the DIA and/or IIB may be attributed to Respondent.
231. On this point, Claimant argued at the Hearing that “the Respondent is the DIA.”¹⁹¹ In Claimant’s Request for Interim Measures, Claimant asserts that the DIA is a Russian agency, associated with the Central Bank and an agent of the State. At the Hearing, Claimant further argued that a majority of the members of the DIA board are appointed by Respondent directly, not the least of which its general director.¹⁹² Claimant also alleges that the Russian Federation is contributing financially to the DIA’s assets.¹⁹³
232. At the Hearing, Respondent asserted that “the DIA is not synonymous with Russia.”¹⁹⁴ Respondent argues that it is wholly misleading to assert that the DIA is synonymous with the Respondent through monetary contributions, when it is clear that the DIA is a separate and distinct legal entity which receives contributions from a variety of sources.¹⁹⁵
233. Respondent adds that the DIA does not act as an organ of the State but as a liquidator pursuant to the statutory duties of a liquidator in bankruptcy, in the best interests of the debtor and all creditors.¹⁹⁶ Consequently, according to Respondent, the DIA acts in the interests of the creditors and in the interest of the IIB.¹⁹⁷
234. In light of the arguments put forward by the Parties and the very limited evidence submitted in this stage of the proceedings, the Tribunal cannot assert, not even *prima facie*, that DIA and IIB are synonymous to the Respondent or that the acts of the DIA and the IIB should be attributed to the Respondent. Therefore, the Tribunal cannot assert, *prima facie*, that it has jurisdiction to order the suspension of proceedings where the DIA and the IIB are applicants.
235. The Tribunal stresses that this conclusion does not entail any prejudging on the merits of the case or any final finding as to whether the DIA and IIB are synonymous with the Respondent or if the acts of the DIA and the IIB may be attributed to Respondent. The Tribunal will duly consider this issue at the appropriate time in this arbitration once the Parties have submitted further evidence and allegations.

¹⁹¹ Hearing, Tr., 18:13.

¹⁹² Hearing, Tr., 19:4-6.

¹⁹³ Hearing, Tr., 18:24-19:1.

¹⁹⁴ Hearing, Tr., 97:20.

¹⁹⁵ Hearing, Tr., 87:12-16.

¹⁹⁶ Hearing, Tr., 98:7-11.

¹⁹⁷ Hearing, Tr., 98:11-13.

236. For the above-mentioned reasons, this Tribunal concludes that Claimant failed to demonstrate that this Tribunal has *prima facie* jurisdiction to decide on the requested interim measures to suspend all civil enforcement proceedings.

b) Claimant did not sufficiently prove necessity

237. Claimant and Respondent acknowledge that, in order for a tribunal to issue an interim measure, the necessity of the measure must be sufficiently proved.¹⁹⁸

238. Pursuant to Article 26.1 of the 1976 UNCITRAL Rules, this Tribunal may take “any interim measures it deems *necessary* in respect of the subject-matter of the dispute.”¹⁹⁹ Several tribunals have interpreted and defined the requirement of necessity. For example, in *Tokios Tokelés v Ukraine*, the tribunal found that “international jurisprudence on provisional measures indicates that a provisional measure is necessary where the actions of a party are capable of causing or threatening *irreparable prejudice* to the rights invoked.”²⁰⁰ According to this decision, Claimant must sufficiently prove that in the absence of interim measures, the civil procedures will cause an irreparable harm to his rights.

239. After studying the arguments put forward by the Parties, this Tribunal finds that necessity is not satisfied in the present case since: (1) the harm claimed is not irreparable given that it can be compensated by monetary damages; and (2) there is no sufficient evidence to conclude that the civil enforcement proceedings would aggravate the present dispute.

1. The harm claimed is not irreparable since it can be compensated by monetary damages

240. International tribunals have interpreted that, for a measure to be necessary, the harm sought to be avoided cannot be compensated by monetary damages.²⁰¹

241. As explained above, Claimant seeks to suspend the enforcement of all civil proceedings. As evidenced in Claimant’s Request for Interim Measures, these civil proceedings are related

¹⁹⁸ Request for Interim Measures, ¶ 104; Response to Request for Interim Measures, ¶ 80.

¹⁹⁹ **Exhibit CL-22**, 1976 UNCITRAL Arbitration Rules, Article 26(1) (“At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.”) (emphasis added).

²⁰⁰ **Exhibit CL-11**, *Tokios Tokelés v. Ukraine*, ARB/02/18, Procedural Order No. 3, 18 January, ¶ 8. (emphasis added).

²⁰¹ **Exhibit RL-14**, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, 17 August 2007, ¶ 99; **Exhibit RL-3**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Order on Provisional Measures, 06 September 2005, ¶ 46; **Exhibit CL-7**, *Quiborax v. Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures, ¶ 156 (“The Tribunal considers that an irreparable harm is a harm that cannot be repaired by an award of damages.”).

to the freezing of assets and the release of mortgages on Mr. Pugachev's properties.²⁰² The Parties do not dispute that the civil measures in the proceedings that Claimant seeks to suspend affect assets, properties and goods of Mr. Pugachev.

242. In particular, Claimant requests this Tribunal to suspend the pending proceedings for the enforcement of civil measures related to discharge the UK Worldwide Freezing Order,²⁰³ to release interim judicial mortgages taken on eleven properties –mostly chateaux and villas– located in France,²⁰⁴ to suspend the exequatur of the judgment of the Commercial Court of Moscow dated 30 April 2015 in Luxemburg,²⁰⁵ and to release the injunction ordered by the Grand Court of the Cayman Islands on 20 April 2016 prohibiting the disposal of Mr. Pugachev's assets,²⁰⁶ among others.
243. After due consideration, this Tribunal finds that Claimant failed to substantiate that the possible harm caused by the enforcement of the civil proceedings could not be compensated by monetary damages.
244. Claimant relies on *Paushok v. Mongolia* to argue that the possibility of monetary compensation does not necessarily eliminate the possible need for interim measures.²⁰⁷ Claimant further argues that there is no requirement for the harm to be absolutely irreparable by an award of damages.²⁰⁸ However, this Tribunal notes that the facts that gave rise to *Paushok v. Mongolia* do not resemble that of the case at hand. In *Paushok v. Mongolia*, Claimant requested a declaratory relief in addition to compensatory relief, whereas in the present case Claimant simply requested compensation in the Notice of Arbitration.²⁰⁹
245. After careful consideration of Claimant's argument, this Tribunal finds that a harm that may be compensated by a damages award is not irreparable. The tribunal in *Dawood Rawat v. The Republic of Mauritius* endorsed this finding by stating that "as for irreparable harm, it is well-established that harm claimed is not irreparable if it can be compensated by monetary damages."²¹⁰ Likewise, the *Occidental Petroleum v. Ecuador* and *Plama v. Bulgaria* tribunals found that harm is not irreparable if it can be compensated by damages.²¹¹

²⁰² Request for Interim Measures, ¶ 231, Appendix B.

²⁰³ *Ibid.*, ¶ 347 (2).

²⁰⁴ *Ibid.*, ¶ 347 (2).

²⁰⁵ *Ibid.*, ¶ 347 (2).

²⁰⁶ *Ibid.*, ¶ 347 (2).

²⁰⁷ **Exhibit CL-4**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*, UNCITRAL Case, Order on Interim Measures, 2 September 2008, ¶¶ 68-69.

²⁰⁸ Request for Interim Measures, ¶ 106.

²⁰⁹ Notice of Arbitration, ¶ 147.

²¹⁰ **Exhibit RL-39**, *Dawood Rawat v. The Republic of Mauritius*, Order Regarding Claimant's and Respondent's Requests for Interim Measures, 11 January 2017, ¶ 45.

²¹¹ **Exhibit RL-14**, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, 17 August 2007, ¶ 99; **Exhibit RL-3**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Order on Provisional Measures, 06 September 2005, ¶ 46.

246. Also, in *EnCana v. Ecuador* the tribunal interpreted that harm is not irreparable if it can be compensated economically, and if the measures could be challenged in domestic courts. In that case, the Claimant requested the tribunal, constituted under the UNCITRAL Rules, to suspend the enforcement of freezing orders issued by Ecuador.²¹² However, the tribunal rejected the request on the basis that the enforcement measure could be challenged in Ecuadorean domestic courts.²¹³
247. This Tribunal considers that Claimant has not produced sufficient evidence that the enforcement of the civil measures would place him in an economic situation of such nature that he could not defend his rights in this arbitration. Moreover, with the evidence presented in this case, it is not possible to conclude that rights other than economic rights represented by goods and assets will be affected by the civil measures. Such economic rights would be susceptible of monetary compensation.
248. Furthermore, the tribunal in *Dawood Rawat v. The Republic of Mauritius* considered, and this Tribunal agrees, that in addition to demonstrating that the measure is essential to prevent an irreparable harm, the applicant needs to demonstrate the urgency of the measure: “for an interim measure to be necessary, the requesting party must demonstrate that the measure is both (a) *urgent*, and (b) essential to prevent irreparable harm to its rights.”²¹⁴ Usually, arbitral tribunals have understood urgency to mean that “a question cannot await the outcome of the award on the merits.”²¹⁵ In *Tokios Tokelés v. Ukraine*, for example, the tribunal noted that “a measure is urgent where action prejudicial to the rights of either party is likely to be taken before such decision is taken.”²¹⁶
249. In the case at hand, Claimant requested, among others, to suspend proceedings originating in the following actions: (i) on 2 September 2013, the Swiss Public Prosecutor froze several assets and bank accounts associated with the Claimant; (ii) on 2 December 2013, the Subsidiary Liability claim was filed by the DIA with the Moscow Commercial Court; (iii) on 11 July 2014, the UK Worldwide Freezing Order was issued; (iv) on 30 April 2015, the Claimant was found liable under the Subsidiary Liability Judgment; (v) on 27 August 2015, the Trust Freezing Order was issued in the English High Court against nine of the Claimant’s trusts.²¹⁷

²¹² **Exhibit CL-27**, *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN 3481, Interim Award - Request for Interim Measures of Protection, 31 January 2004, ¶ 16.

²¹³ **Exhibit CL-27**, *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN 3481, Interim Award - Request for Interim Measures of Protection, 31 January 2004, ¶ 16.

²¹⁴ **Exhibit RL-39**, *Dawood Rawat v. The Republic of Mauritius*, Order Regarding Claimant’s and Respondent’s Requests for Interim Measures, 11 January 2017, ¶ 45 (emphasis added).

²¹⁵ **Exhibit CL-7**, *Quiborax v. Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures, ¶ 66.

²¹⁶ **Exhibit CL-11**, *Tokios Tokelés v. Ukraine*, CSID Case No ARB/02/18, Procedural Order n°3, 18 January 2005, ¶ 8.

²¹⁷ Request for Interim Measures, Appendix B.

250. This Tribunal notes that all of the aforementioned proceedings began before the Notice of Arbitration on 21 September 2015. Consequently, it seems that if these measures had been urgent, the Claimant should have requested them much earlier, upon the constitution of this Tribunal on October 2016 or shortly thereafter.
251. However, this Tribunal emphasizes that the granting of interim measures is not prevented, *per se*, by the fact that the arbitration initiates after the judicial decisions that are intended to be suspended through interim measures. However, in these cases, (regardless of whether the measures are civil, criminal or administrative) a higher evidentiary burden may be required to prove the connection between the arbitration and measures already existing at the time of commencement of the arbitration. Accordingly, the Tribunal must perform a more cautious analysis of the case to avoid the use of the interim measures in the context of investment arbitration as a mechanism to interfere with judicial decisions adopted by the States.
252. Furthermore, the evidence in the record suggests that Claimant could have submitted the Notice of Arbitration at least three months earlier. Claimant asserts that the trigger letter required by the Treaty was delivered to President Putin on 14 December 2014,²¹⁸ whereas the Notice of Arbitration was presented on 21 September 2015.²¹⁹ Pursuant to Article 7 of the France-Russia BIT, only a six-month period is required, after a dispute cannot be settled amicably, to present the Notice of Arbitration.²²⁰ This delay in presenting the Notice of Arbitration suggests Claimant's lack of urgency, particularly when most of these civil measures took place before the submission of the Notice of Arbitration.
253. For these reasons, this Tribunal considers that the Claimant has failed to prove that the enforcement of the civil procedures will cause an irreparable harm to his rights. This Tribunal finds that the evidence and arguments presented are not conclusive to determine that the damage is irreparable.

2. *There is no conclusive evidence that the civil enforcement proceedings would aggravate the present dispute*

254. Claimant asserts that the civil enforcement proceedings worldwide would aggravate the dispute between the Parties. Claimant argues that a potential enforcement would have four different effects.

²¹⁸ *Ibid.*, ¶ 123.

²¹⁹ Notice of Arbitration, ¶ 148.

²²⁰ **Exhibit CL-1**, Agreement Between the Government of the Republic of France and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991; **Exhibit C-2**, Letter from Mr. Pugachev to the Russian Federation proposing to have an amicable settlement dated 10 December 2014.

255. First, Claimant maintains that the enforcement of the Subsidiary Liability Judgment will aggravate the present dispute because it will exacerbate the breaches of the BIT by increasing the amount of damages suffered.²²¹
256. However, the Tribunal finds that the enforcement of the Subsidiary Liability Judgment would not constitute an aggravation of the dispute, since it is a substantial part of the dispute itself. In consequence, a decision of this Tribunal on the dispute through a provisional measure would constitute a prejudgement of an issue that must be resolved in the merits of the case. In addition, this Tribunal observes that the enforcement of the Subsidiary Liability Judgment would not aggravate the dispute because it was a predictable situation at least since 30 April 2015, prior to the Notice of Arbitration, when Mr. Pugachev was found liable by the Russian courts.²²² It was rationally foreseeable that the enforcement of the measures would occur in a certain period thereafter. Claimant failed to prove how a measure, taken in legal proceedings initiated before the dispute, would aggravate the dispute.
257. Second, Claimant states that if the Subsidiary Liability Judgment and the parallel judicial proceedings were enforced, Mr. Pugachev will be almost entirely deprived of any income, and this will have an impact on his capacity to protect his rights in this arbitration.²²³ Nevertheless, this Tribunal finds that Claimant failed to substantiate his claim regarding this matter. Claimant did not provide any evidence to support the assertion that he would be deprived of any income or that he would lose his capacity to protect his rights in this arbitration.
258. Moreover, this Tribunal recalls that the Freezing Order granted by the English court provides for a reasonable amount to be spent on legal proceedings. The UK Freezing Order presented as **Exhibit C-20**, states that: “This order does not prohibit Respondent from spending GBP 10.000 a week towards his ordinary living expenses and also a reasonable sum on legal advice and representation.”²²⁴
259. Third, Claimant argues that if Russia proceeds with the enforcement of civil measures, and if Mr. Pugachev is ultimately awarded monetary compensation in this arbitration, “he may never fully recover the loss.”²²⁵ Again, this Tribunal considers that this allegation is not supported by the evidence at hand. In effect, Claimant did not provide any evidence that a delay in enforcement would imply a loss in Mr. Pugachev’s capital, nor in his business activities.

²²¹ Request for Interim Measures, ¶ 215.

²²² **Exhibit C-12**, Decision of the Commercial Court of the City of Moscow, Central Bank, Receiver of IIB v. M E Illarionova, S V Pugachev, A A Didenko, A S Zlobin, Case No A40- 119763/10, 30 April 2015.

²²³ Request for Interim Measures, ¶ 217.

²²⁴ **Exhibit C-20**, High Court of Justice, Chancery Division, JSC Mezhdunarodney Promyshlenniy Bank, State Corporation “Deposit Insurance Agency” v. S V Pugachev, Claim No HC14D02752, Ex Parte Worldwide Freezing Injunction, 11 July 2014.

²²⁵ Request for Interim Measures, ¶ 224.

260. Fourth, Claimant asserts that the enforcement of the Subsidiary Liability Judgment and the UK Judgment “may result in the confiscation of the house where Mr. Pugachev currently resides. Such enforcement will compromise Mr. Pugachev’s safety and security [because the house has] a sophisticated surveillance system.”²²⁶ This Tribunal is well aware that as regards alleged threats it may be difficult to obtain conclusive evidence and therefore Claimant should not be placed with an impossibly high burden to prove the existence of a threat against him or his family. However, in the present case, Claimant must submit sufficient evidence to assert at least the nature of the threats made and the impact on his safety and security.
261. The Tribunal remains open to take, when and if sufficient evidence is presented, any measure it deems necessary within its power to protect the life and safety of Mr. Pugachev and his family, to the extent necessary to preserve and protect the integrity of this arbitration.
262. Additionally, Claimant requests this Tribunal to order Russia to abstain from initiating any attachment, exequatur or enforcement proceedings against Mr. Pugachev or any of his assets during the arbitration proceedings.²²⁷ This Tribunal observes that Claimant did not provide any evidence to substantiate this request. Moreover, this Tribunal notes that Claimant’s request is extremely general and unprecise. It does not specify the time, subject, place or circumstance by which Russia should cease to exercise its sovereign power. For these reasons, this Tribunal will deny Claimant’s request to order Russia to abstain from initiating any attachment, exequatur or enforcement proceedings against Mr. Pugachev.
263. In sum, this Tribunal finds that Claimant failed to satisfactorily demonstrate *prima facie* jurisdiction of this Tribunal, and the necessity of the measure. Thus, this Tribunal will deny Claimant’s request to issue an interim order to suspend all civil proceedings.

B. Interim measures related to criminal proceedings and requests for international cooperation, including international arrest warrants, extradition requests and mutual legal assistance requests

264. Claimant requests the Tribunal to adopt three types of interim measures related to criminal proceedings:
- (i) order Russia to suspend pending criminal proceedings against Mr. Pugachev, members of his family and individuals related to him in Russia and Switzerland;
 - (ii) order Russia to suspend any existing request for international cooperation, such as extradition requests, international arrest warrants and requests for mutual assistance; and

²²⁶ *Ibid.*, ¶ 225.

²²⁷ *Ibid.*, ¶ 347.

- (iii) order Russia to abstain from initiating criminal proceedings against Mr. Pugachev, members of his family and individuals related to him, including requesting measures of international cooperation based in these proceedings.
265. During the Hearing, Claimant further specified in his oral submissions that the above-mentioned requests only sought to suspend the proceedings during the arbitration, and not to request a withdrawal or waiver of any rights from Respondent.²²⁸
266. Claimant identified the following pending criminal proceedings that Russia had initiated against him and that he seeks to suspend:
- (i) an indictment dated 28 November 2013 for allegedly committing embezzlement, in violation of Articles 33 and 160 of the Criminal Code of the Russian Federation;²²⁹
 - (ii) a second indictment dated 10 April 2014 for allegedly committing embezzlement, again, in violation of Articles 33 and 160 of the Criminal Code of the Russian Federation;²³⁰
 - (iii) a third indictment dated 1 June 2015 for allegedly discharging his managerial functions in a commercial organization contrary to the lawful interests of that organization, in violation of Articles 33 and 160 of the Criminal Code of the Russian Federation;²³¹ and
 - (iv) a fourth indictment dated 25 November 2015 concerning the release of a pledge over an apartment in Moscow, release of a pledge over shares in a mining company, one-hundred and twenty loans granted by IIB and transfer of funds from Claimant's companies to Switzerland.²³²
267. Claimant further explained that, between 29 May and 1 June 2015, the indictments identified in (i) to (iii) were joined in the criminal proceeding No. 201/712005-11. Thus, pursuant to these criminal proceedings, Russian authorities are investigating Mr. Pugachev for alleged violations of Articles 33, 160 and 201 of the Criminal Code of the Russian Federation.²³³
268. Claimant identified an additional pending criminal proceeding against him in Switzerland. In 2013, the Swiss Public Prosecutor opened a criminal investigation for money laundering

²²⁸ Hearing, Tr., 7:25-8:2.

²²⁹ **Exhibit C-52**, Decision of the Main Investigative Directorate of the Investigative Committee of the Russian Federation to Prosecute Mr. Pugachev, 28 November 2013. *See also* Request for Interim Measures, ¶ 238.

²³⁰ **Exhibit C-53**, Decision of the Main Investigative Directorate of the Investigative Committee of the Russian Federation to prosecute Mr Pugachev, 10 April 2014. *See also* Request for Interim Measures, ¶ 242.

²³¹ **Exhibit C-54**, Decision of the Main Investigative Directorate of the Investigative Committee of the Russian Federation to prosecute Mr Pugachev, 1 June 2015.

²³² Request for Interim Measures, ¶ 247.

²³³ Request for Interim Measures, ¶ 245. The Tribunal notes that no exhibit was provided for this alleged indictment.

against him.²³⁴ Claimant affirms that this investigation was the result of a mutual legal assistance request made by Russia to Switzerland on 12 March 2013.

269. This Tribunal further notes that Claimant failed to identify any criminal proceeding against members of his family.
270. Claimant also identified the existing international cooperation requests made by Russia related to the above-mentioned pending criminal proceedings, which he seeks to suspend, namely:
- (i) four mutual assistance requests made by Russia, between March and July 2013, and addressed to Switzerland,²³⁵ the United States, Cyprus and France (the “**Mutual Legal Assistance Requests**”);²³⁶
 - (ii) an international arrest warrant issued on 29 January 2014 by the Russian Ministry of Interior (the “**International Arrest Warrant**”);²³⁷
 - (iii) an extradition request made by Russia to UK authorities (the “**UK Extradition Request**”);²³⁸ and
 - (iv) an extradition request made by Russia to France on 2 March 2017 (the “**France Extradition Request**”).²³⁹
271. Against the above background, this Tribunal must consider whether each of the interim measures requested with respect to existing and future criminal proceedings, international cooperation requests, including mutual legal assistance request, arrest warrants and extradition requests, satisfy all requirements for granting interim measures. As explained above, this Tribunal must be satisfied that the following criteria are present in the case for granting interim measures: (i) *prima facie* jurisdiction of the tribunal; (ii) *prima*

²³⁴ **Exhibit C-56**, Order to freeze Mr Pugachev’s assets issued by the Swiss Public Ministry, 2 September 2013.

²³⁵ **Exhibit C-55**, Request for mutual legal assistance from the Russian Federation to Switzerland, 12 March 2013.

²³⁶ Request for Interim Measures, ¶¶ 235-237. *See also*, Claimant’s Hearing Powerpoint Presentation, at 5.

²³⁷ Request for Interim Measures, ¶ 241. This Tribunal notes that another international arrest warrant against Mr. Pugachev was issued on 3 December 2013. However, Claimant itself explained that this warrant was revoked and this decision was confirmed, on 19 February 2014, by the Basmany District Court of the City of Moscow. *See* Request for Interim Measures, ¶ 240.

²³⁸ This Tribunal notes that Claimant has not submitted sufficient evidence to determine when was the UK Extradition Request issued. At the Hearing, Claimant asserted that this request was made on 5 November 2015, however he submitted a press article that explains that it was initiated sometime at the end of May or beginning of June of 2015. This information is not sufficient for this Tribunal to corroborate when was this extradition request issued. *See* Claimant’s Hearing Power Presentation, at 5 and **Exhibit C-62**, W. Stewart, “Assassination fear as Russia demands extradition of ‘Putin’s banker’ from Britain”, Daily Mail Online, 8 June 2015.

²³⁹ **Exhibit C-87**, Public Prosecutor Website Press Release (<http://genproc.gov.ru/smi/news/archive/news-1168054/>). *See also* Claimant’s Letter to the Tribunal dated 3 March 2017. The Tribunal further notes that Respondent has not contested the fact that the Russian Federation’s Public Prosecutor officially requested the extradition of Mr. Pugachev to Russian authorities.

facie existence of a right susceptible of protection; (iii) necessity of the measure requested; (iv) urgency of the measure requested; and (v) proportionality of the measure requested.²⁴⁰

272. At the outset, this Tribunal notes that the standard to grant the suspension or obstruction of any criminal investigation or proceedings is very high and, in any case, higher than the threshold that Claimant must satisfy to suspend civil proceedings. This is so because the relief sought by the interim measures related to criminal proceedings and investigations would interfere with Respondent's sovereign right and duty to investigate and prosecute crime.
273. The findings of the tribunal in *Hydro v. Albania*, cited by Claimant, supports requiring a very high threshold for this type of interim measures. As the *Hydro v. Albania* tribunal acknowledged, "any obstruction of the investigation or prosecution of conduct that is reasonably suspected to be criminal in nature should only be ordered where that is absolutely necessary."²⁴¹
274. In the case at hand, this Tribunal considers that: (a) Claimant has not established that it is necessary and proportional to order Russia to suspend, and abstain from initiating, criminal proceedings and international cooperation requests –other than the France Extradition Request– against Mr. Pugachev, his family and individuals related to him; nonetheless, (b) Claimant's request to order Russia to suspend the France Extradition Request, and to abstain from initiating any other such request during this arbitration, satisfies all requirements for granting interim measures.
- a) Claimant's request to order Respondent to suspend, and abstain from initiating, criminal proceedings and international cooperation requests against himself, his family and individuals related to him**
275. This Tribunal considers that Claimant has failed to establish that an order to Russia to suspend, and abstain from initiating, criminal proceedings or international cooperation request –other than the France Extradition Request– is an interim measure that is (1) necessary to prevent any "irreparable harm" or "serious prejudice" to Claimant's rights, and (2) proportional in light of the circumstances of the present case.

²⁴⁰ These criteria are both found in the rulings presented by Claimant and Respondent. **Exhibit RL-36**, *United States (Tallim) B.V. and Aktisielts Tallinna Vesi v. Republic of Estonia*, ICSID Case No. ARB/14/24, Decision on Respondents Application for Provisional Measures, 12 May 2016, ¶ 78; and **Exhibit CL-4**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*. Order on interim measures, September 2, 2008, ¶ 40.

²⁴¹ **Exhibit CL-15**, *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures, 3 March 2016, ¶ 3.16.

1. *Claimant has failed to establish that it is necessary to order Russia to suspend, and abstain from initiating, criminal proceedings or international cooperation request –other than the France Extradition Request– against him, his family and individuals related to him*

276. The Parties do not dispute that, pursuant to Article 26.1 of UNCITRAL Rules, for a Tribunal to grant an interim measure it must be deemed necessary. The Parties further agree that a measure is necessary if it is aimed at preventing a “substantial” or “irreparable” harm to the rights one of the parties.²⁴²
277. Nonetheless, as previously mentioned in Section (IV)(A)(b)(1), the Parties disagree on whether harm that may be compensated by an award on damages is “irreparable.” On the one hand, Claimant argues that substantial harm must be assessed on a case-by-case basis and that the risk of aggravating the dispute has been considered by tribunals as a risk of substantial or irreparable harm.²⁴³ On the other hand, Respondent argues that most tribunals have argued that a harm is not irreparable if it can be compensated by damages.²⁴⁴
278. In this case, the Tribunal considers that the request to order Russia to suspend pending criminal proceedings and existing mutual legal assistance requests –other than the France Extradition Request– is not necessary, even if the irreparable harm were not remediable by monetary damages.
279. Claimant argues that the suspension of the criminal proceedings is necessary to prevent an irreparable harm to his right to the *status quo*, the non-aggravation of the dispute and the integrity of the arbitration process.
280. Claimant argues that the criminal proceedings “put at risk the integrity of the procedure and of Claimant’s right to defend himself properly.”²⁴⁵ This Tribunal considers that Claimant has not sufficiently demonstrated that the pending criminal proceedings in Russia and Switzerland, the Mutual Legal Assistance Requests, the International Arrest Warrant and the UK Extradition Request affect the integrity of this arbitration. Moreover, Claimant has not provided conclusive evidence that shows that Claimant’s ability to defend himself in the arbitration has been hindered by these proceedings.
281. The record shows that since the commencement of the pending criminal proceedings against Mr. Pugachev and the Mutual Legal Assistance Requests, Claimant has been able to pursue his claims in this arbitration. Since then, Claimant has presented the Notice of Arbitration, filed a Request for Interim Measures, filed two requests for immediate interim orders, has responded to Respondent’s Security for Cost Application and Claimant’s counsel presented

²⁴² Request for Interim Measures, ¶ 104; Response to Request for Interim Measures, ¶ 80.

²⁴³ Request for Interim Measures, ¶ 108.

²⁴⁴ Response to Request for Interim Measures, ¶81.

²⁴⁵ Request for Interim Measures, ¶ 251.

oral submissions to this Tribunal at the Hearing.²⁴⁶ These circumstances suggest that the existence of the pending criminal proceedings *per se* would not prevent Claimant from pursuing this arbitration.

282. Claimant also argues that the criminal proceedings aggravate the dispute because these (i) are aimed at obtaining witness statements against Mr. Pugachev from individuals under duress; (ii) cause Mr. Pugachev substantial moral harm; and (iii) are used as a basis to issue extradition orders against Mr. Pugachev.²⁴⁷
283. In this case, the Tribunal considers that Claimant has not presented convincing evidence to demonstrate that pending criminal proceedings and existing mutual assistance requests affect his right to the *status quo* and the non-aggravation of the dispute, for the following reasons.
284. Claimant has not presented any evidence to substantiate his claim that the criminal proceedings “are a tactical move” to obtain witness statements against him.²⁴⁸ Claimant solely identifies a series of criminal proceedings that have been initiated against several individuals, such as Mr. Didenko (former CEO of IIB) and Mr. Dimitry Amunts (former member of IIB’s board of directors).²⁴⁹ Nonetheless, Claimant has failed to submit evidence that may even suggest that criminal proceedings are being used to fabricate evidence against him, nor that Respondent is forcing any prosecuted individual to testify against him.
285. The fact that criminal proceedings that commenced before the Notice of Arbitration, have been initiated against individuals allegedly related to Claimant, or allegedly related to this arbitration, is not alone sufficient evidence to demonstrate that their sole purposes is to pressure individuals to testify against Claimant.²⁵⁰
286. Claimant has also argued that a major risk of aggravation arises because criminal proceedings are causing him moral harm. Claimant states that this moral harm is the result of “[h]aving to live with his name mentioned in an Interpol Red Notice.”²⁵¹ However, Claimant failed to explain how this moral harm would aggravate the dispute. Moreover, in his Request for Interim Measures, Claimant explained to this Tribunal that “[o]n 11 January 2016, following an application by Mr. Pugachev, Interpol’s Commission recommended that

²⁴⁶ This Tribunal further notes that Claimant had planned to appear at the Hearing. He finally could not attend the Hearing because he was urgently hospitalized for a heart condition. *See* Hearing, Tr., 1:18-2:7.

²⁴⁷ Request for Interim Measures, ¶¶ 253-255.

²⁴⁸ *Ibid.*, ¶ 255.

²⁴⁹ *Ibid.*, ¶¶ 264-268.

²⁵⁰ **Exhibit CL-14**, *Lao Holdings NV v. Lao People’s Democratic Republic*, ICSID Case No ARB(AF)/12/6, Ruling on Motion to Amend the Provisional Measures Order, 30 May 2014, ¶ 30 (“a criminal proceeding does not per se (...) aggravate the dispute”).

²⁵¹ Request for Interim Measures, ¶ 255.

the Red Notice be withdrawn from Interpol's website."²⁵² Since the Interpol Red Notice has been withdrawn, this argument is rendered moot.

287. Additionally, this Tribunal considers that there is no element of necessity in the requested suspension of the pending criminal proceedings in Russia and Switzerland, the Mutual Legal Assistance Requests and the International Arrest Warrant, given that these proceedings were part of the *status quo* and the dispute submitted to this Tribunal at the time of the Notice of Arbitration.
288. All criminal proceedings in Russia and Switzerland, but one, started before Claimant filed the Notice of Arbitration, on 21 September 2015. Indeed, the first indictment is dated 28 November 2013, the second one is dated 10 April 2014, the third one is dated 1 June 2015,²⁵³ and the criminal investigation in Switzerland commenced in 2013. Likewise, the Mutual Legal Assistance Requests and the International Arrest Warrant were issued in 2013 and early 2014, before the Notice of Arbitration was filed.
289. All the aforementioned proceedings were ongoing when Claimant submitted his Notice of Arbitration (*i.e.*, 21 September 2015). In fact, in his Notice of Arbitration, Claimant already mentioned the majority of these criminal proceedings as the underlying facts that gave rise to the dispute.²⁵⁴ Nonetheless, as previously mentioned, Claimant failed to request a declaratory relief in his Notice of Arbitration that sought to compel Respondent to cease the continuation of the ongoing criminal proceedings, including the Mutual Legal Assistance Requests and the International Arrest Warrant.²⁵⁵ This Tribunal is of the view that if such proceedings were truly causing an irreparable harm to Claimant's rights, he would have requested such relief in his Notice of Arbitration or immediately upon constitution of the Tribunal.
290. This Tribunal notes that Claimant has cited the tribunals in *Hydro v. Albania* and *Quiborax v. Bolivia* to support his request to suspend pending criminal proceedings and international cooperation requests. Nonetheless, unlike this case, the criminal proceedings in *Quiborax v. Bolivia* were filed a considerable time after the respective notice of arbitration.²⁵⁶ In *Hydro v. Albania*, claimants were not formally notified of any criminal proceedings against them, and their arrest warrants were issued less than one week before the initiation of the arbitration.²⁵⁷

²⁵² *Ibid.*, ¶ 243.

²⁵³ These three indictments were later joined in criminal proceeding No. 2017/712005-11, which Claimant has specifically requested this Tribunal to suspend. *See* Request for Interim Measures, ¶ 260.

²⁵⁴ Notice of Arbitration, ¶¶ 76, 107-108.

²⁵⁵ *Ibid.*, ¶147.

²⁵⁶ **Exhibit CL-7**, *Quiborax SA, Non Metallic Minerals SA and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No ARB/06/2, Decision on Provisional Measures, 26 February 2010, ¶¶ 4-11, 27-45.

²⁵⁷ **Exhibit CL-15**, *Hydro Srl and others v. Republic of Albania*, ICSID Case No ARB/15/28, Order on Provisional Measures, 3 March 2016, ¶ 2.30.

291. Against this background, the criminal proceedings in Russia and Switzerland, including the Mutual Legal Assistance Request and the International Arrest Warrant, were well known to Claimant at the time he submitted the dispute to this Tribunal, thus they are an integral part of the *status quo* and the dispute. For this reason, Claimant may not claim that these proceedings cause an irreparable harm to his right to the *status quo* and non-aggravation of the dispute.
292. As for the only criminal proceedings that started following the Notice of Arbitration, Claimant has not satisfied his burden to demonstrate that it is necessary to suspend it to prevent any “irreparable harm.” Claimant has argued that, on 25 November 2015, a fourth indictment was issued against Mr. Pugachev. However, Claimant did not submit any document or other evidence that supports his allegation that an indictment was issued on 25 November 2015. Moreover, Claimant has failed to provide sufficient evidence as to why these criminal proceedings are causing an “irreparable harm” to him by aggravating the dispute, affecting the *status quo* or affecting the integrity of this arbitration. This Tribunal already referred to the arguments advanced by Claimant in the preceding paragraphs.
293. As indicated in Section (IV)(A)(b)(1), the mere fact that the judicial decision that a party seeks to be suspended through an interim measure precedes the initiation of the arbitration, does not imply *per se* that the said interim measure cannot be granted. However, in these cases, the evidence required to demonstrate the relationship of the measure sought to be suspended with the arbitration is higher, and the Tribunal’s analysis must be cautious in order to prevent unjustified interferences in the sovereign judicial decisions of States.
294. For these reasons, Claimant did not sufficiently establish that the interim measures related to the suspension of the criminal proceedings in Russia and Switzerland, the Mutual Extradition Requests and the International Arrest Warrant are necessary.
2. *Claimant has failed to establish that it is proportionate to order Russia to suspend, and abstain from initiating, criminal proceedings or international cooperation requests –other than the France Extradition Request*
295. The Parties do not dispute that proportionality is a requirement that must be established before a tribunal grants an interim measure.²⁵⁸ The Parties also agree that Article 26(3) of the 2010 UNCITRAL Arbitration Rules²⁵⁹ illustrates the importance and reaffirms the principle of proportionality in international arbitration.²⁶⁰

²⁵⁸ Request for Interim Measures, ¶¶ 112-115; Response to Request for Interim Measures, ¶¶ 94-97.

²⁵⁹ **Exhibit RL-35**, 2010 UNCITRAL Arbitration Rules, Article 26(3). (“Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that the measures are likely to cause to the other party if implemented”).

²⁶⁰ Request for Interim Measures, ¶ 114; Response to Request for Interim Measures, ¶¶ 95-96.

296. The tribunal in *Paushok v. Mongolia* is quoted as having established the applicable standard to evaluate the proportionality of interim measures under the 1976 UNCITRAL Rules. In its ruling “the tribunal is called upon to weigh the balance of inconvenience in the imposition of interim measures upon the parties.”²⁶¹ This Tribunal agrees that it must balance the alleged harm caused to Claimant by not granting the interim measures against the potential harm caused to Respondent if these measures were granted.
297. Accordingly, the Tribunal must assess the harm caused to Claimant by the criminal proceedings, the Mutual Legal Assistance Requests, the International Arrest Warrant and the UK Extradition Request against the harm infringed on Respondent if it were ordered to stay, and abstain from initiating, any criminal proceeding and international cooperation request against Mr. Pugachev, his family and individuals related to him.
298. In this case, the Tribunal is of the view that ordering a State to suspend, or abstain from initiating, criminal proceedings and international cooperation requests encroaches the sovereign State’s rights and duty to investigate and prosecute crime. As acknowledged by the tribunal in *Hydro v. Albania*, “[i]t is trite to say that criminal law and procedure are a most obvious and undisputed part of a State’s sovereignty.”²⁶² In this sense, a particularly high threshold must be met for this Tribunal to grant a provisional measure related to criminal proceedings.
299. In particular, the breadth of the interim measure requested by Claimant would considerably limit Russia’s ability to investigate and prosecute crime in relation to events that took place within its jurisdiction. Claimant’s request, among others, seeks to order Russia to suspend, and abstain from, initiating criminal prosecution against an undefined category of persons, namely, “individuals related to [Mr. Pugachev].” Thus, granting such vague and broad interim measure would place an undue burden on Respondent.
300. Moreover, this Tribunal considers that the requested interim measure is disproportionate because it unduly and unjustifiably encroaches Russia’s future ability to initiate criminal proceedings against any of the named individuals, and request international cooperation in this context, including extradition requests. In fact, this interim measure even forbids Russia from initiating criminal proceedings that would have a reasonable foundation under its applicable laws.
301. In this context, Claimant must overcome a particularly high threshold before this Tribunal may order the interim measure requested related to criminal measures. However, Claimant has failed to do so.

²⁶¹ **Exhibit CL-4**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*, UNCITRAL Case, Order on Interim Measures, 2 September 2008, ¶ 79.

²⁶² **Exhibit CL-15**, *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures, 3 March 2016, ¶ 3.16.

302. Claimant has failed to provide sufficient evidence that demonstrates that pending criminal proceedings in Russia and Switzerland and the international cooperation requests (*i.e.*, Mutual Legal Assistance Requests, the International Arrest Warrant and the UK Extradition Request) are affecting his capacity to pursue his rights in this arbitration. Moreover, any harm that may derive from these proceedings would be mitigated by the fact that Claimant currently resides in France, and that this Tribunal has decided to suspend the France Extradition Request pursuant to the terms set forth below.²⁶³
303. For these reasons, this Tribunal has decided that the circumstances of this case do not warrant this Tribunal to encroach on Russia's sovereign right to investigate and prosecute crime by ordering Russia to suspend, and abstain from initiating, criminal proceedings and international cooperation requests –other than the extradition request to France– against Claimant, his family and individuals related to him.

b) Claimant's request to order Russia to suspend the France Extradition Request satisfies all requirements for granting interim measures

304. After carefully considering the submissions of the Parties, this Tribunal has decided to order Respondent to suspend the France Extradition Request, and to abstain from initiating any future extradition request to France. This Tribunal further clarifies that such interim measure solely seeks the suspension of the France Extradition Request under the strict terms set forth below.
305. In this regard, the suspension of the France Extradition Request meets all the requirements to issue an interim measure.

1. Prima facie jurisdiction

306. This Tribunal is of the view that such assessment does not require it to definitely satisfy itself that it has jurisdiction over the merits of the case.²⁶⁴ All that is required is that the provisions invoked by Claimant appear, *prima facie*, to afford a basis to establish jurisdiction.
307. While this Tribunal has not yet finally determined that it has jurisdiction on the merits, it is satisfied that Claimant, in his Notice of Arbitration and Request for Interim Measures,²⁶⁵ has established a basis upon which the *prima facie* jurisdiction of the Tribunal may be founded:

²⁶³ See Section (IV)(B)(b)

²⁶⁴ **Exhibit CL-4**, *Sergei Paushok, CJSC Golden East Company and CJSC Company v. Government of Mongolia*, UNCITRAL Case, Order on Interim Measures, 2 September 2008, ¶¶ 47-54; **Exhibit RL-14**, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, 17 August 2007, ¶ 55.

²⁶⁵ Request for Interim Measures, ¶¶ 116-124.

(i) Article 7 of the France-Russia BIT provides for arbitration under the 1976 UNCITRAL Rules;

(ii) until proven otherwise, and without pre-judging Respondent's jurisdictional objections, Mr. Pugachev is a French national, and thus appears to be an investor pursuant to Article 1.2(a) of the France-Russia BIT;

(iii) Claimant appears to have made investments, pursuant to Article 1.1. of the France-Russia BIT, in a renovation project of condominiums in the Red Square area, in two shipyards and an associated construction bureau, in a company that hold a license to develop and mine coal, and in 167 plots of land in the Moscow area; and

(iv) the dispute is related to investments in Russia.

308. This Tribunal acknowledges that Respondent has raised a series of jurisdictional objections. However, this Tribunal is not required to review at this stage the substance of Respondent's jurisdictional objections to consider a request for provisional measures.²⁶⁶ Indeed, Respondent accepts that this Tribunal may order interim measures, even while jurisdiction is being challenged.²⁶⁷ Moreover, Respondent has indicated that it will raise a number of jurisdictional objections in respect to Claimant's claims.²⁶⁸ Thus, the Tribunal considers it appropriate to address these objections in due course and after the Parties have fully presented their submissions on this issue.

309. Unlike Claimant's request to suspend civil enforcement proceedings, there is no question that the France Extradition Request is a sovereign act of the State of Russia, a Party to the France-Russia BIT. The Tribunal therefore concludes, that for the purposes of a request for interim measures, the *prima facie* jurisdiction of the Tribunal has been established.

2. *Prima facie establishment of the case*

310. The Parties seem to agree, citing *Paushok v. Mongolia*, that this Tribunal needs not go beyond assessing whether the claims are "on their face, frivolous or obviously outside the competence of the Tribunal."²⁶⁹

²⁶⁶ **Exhibit CL-15**, *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures, 3 March 2016, ¶ 3.7.

²⁶⁷ Response to Request for Interim Measures, ¶ 64.

²⁶⁸ *Ibid.*, ¶ 89.

²⁶⁹ **Exhibit CL-4**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*, Order on Interim Measures, 2 September 2008, ¶ 50. See also Request for Interim Measures, ¶¶ 93-94; Response to Request for Interim Measures, ¶ 77.

311. In the present circumstances, this Tribunal is satisfied that Claimant has established a *prima facie* basis of the merits of his case. In particular, Claimant has established (i) the facts that allegedly give rise to the dispute; (ii) the provisions of the France-Russia BIT that Respondent allegedly breached; (iii) the relief sought; and (iv) provided sufficient documentary evidence to support, on a *prima facie* basis, his claims in this arbitration.
312. More importantly, Claimant has further identified, among others, that the procedural integrity of the arbitration and the non-aggravation of the dispute are rights protected from the basis of Claimant's Request for Interim Measures. In this particular case, the Tribunal is satisfied that a real issue arises in relation to Claimant's right to the procedural integrity of this arbitration. As will be explained below, Mr. Pugachev faces extradition from France as a result of the France Extradition Request and his possible extradition and further incarceration in Russia would prevent him from effectively participating in this arbitration.
313. For these reasons, the Tribunal considers, that for the purposes of a request for interim measures, Claimant has *prima facie* established his case on the merits. This ruling, again, does not imply that the Tribunal would reach a similar conclusion on the merits of the case or that is pre-judging in any way the merits of this case.

3. Necessity

314. This Tribunal notes that an interim measure is necessary where it prevents "irreparable harm" to the requesting party's rights. As acknowledged by the tribunal in *Tokios Tokelés*, a case cited by Respondent, "a provisional measure is necessary where the actions of a party 'are capable of causing or threatening irreparable prejudice of the rights invoked.'" ²⁷⁰
315. Claimant submits that extradition requests put at "risk the integrity of the procedure and of Claimant's right to defend himself properly."²⁷¹ Claimant further alleges that extradition would prevent Claimant from fully participating in this arbitration and would have a dramatic consequence in his ability to defend himself.²⁷² Claimant also notes that, even if France has a tradition not to extradite its own nationals, the concerned person can be held in custody during the duration of the extradition proceedings, which last between three to six years.²⁷³
316. Respondent notes that Mr. Pugachev himself considers that France would normally refuse to extradite him, since he is a French citizen. Thus, there is no need to award Claimant the relief he seeks.²⁷⁴ Respondent, moreover, affirms that even if Claimant were extradited he

²⁷⁰ Exhibit CL-11, *Tokios Tokelés v. Ukraine*, ARB/02/18, Procedural Order No. 3, 18 January 2005, ¶ 8.

²⁷¹ Request for Interim Measures, ¶ 251, 257.

²⁷² Hearing, Tr., 81:24-82:2.

²⁷³ Claimant's letter to the Tribunal dated 3 March 2017, ¶ 11.

²⁷⁴ Hearing, Tr., 82:3-11.

could still appear in hearings and instruct counsel via videoconference, wherever their location.²⁷⁵

317. In this case, the Tribunal considers that the France Extradition Request threatens to cause Claimant an irreparable harm to his right to (i) the procedural integrity of the arbitration and (ii) his right to defend himself.
318. The possible detention of Mr. Pugachev in France for extradition purposes and the eventual incarceration of Mr. Pugachev in Russia, as a result of the France Extradition Request, would cause irreparable harm to Claimant and to the integrity of this arbitration. Claimant's detention or imprisonment would substantially hinder Claimant's ability to present his case before this Tribunal and would prevent him from fully participating in this arbitration.
319. Claimant's ability to defend himself would be dramatically undermined. If Claimant were extradited, his incarceration would limit his access to legal counsel, who is based in France. Even if Claimant would be allowed to contact his counsel by videoconference or other similar means, Claimant's imprisonment would undoubtedly limit his capacity to react promptly to developments in this arbitration and to be informed on recent developments in this arbitration. Even if he is allowed to participate in hearings and communicate with his legal counsel through videoconference, such participation in the proceedings would be conditioned to the terms of his imprisonment. Thus, Claimant's imprisonment in Russia implies that his availability, and contact with legal counsel and the Tribunal, would be under the control of Respondent.
320. This Tribunal considers that the harm set out above would not be adequately reparable by an award of damages, and thus even satisfy the stricter interpretation of "irreparable harm" endorsed by Respondent.

4. Urgency

321. As acknowledged by the tribunal in *Chevron v. Ecuador*, urgency is established where there is a "risk that a substantial harm may befall the Claimants before this Tribunal can decide the Parties' dispute by any final award."²⁷⁶ Similarly, the tribunal in *Tokios Tokelés*, a case cited by Respondent, affirmed that "a measure is urgent where 'action prejudicial to the rights of either party is likely to be taken before such final decision is taken.'"²⁷⁷
322. Claimant submits that, in the case of extradition, the urgency is characterized by the very nature of the risk of extradition. Claimant, citing *Hydro v. Albania*, explains that extradition

²⁷⁵ Response to Request for Interim Measures, ¶ 155.

²⁷⁶ **Exhibit CL-32**, *Chevron Corporation and Texaco Petroleum Corporation v. Republic of Ecuador*, UNCITRAL, PCA Case No 2009-23, Second Interim Award on Interim Measures, 16 February 2012, ¶ 2.

²⁷⁷ **Exhibit CL-11**, *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Procedural Order n°3, 18 January 2005, ¶ 8.

causes an imminent risk to a claimant's ability to effectively participate in an arbitration proceeding, given that extradition may be an accomplished fact by the time an order is made.²⁷⁸

323. As set out above, Claimant further argues that, even if it is true, in principle, that France does not extradite its own nationals, French courts' usual practice is to place under custody the subject of the request (*i.e.*, Mr. Pugachev) pending the examination of the extradition request.²⁷⁹ These proceedings may last between three to five years, and Claimant may remain in custody during this period. Moreover, extradition requests are not public in France. Therefore, Claimant affirms that he is no condition to satisfy any burden, given that he does not have access to the relevant information.²⁸⁰
324. Respondent submits that Claimant himself considers that he would not be extradited from France, given that he is a French citizen. Thus, there is no need to award Claimant the relief he seeks.²⁸¹ Respondent argues that Claimant's assertion that he may be held in custody by the French authorities between three to five years pending the examination of the extradition is false. Respondent explains that this assertion is not supported in French law, which establishes a swift process for addressing extradition requests. Pursuant to this process, Respondent concludes that, if conditions for extradition are not met, Mr. Pugachev would be in custody for a "very short period of time, at most a few weeks."²⁸²
325. This Tribunal concludes that the very nature of extradition proceedings in France shows that it is highly probable that a substantial harm may befall Claimant before this Tribunal issues a final award on the merits. It is not disputed by the Parties that the French courts have the authority to hold in custody Mr. Pugachev pending the examination of the France Extradition Request, even if they disagree on the duration of such detention in custody. Moreover, Respondent itself has recognized that French legislation provides "for a swift process for addressing extradition requests."²⁸³ Thus, there is an imminent risk that Mr. Pugachev could be placed in legal custody pending the extradition request and that he would be extradited before this Tribunal issues a final award.
326. This Tribunal further notes that the confidentiality of the France Extradition Request warrants its suspension. Indeed, Claimant may be served –or even placed in custody– at an advance stage of the examination of these requests, without prior notice. At this point, it would take some time for Claimant to seek further orders from this Tribunal, thus an extradition may be a consummated fact before an order is issued by this Tribunal.

²⁷⁸ Request for Interim Measures, ¶ 257; Hearing, Tr., 34:24-35:6.

²⁷⁹ Hearing, Tr., 34:5-12; Claimant's letter to the Tribunal dated 3 March 2017, ¶¶ 11-12.

²⁸⁰ Hearing, Tr., 34:10-17; Claimant's letter to the Tribunal dated 3 March 2017, ¶ 11.

²⁸¹ Hearing Tr., 82:3-11.

²⁸² Respondent's letter to the Tribunal dated 8 March 2017, ¶¶ 15-19.

²⁸³ *Ibid.*, ¶ 17.

327. This Tribunal thus considers that the suspension of the France Extradition Request is urgent, because there is an “imminent” risk that Mr. Pugachev would be placed in custody in France and extradited and incarcerated in Russia.

5. *Proportionality*

328. As explained above, this Tribunal must weigh the balance of inconvenience in the imposition of interim measures upon the Parties. Accordingly, the Tribunal must balance the harm caused to Claimant by not suspending the France Extradition Request and the harm caused to Respondent if the France Extradition Request was stayed for purposes of this arbitration.
329. As set out above, Claimant argues that the outcome of the extradition is critical for Mr. Pugachev’s ability to defend himself and right to access to justice and due process more generally. Claimant also notes that even if France has a tradition not to extradite its own nationals, Mr. Pugachev could be held in custody pending the arbitration proceedings. Thus, Mr. Pugachev’s incarceration in Russia, and even if he is held in custody in France pending extradition, would jeopardize the arbitration proceedings.²⁸⁴
330. Respondent submits that States have the right to conduct criminal proceedings alongside arbitration proceedings. The France Extradition Request has been made in connection with criminal charges brought against Claimant in the Russian Federation. The Russian authorities are entitled to make the France Extradition Request in support of criminal proceedings against Claimant. Respondent further argues that the criminal proceedings were commenced long before this arbitration, and thus this arbitration provides no reason for Russian authorities to cease from pursuing valid criminal proceedings.²⁸⁵
331. In this case, this Tribunal considers that to suspend the France Extradition Request is proportionate. The France Extradition Request is not divorced from the dispute at issue in this arbitration. As explained above, the possible incarceration of Mr. Pugachev, as a result of the France Extradition Request, would substantially undermine his rights to (i) the integrity of the arbitration and (ii) his ability to defend himself. In particular, Mr. Pugachev would be prevented from adequately and effectively pursuing his case and participating in this arbitration.
332. This Tribunal acknowledges that the interim measure would affect Respondent’s ability to proceed with the extradition of Mr. Pugachev from France in the immediate future. However, the stay of the France Extradition Request would not definitely terminate it. Indeed, this interim measure solely requires Respondent to suspend the France Extradition Request in the present circumstances and for purposes of preserving the integrity and efficiency of this

²⁸⁴ Claimant’s letter to the Tribunal dated 3 March 2017, ¶¶ 10-13.

²⁸⁵ Respondent’s letter to the Tribunal dated 8 March 2017, ¶¶ 9-12.

arbitration. Moreover, this interim measure does not affect the criminal proceedings in Russia against Mr. Pugachev. Hence, this interim measure does not disproportionately encroach on Russia's sovereign right to prosecute crime.

333. For the above-mentioned reasons, the balance of inconveniences upon the parties derived from the suspension of the France Extradition Request demonstrates that such interim measures are proportional.
334. In ruling to suspend the France Extradition Request, this Tribunal clarifies that it is not pre-judging the merits of this case. Moreover, this Tribunal reserves its right to withdraw or modify this interim measure if Respondent demonstrates in a later stage of this arbitration that the France Extradition Request does not undermine the integrity of this arbitration or Claimant's ability to defend himself in this arbitration.
335. For the above-mentioned reasons, this Tribunal will order Respondent to take all actions necessary to suspend the France Extradition Request.

C. Interim measures related to the protection of witnesses

336. Claimant requests this Tribunal to:

(i) Order Russia to take all measures required to ensure that individuals who Mr Pugachev would need to call as witnesses in the present arbitration proceedings will be able to testify. This relates notably to Mr Ulyukaev and Mr Amunts, whose testimony Mr Pugachev will seek in the present arbitration proceedings and to any other witness already or later identified by Claimant as such;
(ii) Order Russia to stay any criminal proceedings against potential witnesses, notably Mr Ulyukaev and Mr Amunts.²⁸⁶

337. This Tribunal finds, as it will explain below, that Claimant's request for protection of witnesses is (a) unsubstantiated and (b) unprecise. Accordingly, this Tribunal notes that Claimant failed to demonstrate that his request satisfies the requirements for interim measures.

a) Claimant's request is unsubstantiated

338. Claimant states that since Russia became aware of the potential BIT claim that could be filed by Mr. Pugachev, Russia instigated various actions against potential witnesses who could corroborate Mr. Pugachev's claims.²⁸⁷ Claimant further maintains that Russia is

²⁸⁶ Request for Interim Measures, ¶ 347(4).

²⁸⁷ *Ibid.*, ¶ 262.

currently trying to force the testimonies of other potential key witnesses that could be central in the present arbitration to establish Claimant's case.²⁸⁸

339. To corroborate the aforesaid allegation, Claimant mentions the dismissal from office of six individuals, and the initiation of criminal proceedings or arrest of another five.²⁸⁹ Because of the importance of evidencing the manner in which Claimant sustains this claim, this Tribunal transcribes it below:

- *Mr Alexei Kudrin, former Minister of Finance and First Deputy Prime Minister, who had been responsible for the purchase by Russia of the Shipyard Interests, was dismissed from office.*
- *Mr Igor Sechin, who was organizing the Shipyard Interests' sale, was dismissed as Chairman of the Board of United Shipbuilding Corporation (USC).*
- *Mr Vladimir Lisin, Chairman of the Board of USC after Mr Sechin, with whom Mr Pugachev conducted the negotiations in London in relation to the compensation for the Shipyard Interests was dismissed in June 2012.*
- *Mr Roman Trotsenko, President of USC who actively participated in the expropriation of the Shipyard Interests and was the advisor of Mr Sechin, was also dismissed and a criminal investigation has been initiated against him. He was also put on a wanted person list.*
- *Mr Sergey Ignatyev, Head of the Central Bank, who was also organizing the Shipyard Interests' deal, was also dismissed.*
- *Mr Vladimir Kozhin, Head of Presidential Property Management Department and in charge of Red Square and Moscow region land projects was also dismissed.*
- *Mr Alexander Dunayev, the "right hand" of Mr Valery Miroshnikov at the DIA, was indicted and fled to Israel. He is currently on the Interpol Red Notice list and an extradition procedure has been launched against him.*
- *Mr Mikhail Bashmakov, associate of Mr. Miroshnikov, is being prosecuted in Russia and is prevented from leaving Russia.*
- *Mr Andrey Fomichev, Director of Baltic and Northern Shipyards at the time of their expropriation, is currently under criminal investigation and prevented from leaving Russia.*
- *Mr Vladimir Yevtushenkov, majority shareholder and Chairman of the Board of Sistema PJSFC, which was the majority owner of Bashneft [...] Mr Yevtushenkov was arrested in Russia. In December 2014, Bashneft was expropriated by Russia.*
- *Mr Alexey Ulyukaev, the Minister of Economy, First Deputy Head of the Central Bank at the time of the expropriation of the Shipyard Interests, was arrested based on allegedly fabricated evidence and is being now held under house arrest.²⁹⁰*

340. Claimant also mentions that Mr. Dmitry Amunts, who was for a short-term member of the IIB's Board of Directors, is being investigated in criminal proceedings in Russia, and is

²⁸⁸ *Ibid.*, ¶ 267.

²⁸⁹ *Ibid.*, ¶ 264.

²⁹⁰ *Ibid.*, ¶ 264.

being held in prison during the investigation.²⁹¹ Claimant states that the criminal proceedings in Russia against Mr. Amunts have recently accelerated because “Respondent seeks to convict Claimant’s potential witness as quickly as possible before this Tribunal can grant any interim measures.”²⁹²

341. On the contrary, Respondent asserts that Claimant has not provided any evidence to substantiate his allegations that Russia has, or intends to take, any action which will prevent Claimant from fully participating and presenting his case.²⁹³
342. At the Hearing, Respondent argued that “the criminal proceedings against Mr. Amunts have been pending for at least three years now. It is not that quick. Mr. Pugachev has not put forward any evidence to suggest that they are connected to this arbitration, those criminal proceedings, or that they are taking place unnecessarily quickly or not in accordance with Russian law.”²⁹⁴
343. First of all, this Tribunal reiterates that, as the tribunal in *Hydro v. Albania* remarked, “any obstruction of the investigation or prosecution of conduct that is reasonably suspected to be criminal in nature should only be ordered where that is absolutely necessary.”²⁹⁵ As explained in Section (IV)(B)(a)(2), there is a high threshold for ordering the suspension of criminal proceedings.
344. Having carefully considered the arguments put forward by the Parties, this Tribunal notes that Claimant’s request is unsubstantiated. Of all cases of dismissal or initiation of criminal proceedings alleged by Claimant and transcribed above, none of them is supported by evidence. The mere existence of the alleged facts is not clear to this Tribunal.
345. Moreover, this Tribunal finds that Claimant failed to prove the link between the dismissals and the initiation of criminal proceedings and the present dispute. It is not sufficiently clear that those facts are related to, or are the consequence of, the dispute brought before this Tribunal. As the *Churchill Mining v. Indonesia* tribunal stated, the mere fact of the existence of criminal proceedings cannot be argued in isolation from the purposes of obtaining interim measures: “while fears and concerns deriving from an ongoing criminal investigation may be understandable, it is not sufficient to allege, without more, that the possibility of being the target of a criminal investigation is intimidatory to obtain protection through provisional measures.”²⁹⁶

²⁹¹ *Ibid.*, ¶ 268.

²⁹² *Ibid.*, ¶ 271.

²⁹³ Response to Request for Interim Measures, ¶ 165.

²⁹⁴ Hearing, Tr., 92:5-11.

²⁹⁵ **Exhibit CL-15**, *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures, 3 March 2016, ¶ 3.16.

²⁹⁶ **Exhibit RL-48**, *Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Procedural Order No. 14, 22 December 2014, ¶ 72.

346. This Tribunal further finds that Claimant has not provided any evidence to show that Respondent has prevented Mr. Pugachev from obtaining testimonies from potential witnesses. In this regard, Claimant did not sufficiently prove that Respondent's actions will prevent the individuals from appearing as witnesses in this arbitration. Likewise, Claimant failed to provide evidence of how Respondent is currently trying to force testimonies of other potential witnesses.
347. For the above-mentioned reasons, this Tribunal finds that Claimant's request regarding the protection of witnesses is unsubstantiated.

b) Claimant's request is unprecise

348. As noted above, Claimant requests this Tribunal to order Respondent to "take all measures required to ensure that individuals who Mr. Pugachev would need to call as witnesses in the present arbitration proceeding will be able to testify [...] [and to] suspend any criminal proceedings against potential witnesses."²⁹⁷

349. Furthermore, Claimant requests the Tribunal to:

(i) Order Russia to stay the criminal proceedings against Mr. Amunts and Mr. Ulyukaev;

(ii) Order Russia not to threaten or sue any potential witness linked to this arbitration or which will be designated as such by Mr. Pugachev.

(iii) Order Russia consequently to take all appropriate measure to suspend the criminal proceedings and to refrain from initiation any other criminal proceedings directly related to the arbitration or engaging in any other course of action which might jeopardise the procedural integrity of the arbitration.²⁹⁸

350. On this matter, Respondent argued at the Hearing that "the effect of Mr. Pugachev's requested relief would be to require the stay of any criminal proceedings against potential witnesses. That is to say that it gives anyone who Mr. Pugachev identifies as a potential witness free rein to commit criminal offences without fear of sanctions."²⁹⁹

351. Respondent further alleges that Claimant's request to take all measures required to ensure that individuals who Mr. Pugachev would need to call as witnesses is an extremely broad category.³⁰⁰

352. This Tribunal notes that Claimant's request to "order Russia to take all measures required to ensure individuals who Mr. Pugachev would need to call as witnesses in the present

²⁹⁷ Request for Interim Measures, ¶ 347.

²⁹⁸ *Ibid.*, ¶ 277.

²⁹⁹ Hearing, Tr., 92:18-23.

³⁰⁰ Response to Request for Interim Measures, ¶ 166.

arbitration proceedings will be able to testify”³⁰¹ is a request for Respondent to merely comply with one of its obligations in this arbitration.

353. On the other hand, this Tribunal considers that Claimant’s request to “order Russia to stay any criminal proceedings against potential witnesses”³⁰² is too broad in scope to be actionable. The “potential witnesses” category is so broad that would prevent Russia from prosecuting a potentially indefinite number of individuals. Moreover, in the manner in which the relief is requested, any person who is a potential witness would have a *de facto* immunity to be investigated for criminal acts. This Tribunal observes that the granting of such an order would be an extreme burden on Respondent.
354. In this manner, this Tribunal finds that Claimant’s request related to the protection of witnesses is unprecise and would be a disproportionate burden on Respondent.
355. This Tribunal concludes that Claimant’s request for the protection of witnesses is unsubstantiated and unprecise. Accordingly, Claimant failed to demonstrate that his request for protection of witnesses satisfies the requirements for interim measures. For the above-mentioned reasons, this Tribunal will deny Claimant’s request related to the protection of witnesses.
356. For an application to protect witnesses of the nature requested by Claimant, the applicant should at least provide: (i) a witness identification; (ii) a description of the conduct of the State leading to the prevention of access to such a witness; (iii) a generic description of how the testimony will be relevant and necessary to the case; (iv) and an allegation of how the particular request meets the five requirements for granting an interim measure. None of the above have been provided in this case.

D. Interim measures related to the protection of Mr. Pugachev and other individuals

357. Claimant requests this Tribunal to order Russia to abstain from taking any action that could intimidate Mr. Pugachev, his family, advisors, counsels, experts and any person who assists him in the preparations of the claim in the present arbitration.³⁰³
358. After careful consideration of the arguments brought up by the Parties, this Tribunal considers that Claimants request is (a) unsubstantiated and (b) unprecise.

³⁰¹ Request for Interim Measures, ¶ 347.

³⁰² *Ibid.*, ¶ 347.

³⁰³ *Ibid.*, ¶ 347(5).

a) Claimant's request is unsubstantiated

359. Claimant asserts that Mr. Pugachev and his family have been threatened and frightened several times by persons connected to the Respondent.³⁰⁴ In this regard, Claimant affirms that:

(i) “in June 2011, Mr. Pugachev was kidnapped by two officials of the DIA [...] who attempted to extort money from Mr. Pugachev by threatening his and his family's life and safety;”³⁰⁵

(ii) “since 2012, Mr. Pugachev has been under surveillance of Diligence LLC, a private investigation company hired by the Russian authorities to identify Mr. Pugachev's assets, but which also conducted extensive surveillance on Mr. Pugachev's family and members of his team assisting in this arbitration, in the UK and France;”³⁰⁶ and

(iii) “on 9 October 2015, Ms. Kate Mallisson, analyst of the security agency GPW Ltd in London, informed Mr. Pugachev's former partner that a professional killer had been hired to kill Mr. Pugachev.”³⁰⁷

360. Respondent, in turn, argues that “Claimant's allegations with respect to these issues are so lacking in evidence that they border on the fanciful. In addition, the Claimant has failed to provide any explanation linking the Respondent to these allegations. The conclusions that the Claimant draws are therefore wholly unconvincing.”³⁰⁸

361. This Tribunal affords the utmost importance to the security and safety of Mr. Pugachev, his family, advisors, counsels, experts and any person who assists him in the present arbitration. Nevertheless, having carefully reviewed the evidence submitted by Mr. Pugachev, this Tribunal finds that:

(i) Claimant failed to provide sufficient evidence related to the alleged kidnapping. There is no evidence on the record, besides Claimant's assertions, that indicates the existence of this event;

(ii) Claimant has not demonstrated that Diligence LLC was employed by Respondent. There is no evidence on the record suggesting that Respondent hired Diligence LLC to put Mr. Pugachev and his family under surveillance. In this regard, after reviewing specific evidence on this question, the Tribunal found two relevant exhibits. First, **Exhibit C-32**,

³⁰⁴ *Ibid.*, ¶ 280.

³⁰⁵ *Ibid.*, ¶ 281.

³⁰⁶ *Ibid.*, ¶ 282.

³⁰⁷ *Ibid.*, ¶ 285.

³⁰⁸ Response to Request for Interim Measures, ¶ 178.

which consists of an email sent by Mr. Pugachev himself to French police officers.³⁰⁹ Second, **Exhibit C-33**, which is a letter sent by a British law firm to a New Scotland Yard's detective with the opinion that Diligence LLC was working under the instruction of international law firm Hogan Lovells.³¹⁰ However, none of these exhibits reasonably indicate that Diligence LLC was employed by Respondent; and

(iii) Claimant failed to provide sufficient evidence regarding the alleged threat to his life. In this vein, **Exhibit C-33** mentions that "Kate Mallison [...] informed [his] wife, Alexandra Tolstoy-Miloslavsky, that she had information that someone had contracted a contract killer in France to kill me."³¹¹ Furthermore, from the evidence provided by Claimant, it is unclear how there is a link between the alleged threat and Respondent.

362. As noted above, this Tribunal does not expect Claimant to prove conclusively the existence of threats against himself and other individuals. This would constitute an extremely high burden of proof that Claimant could hardly satisfy. However, Claimant must submit sufficient evidence to assert at least the nature of the threats made, and the impact on him and other individuals' safety and security.

363. For these reasons, this Tribunal finds that Claimant's request regarding the protection of Mr. Pugachev and other individuals is not sufficiently substantiated.

b) Claimant's request is unprecise

364. Claimant makes his request as follows:

- i. Order Russia to abstain from taking any action which is aimed at intimidating Mr Pugachev and the members of his family;*
- ii. Order Russia to abstain from taking any action that could intimidate advisors, counsel and experts for Mr Pugachev in the present proceedings, and more generally any person who assists Mr Pugachev in the preparation of his claim in arbitration.³¹²*

365. It is unclear for this Tribunal what is the scope of the expressions "any action" or "that could intimidate". These expressions are very broad in definition and are subject to a high degree of subjectivity.

366. The tribunal in *Hydro v. Albania* faced a similar request and stated that "the proposed measure is to refrain from initiating other proceedings 'directly or indirectly related to the present arbitration' and also to 'engaging in any other course of action that may aggravate

³⁰⁹ **Exhibit C-32**, Letter from Peters & Peters to Detective Constable Rhodri Gardner, 9 September 2015.

³¹⁰ **Exhibit C-33**, Email from Mr. Pugachev to Officer Gardner, 16 October 2015.

³¹¹ **Exhibit C-33**, Email from Mr. Pugachev to Officer Gardner, 16 October 2015.

³¹² Request for Interim Measures, ¶ 347.

the dispute'. The terminology is too broad, vague and uncertain in scope and is in any event premature."³¹³

367. This Tribunal notes that the language in which Claimant's request is formulated is unprecise, so that its application would be impossible and would place a disproportionate burden on Respondent.
368. In conclusion, this Tribunal finds that Claimant's request regarding the protection of Mr. Pugachev and other individuals is unsubstantiated and unprecise. In consequence, Claimant did not satisfy the necessary requirements for granting an interim measure. For these reasons, this Tribunal will deny Claimant's request related to the protection of Mr. Pugachev and other individuals.
369. Nonetheless, as mentioned in Section (IV)(A)(b)(2), this Tribunal remains open to take any measure it deems necessary to protect the life and safety of Mr. Pugachev and to protect the life and safety of other individuals to the extent required to protect the integrity of this arbitration. However, in order to take any measure, this Tribunal needs to find sufficient evidence that reasonably indicates the existence of a threat that is attributed to Respondent together with an allegation of how the particular request meets the five requirements for granting interim measures.

E. Security for costs applications from the Parties

370. Having carefully considered the Parties' submissions, this section refers to: (a) the Tribunal's power to consider and grant security for costs; (b) the legal standard to grant security for costs; (c) how Respondent's Security for Costs Application does not meet the applicable legal standard; and (d) how Claimant's security for costs application included in the Request for Interim Measures (the "**Claimant's Security for Costs Application**") does not meet the applicable legal standard.

a) This Tribunal's power to consider and grant security for costs

371. The Parties agree that this Tribunal has the power to grant requests for security for costs.³¹⁴ Although this issue is not contested, the Tribunal will examine whether it has the power to consider and, if the applicable legal standard is satisfied, grant the security for costs applications.
372. This Tribunal is of the view that its power to grant security for costs applications falls under Article 26 of the 1976 UNCITRAL Rules. Pursuant to this provision, UNCITRAL Tribunals

³¹³ **Exhibit CL-15**, *Hydro Srl and others v. Republic of Albania*, ICSID Case No ARB/15/28, Order on Provisional Measures, 3 March 2016, ¶ 4.5.

³¹⁴ Respondent's Security for Costs Application, ¶ 5; Reply to Respondent's Security for Costs Application, ¶ 13; Response to Request for Interim Measures, ¶ 193.

have the power to, upon request of either party, “take any interim measures it deems necessary in respect of the subject-matter of the dispute.”³¹⁵ Moreover, Article 26(a) of the UNCITRAL Rules expressly entitles UNCITRAL Tribunals to require “security for the costs” of such interim measures. Article 26 of the UNCITRAL Rules does not set forth a limit on the types of provisional measures that this Tribunal may take. In this sense, this Tribunal has the powers to request a party to provide security for costs.

373. Additionally, in the context of investment arbitration, several arbitral tribunals have expressly confirmed that arbitral tribunals have the power to grant requests for security for costs. Both Parties have put forward several of these decisions,³¹⁶ and such decisions confirm the Tribunal’s conclusion that it has the power to grant security for costs applications.

b) The legal standard to grant security for costs

374. The Tribunal notes that the Parties disagree on the criteria that the requesting party must establish to grant security for costs.

375. Respondent argues that this Tribunal should consider the factors listed in Article 1(2) of the CIArb Practice Guidelines to evaluate whether to grant Respondent’s Security for Cost Application. Respondent submits that the Tribunal should consider: (i) Claimant’s prospect of success in its claims and defences; (ii) Claimant’s ability to satisfy an adverse costs award and the availability of Claimant’s assets to enforce such award; and (iii) whether it is fair in all the circumstances to require one party to provide security for the other party’s costs.³¹⁷ In its Response to Claimant’s Request for Interim Measures, Respondent, citing *South American Silver v. Plurinational State of Bolivia*, further submits that investment arbitration tribunals are reluctant in awarding security for costs except in “exceptional circumstances.”³¹⁸

376. On the other hand, Claimant submits that the requesting party must establish the following criteria before a security for costs is granted: (i) a reasonable possibility to succeed on the merits (*i.e.*, a plausible defence on the merits) and a likelihood to be awarded costs; (ii) the existence of extreme and exceptional circumstances warranting a security for costs; and (iii)

³¹⁵ **Exhibit CL-22**, 1976 UNCITRAL Arbitration Rules, Article 26(1).

³¹⁶ **Exhibit RL-49**, *South American Silver Limited v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Procedural Order No. 10, ¶¶ 48-52; **Exhibit CL-60**, *RSM Production Corporation v. Government of Grenada*, ICSID Case No. ARB/10/6, Tribunal’s Decision on Respondent’s Application for Security for Costs, 14 October 2010, ¶ 5.5; **Exhibit CL-25**, *Libananco Holdings Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Decision on Preliminary Issues, 23 June 2008, ¶ 57; and **Exhibit CL-24**, *Burimi S.R.L. & Eagle Games S.H.A v. Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2 (Provisional Measures Concerning Security for Costs), 3 May 2012, ¶¶ 28-33.

³¹⁷ Respondent’s Security for Costs Application, ¶¶ 9-10.

³¹⁸ Response to Request for Interim Measures, ¶ 193.

that to grant the security for costs would not disproportionately burden the party against whom the measure is sought.³¹⁹

377. Having carefully considered the application submitted by both Parties, this Tribunal is of the opinion that a security for costs application is an extraordinary measure that should only be granted in “extreme and exceptional circumstances.”³²⁰ This approach is supported by the cases put forward by the Parties in their respective submissions and by the Parties’ admission that the requesting party has to establish that exceptional circumstances exist that warrant security for costs.³²¹
378. Pursuant to decisions of arbitral tribunals, exceptional circumstances are construed to require that a security for costs request is both (i) necessary and (ii) urgent.³²² The tribunal in *South American Silver v. Plurinational State of Bolivia* established that a security for costs application meets these requirements in the following terms:

*In relation to the necessity and the urgency of the measure, investment arbitration tribunals considering requests for security for costs have emphasized that they may only exercise this power where there are extreme and exceptional circumstances that prove a high real economic risk for the respondent and/or that there is bad faith on the part from whom the security for costs is requested.*³²³

379. Therefore, the controlling criteria in the review of requests for security for costs is to establish whether there are exceptional circumstances that demonstrate a high real economic risk or that there is bad faith on the party subject to security for costs.
380. *R.S.M. v. Saint Lucia*, a case invoked by Respondent, is the landmark example of an arbitration where the tribunal was satisfied that such exceptional circumstances existed. The tribunal considered that claimant’s history of unpaid advances, opposing party’s costs and final awards in two different international arbitrations was sufficient to determine that exceptional circumstances existed, and thus it was urgent and necessary to grant the security

³¹⁹ Reply to Respondent’s Security for Costs Application, ¶¶ 13-15.

³²⁰ **Exhibit RL-49**, *South American Silver Limited v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Procedural Order No. 10, ¶ 59; **Exhibit CL-60**, *RSM Production Corporation v. Government of Grenada*, ICSID Case No. ARB/10/6, Tribunal’s Decision on Respondent’s Application for Security for Costs, 14 October 2010, ¶ 5.17; **Exhibit CL-24**, *Burimi S.R.L. & Eagle Games S.H.A v. Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2 (Provisional Measures Concerning Security for Costs), 3 May 2012, ¶ 34.

³²¹ Reply to Respondent’s Security for Costs Application, ¶¶ 23-24; Response to Request for Interim Measures, ¶¶ 193-194.

³²² **Exhibit RL-49**, *South American Silver Limited v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Procedural Order No. 10, ¶ 59; **Exhibit CL-63**, *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia’s request for security for costs, Assenting reasons of Gavan Griffith, 12 August 2014, ¶ 75; and **Exhibit CL-24**, *Burimi S.R.L. & Eagle Games S.H.A v. Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2 (Provisional Measures Concerning Security for Costs), 3 May 2012, ¶ 34.

³²³ **Exhibit RL-49**, *South American Silver Limited v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Procedural Order No. 10, ¶ 59.

for costs, based on the following: (i) claimant failed to pay the requested advances in an ICSID annulment proceeding, and the proceeding was eventually discontinued; and (ii) claimant, in an investor-State arbitration, failed to pay the costs advanced by the opposing party (*i.e.*, the State of Grenada) and the final award, which had to be paid by one of claimant's shareholders. The tribunal reached the conclusion that claimant's conduct in these two international proceedings was sufficient to establish that it did not have sufficient financial resources, and that it was inappropriate to wait for the final award before dealing with respondent's legal costs.³²⁴

381. Moreover, this Tribunal notes that the standard to establish that the opposing party lacks sufficient financial resources to warrant granting security for costs is "very high."³²⁵ As acknowledged by the tribunal in *South American Silver v. Plurinational State of Bolivia*, "the lack of assets, the impossibility to show available economic resources or the existence of economic risk or difficulties that affect the finances of a [party] are not *per se* reasons or justifications sufficient to warrant security for cost."³²⁶

c) Respondent's Security for Costs Application does not meet the applicable legal standard

382. Respondent seeks an order from this Tribunal requiring the Claimant to provide security for costs in the amount of eight hundred thousand dollars (USD 800,000).³²⁷
383. Respondent argues that this Tribunal should grant its security for costs application due to: (i) Claimant's low prospect of success in this arbitration;³²⁸ (ii) Claimant's lack of liquidity due to the UK Freezing Order and an uncertain financial situation;³²⁹ and (iii) a real risk of non-enforcement of any costs award.³³⁰ In this regard, it is worth considering each of these arguments.
384. Claimant submits that Respondent has failed to satisfy the standard to obtain a security for costs because (i) Respondent has failed to establish a plausible defence on the merits and a likelihood that it will be awarded costs; (ii) Respondent has failed to demonstrate the existence of exceptional circumstances that warrant its request for security for costs to be

³²⁴ **Exhibit CL-63**, *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's request for security for costs, Assenting reasons of Gavan Griffith, 12 August 2014, ¶¶ 77-82, 85.

³²⁵ **Exhibit RL-49**, *South American Silver Limited v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Procedural Order No. 10, ¶ 61.

³²⁶ **Exhibit RL-49**, *South American Silver Limited v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Procedural Order No. 10, ¶ 63; **Exhibit CL-60**, *RSM Production Corporation v. Government of Grenada*, ICSID Case No. ARB/10/6, Tribunal's Decision on Respondent's Application for Security for Costs, 14 October 2010, ¶ 5.19 ("In an ICSID arbitration, it is also doubtful that a showing of an absence of assets alone would provide a sufficient basis for such an order").

³²⁷ Respondent's Security for Costs Application, ¶ 1.

³²⁸ *Ibid.*, ¶¶ 12-14.

³²⁹ *Ibid.*, ¶¶ 15-22.

³³⁰ *Ibid.*, ¶¶ 23-25.

granted; and (iii) Respondent's request is based on a speculative risk that would not substantially outweigh the harm that Claimant will suffer from a security for cost.³³¹

385. Claimant further notes that there are no exceptional circumstances that could justify granting security for costs, given that he has no history of unpaid awards and he has timely paid all the advance costs in this arbitration. In addition, Claimant alleges that his financial situation is the result of Russia's illegal expropriation and, thus, to grant Respondent's Security for Costs Application would allow Russia to benefit from its improper and illicit conduct.³³²
386. This Tribunal considers that Respondent's allegation that Claimant has a low prospect of success in this arbitration would require it to examine the merits of Claimant's claims. At this stage of the proceedings, this Tribunal is precluded from prejudging any matters submitted to its decision, and it is not necessary to make any determination on this issue for this Tribunal to reach a decision on Respondent's Security for Costs Application.³³³ Thus, the Tribunal does not consider it necessary, nor appropriate, to examine Claimant's alleged low prospect of success.
387. Moreover, this Tribunal considers that Respondent has not provided enough evidence to establish that Claimant has insufficient assets or that he would have difficulties in satisfying an adverse costs award. The fact that Claimant is subject to the UK Freezing Order alone is not sufficient to overcome the "very high" threshold to grant security for costs. This Tribunal further considers that Claimant's failure to respond to Respondent's queries on his current financial situation is not sufficient to imply that Claimant does not have the financial resources to comply with an adverse costs award.
388. Furthermore, Claimant's conduct in this arbitration suggests that he has sufficient financial resources to pay an eventual adverse costs award. First, Claimant has fully paid the initial deposit ordered by the Tribunal. Second, Claimant has been able to present his case before this Tribunal and respond to the opposing party's submissions. Indeed, Claimant has submitted before this Tribunal the Notice of Arbitration, the Request for Interim Measures, two requests for immediate interim orders, his Reply to Respondent's Security for Costs Application and a considerable number of applications and cross-applications. Moreover, Claimant's counsel presented oral submissions to this Tribunal at the Hearing. Third, the Tribunal also notes that Claimant has been able to defend himself in multiple proceedings before different jurisdictions. The previous facts suggest that Claimant's has a financial

³³¹ Reply to Respondent's Security for Costs Application, ¶¶ 46-82.

³³² *Ibid.*, ¶¶ 57-73.

³³³ **Exhibit RL-49**, *South American Silver Limited v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Procedural Order No. 10, ¶ 56 ("On this respect, the Tribunal shares the view of *Rurelec v. Bolivia*, in which it was stated that "[i]t is also unwise to risk even the most minor prejudgment of the case [...]. Such determinations are therefore best avoided unless absolutely necessary to come to a decision on the requests for interim measures, which is not the case here").

capacity, or at least has entered into an agreement with his lawyers, to defend himself in this arbitration and pay an eventual cost awards. Therefore, there is no sufficient evidence that leads this Tribunal to the conclusion that exceptional circumstances exist to grant Respondent's Security for Costs Application.

389. Respondent further alleges that a real risk of non-enforcement of any costs award arises from the Claimant's failure to comply with twelve orders of the English High Court. Respondent also points to Claimant's failure to comply with this Tribunal's request to refrain from making public statements and disclose information. Additionally, Respondent submits that these circumstances show a tendency of Claimant to act in bad faith.³³⁴
390. Contrary to Respondent's allegation, Claimant's alleged failure to comply with orders of the English High Court does not constitute an exceptional circumstance that warrants a security for cost. This Tribunal notes that the orders that Claimant allegedly breached are related to proceedings initiated by DIA and/or the IIB, thus form part of the issues to be discussed in this arbitration. In this sense, it is not clear that Claimant's alleged failure to comply with these orders speaks to Claimant's ability to satisfy an adverse costs award, nor provide sufficient evidence of bad faith. Thus, this Tribunal is of the opinion that such conduct is not sufficient to overcome the high threshold to grant security for costs.
391. Respondent also alleges that Claimant's failure to comply with the Tribunal's requests to refrain from making public statements and disclosing information demonstrates a real risk of non-enforcement of an adverse cost award.³³⁵ This Tribunal notes that this matter is related to Respondent's applications concerning Claimant's alleged breaches of confidentiality provisions in PO1 and the Tribunal's order dated 9 November 2016. In this regard, having carefully considered Respondent's applications on this matter, this Tribunal will not derive any further consequences from Claimant's alleged failure to comply with such Tribunal's orders other than those set out in Section (IV)(H).
392. In any case, Claimant's alleged failure to comply with the Tribunal's orders to refrain from making public statements and disclosing information, even if sufficiently established, is not *alone* sufficient to overcome the standard to grant security for costs. As explained above, Claimant has failed to establish that exceptional circumstances exist that demonstrate that the requested security for costs is necessary and urgent.
393. For the above-mentioned reasons, this Tribunal denies Respondent's Security for Costs Application, given that there are no exceptional circumstances that demonstrate that the measures sought are necessary or urgent.

³³⁴ Respondent's Security for Costs Application, ¶ 23.

³³⁵ *Ibid.*, ¶ 29.

d) Claimant's Security for Costs Application does not meet the applicable legal standard

394. In its Request for Interim Measures, Claimant requested this Tribunal to grant a security for costs in his favour either in the form of a transfer of funds in an escrow –or in any other way– for EUR 10 million.
395. Claimant alleges that, in this case, Respondent's past record regarding non-reimbursement of costs from international arbitration awards is an exceptional circumstance that must be considered to grant the requested security for costs. Claimant cites two cases that allegedly illustrate Russia's record of not paying final awards, the *Noga* case and the *Sedelmayer* case.³³⁶ In addition, Claimant submits that Russia has "bluntly declared that it intends not to abide by international awards rendered against it [...]."³³⁷ In this regard, Claimant submits that this declaration further demonstrates that exceptional circumstances exist that warrant a security for costs.
396. Respondent alleges, based on the ruling of the tribunal in *Burimi v. Albania*, that Claimant's request must be rejected because it is grounded on hypothetical harm and uncertain future actions. Moreover, Respondent alleges that it is incorrect for Claimant to "accuse" Respondent that it does not intend to "abide by international awards." Respondent clarifies that of the ten awards that have been issued against Russia: (i) five have been set aside; (ii) payment has been settled in three awards; (iii) payment is pending in respect of one award; and (iv) annulment proceedings are pending in respect of one award.³³⁸ Thus, it is incorrect to claim that Russia does not intend to abide by international awards.
397. In this case, this Tribunal finds that Claimant has failed to sufficiently establish that exceptional circumstances exist that justify his request for security for costs. Claimant bases his request mainly on the premise that Russia allegedly has a record of not paying adverse costs awards. This Tribunal considers that Claimant has failed to provide sufficient evidence to substantiate this allegation.
398. Moreover, the fact that Mr. Pugachev has incurred "very heavy costs" to defend his case does not overcome the "very high" threshold to grant security for costs. As explained above, the economic risks or financial difficulties that affect a party are not *per se* sufficient reasons or justifications to warrant security for costs.³³⁹ Thus, the fact that Mr. Pugachev has

³³⁶ In the *Noga* case, Claimant argues that Russia refused to pay two awards that amounted to USD 27 millions of damages, and the claimant went bankrupt for attempting to enforce such awards. In the *Sedelmayer* case, Claimant argued that the claimant collected the USD 2 million awarded by the tribunal after a costly litigation and two decades after the award was issued.

³³⁷ Request for Interim Measures, ¶ 329.

³³⁸ Response to Request for Interim Measures, ¶ 191.

³³⁹ **Exhibit RL-49**, *South American Silver Limited v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Procedural Order No. 10, ¶ 63; **Exhibit CL-60**, *RSM Production Corporation v. Government of Grenada*, ICSID

incurred considerable costs in defending his cases does not constitute an exceptional circumstance that justifies this Tribunal to grant his request for security for costs.

399. For the above-mentioned reasons, this Tribunal is of the opinion that Claimant has failed to overcome the high threshold to grant security for costs.

F. Respondent’s Application for Disclosure of Third Party Funders

400. In its Security for Cost Application, Respondent requested this Tribunal to order Claimant “to disclose the name of any third-party funders as well as the terms of any funding agreement.”³⁴⁰ This Tribunal notes that Claimant has affirmed that “there is no reason that would warrant the disclosure by Claimant of any third-party funding arrangement, since *there is none*.”³⁴¹
401. Since Claimant has already disclosed that there is no third-party funder, and Respondent has not submitted evidence suggesting that there is one, this Tribunal does not need to decide on such a request.

G. Claimant’s Security for Claims Application

402. In its Request for Interim Measures, Claimant requested this Tribunal to order Respondent to provide a security for claim in the form of either (i) the transfer of six billion dollars (USD 6 billion) –or any other amount the Tribunal deems appropriate– to an escrow account administered by this Tribunal; or (ii) to issue a letter of comfort³⁴² where Respondent indicates that it will abide to its international obligations, including, but not exclusively, under the France-Russia BIT and that it will respect any award issued in this arbitration, including any pecuniary or non-pecuniary obligations therein (the “**Security for Claims Application**”).³⁴³
403. Claimant argues that this Tribunal has the inherent power to order a security for claim pursuant to Article 26 of the UNCITRAL Rules, which authorizes the Tribunal to take “measures for the conservation of the goods forming the subject-matter in dispute.”³⁴⁴ Claimant also identifies *Burimi v. Albania* as case where the tribunal considered that it had the power to grant a security for claim in favour of claimant.³⁴⁵

Case No. ARB/10/6, Tribunal’s Decision on Respondent’s Application for Security for Costs, 14 October 2010, ¶ 5.19.

³⁴⁰ Respondent’s Security for Costs Application, ¶ 43(ii).

³⁴¹ Reply to Respondent’s Security for Costs Application, ¶ 91 (emphasis added).

³⁴² The Claimant provided a draft letter of comfort in Appendix C of the Request for Interim Measures.

³⁴³ Request for Interim Measures, ¶ 321 and 347(6)(i).

³⁴⁴ *Ibid.*, ¶ 75.

³⁴⁵ *Ibid.*, ¶ 80.

404. Claimant further submits that this Tribunal should grant Claimant’s Security for Claims Application given that his situation is “exceptional and the risk not speculative” on the following grounds. First, Respondent has continuously refused to comply with past arbitral awards and other pecuniary commitments. Second, Respondent’s credit situation has deteriorated because (i) Russia has recently enacted laws that protect its assets from enforcement proceedings; (ii) Russia pressures other governments not to enforce international decisions against its property; and (iii) Russia is increasingly a respondent in investment treaty cases and in cases before the European Court of Human Rights (the “**ECHR**”), and thus there are more creditors trying to enforce their claims. Third, the security for claim is necessary due to the “exorbitant damages” suffered by Mr. Pugachev that result from Respondent’s destructive strategy that targets Mr. Pugachev’s “entire business empire.”³⁴⁶
405. Respondent does not contest that this Tribunal has the power to grant security for claims, but points out that no investment arbitration tribunal has done so to date. Respondent also draws the attention of this Tribunal to the fact that Respondent incorrectly relies on *Burimi v. Albania* as an example of a case where a party requested security for claims. Respondent points out that such a case refers to a request for security for costs, and not security for claims. Respondent further submits that Claimant has failed to establish that the Security for Claims Application satisfies the requirements for granting provisional measures.³⁴⁷
406. In this case, this Tribunal has carefully considered the submissions filed by the Parties related to the Security for Claims Application. This Tribunal has reached the conclusion that Claimant has failed to substantiate its Security for Claims Application.
407. First, Claimant’s allegation that Respondent has been reluctant to comply with past arbitration awards is solely substantiated with references to two cases, namely, the *Noga* case and the *Sedelmayer* case.³⁴⁸ In response, and as previously mentioned in Section (IV)(E)(d), Respondent questions the accuracy of Claimant’s submissions and provides a detailed explanation of the status of the ten awards rendered against it: (i) five have been set aside; (ii) payment is pending in one case; (iii) three have been settled; and (iv) annulment proceedings are pending in one case. Against this background, Claimant has not provided sufficient evidence that support his argument that Respondent continuously refuses to comply with international awards. In this context, it would be disproportionate to order Respondent to grant a security for claim in favour of Claimant.

³⁴⁶ Request for Interim Measures, ¶¶ 292-327.

³⁴⁷ Response to Request for Interim Measures, ¶¶ 190-191.

³⁴⁸ In the *Noga* case, Claimant argues that Russia refused to pay two awards that amounted to USD 27 million of damages, and the claimant went bankrupt for attempting to enforce such awards. In the *Sedelmayer* case, Claimant argued that the claimant collected the USD 2 million awarded by the tribunal after a costly litigation and two decades after the award was issued.

408. Second, Claimant also argues that its Security for Claims Application should be granted because Russia has not complied with commitments made to Mr. Pugachev in the past. For example, Claimant submits that Respondent affirmed that it would compensate Mr. Pugachev for the termination of an investment agreement with one of its companies, but failed to do so.³⁴⁹ At this stage of the proceedings, this Tribunal will abstain from entertaining any of these alleged breaches of Respondent's commitments, given that it must not prejudge the merits of this case.
409. Third, this Tribunal considers that Claimant's arguments alleging that Russia has enacted laws that protect its assets from enforcement proceedings and it is increasingly a respondent in investment treaty cases and ECHR proceedings, even if true, do not necessarily imply that Russia will not pay any adverse award rendered by this Tribunal. Moreover, Claimant has not pointed to any fact that suggests that Russia intends or has initiated any act to avoid compliance with a future award on the merits.
410. Fourth, Claimant's allegation that Respondent pressures other governments not to enforce international decisions against its property is unsubstantiated. Claimant mostly supports this assertion with articles published in newspapers, journals and other websites.³⁵⁰ This Tribunal cannot rely on such exhibits in order to support Claimant's assertion.
411. Finally, Claimant argues that Mr. Pugachev's financial situation warrants granting a security for claim. However, this Tribunal does not consider that Mr. Pugachev's financial difficulties *per se* are sufficient to grant a security for claim. This Tribunal further notes that Claimant argues that the security for claim is necessary due to the exorbitant damages suffered by Mr. Pugachev, which at this stage amount to twelve billion dollars (USD 12 billion). However, Claimant has not substantiated why the underlying amount in dispute in this arbitration speaks against Respondent's ability or disposition to comply with an adverse award.
412. For the above-mentioned reasons, this Tribunal is of the opinion that Claimant has failed to substantiate its Security for Claims Application. Consequently, it would be disproportionate to order Respondent to grant a security for claim based on Claimant's request.

³⁴⁹ Request for Interim Measures, ¶¶ 298-299.

³⁵⁰ **Exhibit CL-46**, A. Panov, "Law on Jurisdictional Immunities of Foreign States Passed", International Law Office, 1 December 2015; **Exhibit CL-47**, A. Ross, "Russia's Lawmakers Respond to Yukos Enforcement Attempts", Global Arbitration Review, 19 August 2015; **Exhibit C-74**, H. Amos, "Russia Pushes Ahead with Law to Confiscate Foreign Assets", The Moscow Times, 6 August 2015; **Exhibit CL-42**, T. Osborne, "Rule of Law Forgotten. The Justice of the Yukos case – an Investor View", Global Arbitration Review, 30 August 2016.

H. The alleged breach of confidentiality provisions of PO1, the Order issued on 9 November 2016 and the 26 May 2017 Order

413. By letter dated 8 March 2017, Respondent requested from this Tribunal the following additional relief: (i) grant permission for the Respondent to share the Response with the DIA, and for the DIA to exhibit the Response to Request for Interim Measures in the French Proceedings; (ii) a declaration that Claimant's public statements consist of incorrect and misleading information and have been made in breach of Tribunal's 9 November Order and PO1; and (iii) any such relief as the Tribunal sees fit.
414. Respondent justifies the additional relief by asserting that an order permitting him to share the Response to Request for Interim Measures with the DIA would provide the DIA a better understanding of Claimant's allegations in this arbitration. Additionally, Respondent affirms that permitting the DIA to exhibit the Response to Request for Interim Measures in the French proceedings would enable the DIA to correct Claimant's misleading statements made to the French court.
415. Respondent alleges that such relief is justified since it complies with the five requirements for issuing an interim measure. Respondent sustains that:
- (i) the Tribunal has *prima facie* jurisdiction to grant relief in respect of the Claimant's breach of PO1, and to grant relief to remedy the harm caused by the Claimant's failure to comply with PO1;
 - (ii) there is a *prima facie* existence of a right being susceptible to protection where the right is clearly enshrined in PO1;
 - (iii) the relief sought is necessary and essential as the Claimant's ongoing breaches of PO1 are capable of causing irreparable harm given the Claimant's press campaign – disseminating not only confidential information about the arbitration, but also false and misleading information–, as well as his use of materials from the arbitration to mislead national courts in clear breach of PO1; thereby causing harm that may not be remedied by monetary compensation;
 - (iv) the relief sought is urgent as the Claimant continues to disseminate false and misleading information about this arbitration in breach of PO1 on a regular basis, most recently on 3 March 2017, requiring immediate action by the Tribunal prior to the issuance of a final award; and
 - (v) the relief requested is proportionate as the Claimant will suffer no harm if ordered to comply with the Tribunal's order, whereas Respondent will continue to suffer the harm arising out of the Claimant's breaches of the 9 November Order and PO1, particularly where the relief requested is that the Claimant refrain from activities on which the Tribunal has

already ruled and complying with the Tribunal's ruling requires no effort or expense. Any effort or expense the Claimant may incur in repairing the harm caused by his breaches, as requested by the Respondent, flows directly from his own repeated breaches.

416. Pursuant to Article 15(1) of the 1976 UNCITRAL Rules, "the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case." According to this Article, the Tribunal's authority to conduct the arbitration finds its limit on the Parties' rights of equality and due process. Thus, this Tribunal has wide powers to guarantee the Parties' rights and preserve the integrity and efficiency of this arbitration.
417. On this point, the *Methanex Corporation v. United States of America* decision stressed that "Article 15(1) of the UNCITRAL Arbitration Rules grants to the Tribunal a broad discretion as to conduct of this arbitration, subject always to the requirements of procedural equality and fairness towards the Disputing Parties. This provision constitutes one of the essential 'hallmarks' of an international arbitration under the UNICITRAL Arbitration Rules, according to the *travaux préparatoires*."³⁵¹
418. Against this background, this Tribunal must consider whether it would (i) grant permission for Respondent to share the Response with the DIA; and (ii) make a declaration regarding Claimant's public statements.
419. First, regarding Respondent's request for permission to share the Response with the DIA, and for the DIA to exhibit the Response in the French Proceedings, this Tribunal stresses that Article 10.4 of PO1 provides that the Parties must keep confidential all materials submitted in the framework of the arbitral proceedings, except that a disclosure may be required to comply with a legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a judicial authority.
420. In the case at hand, this Tribunal notes that Respondent has failed to substantiate how the disclosure of the Response is required to comply with a legal duty of Respondent, to protect or pursue a right of Respondent, or to enforce or challenge an award. Particularly, it is not sufficiently clear how the disclosure of the Response would protect Respondent's rights in the French Proceedings, if any such right exists given that Respondent is not a party to those proceedings.
421. Furthermore, this Tribunal notes that the applicant in the French Proceedings is the DIA and, as mentioned in Section (IV)(A)(a), there is not sufficient evidence to assert that, *prima*

³⁵¹ **Exhibit RL-59**, *Methanex Corporation v. United States of America*, Decision of the Tribunal on Petitions from Third Persons, intervene as "amici curiae", 15 January 2001, ICSID administered, 1976 UNCITRAL Rules, NAFTA Chapter Eleven, ¶ 26, Appendix 11.

facie, the DIA is the same as or is synonymous to the Respondent, or that the acts of the DIA should be attributed to the Respondent. Accordingly, the measure requested by Respondent pursues the protection of a right that allegedly is not its and, therefore, is not susceptible of protection under the present circumstances.

422. Second, the Tribunal denies Respondent's request for this Tribunal to make a declaration in the sense that Claimant's public statements consist of incorrect and misleading information. This Tribunal will not comment on statements that correspond to one of the Parties' perspective on the procedure or merits of the case, given that any statement in this regard could risk a prejudging on the merits of the dispute.
423. Nonetheless, this Tribunal is aware that after PO1 and the Order issued on 9 November 2016 and the 26 May 2017 Order, Claimant maintained on the web page www.pugachevsergei.com some information about this arbitration available to the public. The Tribunal is also aware that the constant disputes between the Parties concerning the alleged breaches of the multiple confidentiality orders could jeopardize in the future the integrity and efficiency of these proceedings. Finally, the Tribunal must balance the need for reserve and confidentiality that preserves the integrity of the arbitration with the need for transparency in a case involving a State and matters of public interest. Accordingly, the Tribunal considers necessary to adopt certain measures in this Interim Award to preserve and protect the integrity and efficiency of this arbitration and guarantee the transparency with which both parties seem to agree.
424. The Tribunal has issued, as of the date of this Interim Award, a Procedural Order No. 2 ("**PO2**") which specifically sets forth that certain documents of this arbitration will not be deemed confidential and may be published by the Parties (the "**Available Documents**") and that documents other than the Available Documents shall be deemed confidential (the "**Confidential Information**"). Hence, Available Documents may only be disclosed or published in accordance with the terms set forth in PO2 or any amendment thereto by the Tribunal, and no Party may publish or disclose to any third party any Confidential Information without prior leave from the Tribunal.
425. The Tribunal has the power to, and in its discretion, may allow the disclosure of Confidential Information to the extent that such disclosure: (i) is necessary to pursue and protect a Party's legal right, or is necessary in order for a Party to comply with a legal duty; (ii) does not hinder a Party's right to be treated equally and does not undermine its opportunity to fully present its case; and (iii) does not jeopardize the integrity and efficiency of this arbitration.
426. Second, for purposes of preventing any further disputes between the Parties concerning the specific scope of the confidentiality orders issued in this arbitration and with the intent of strengthening the foundations of PO2, the Tribunal considers necessary to incorporate the 26 May 2017 Order to the present Interim Award and amend it for purposes of allowing exclusively the publication of the Available Documents and protecting all Confidential Information. In particular, and in light of the substantive differences expressed in the

applications submitted by Respondent on 6 June 2017 and Claimant on 9 June 2017, this Tribunal considers necessary that, without prejudice of the publication of the Available Documents: (i) each Party and their respective counsel shall refrain from commenting or making any public statement to any third party (including reporters, news organizations or media networks) on any matter or fact regarding this arbitration, including any matter addressed in the Available Documents, without prior leave from the Tribunal; and (ii) each Party and their respective counsel must, except with prior leave from the Tribunal, abstain from publishing or disclosing any Confidential Information regarding this arbitration. Accordingly, the Parties are only allowed to publish or disclose the Available Documents.

427. In addition, Claimant is ordered to: (i) refrain from posting or publishing, without prior leave from the Tribunal, any information concerning this arbitration other than the Available Documents, on the website www.pugachevsergei.com, or on any other website or digital platform; and (ii) provide a statement to this Tribunal on or before 17 July 2017 declaring and certifying that any posts or publications concerning this arbitration, other than the Available Documents, have been removed from the website www.pugachevsergei.com.
428. Pursuant to the terms set forth in *para.* 425 above, the Tribunal may grant leave from these orders in the form it deems appropriate, either through a procedural order or through any letter or correspondence.
429. For the above-mentioned reasons, this Tribunal will deny Respondent's additional relief sought in letter dated 8 March 2017.

V. THE TRIBUNAL'S DECISION

430. Based on the above-mentioned, the Tribunal hereby:
- (i) Orders Respondent to take all actions necessary to suspend the France Extradition Request;
 - (ii) Denies all other claims and requests made by Claimant in the Request for Interim Measures;
 - (iii) Denies all claims and requests made in Respondent's Security for Costs Application;
 - (iv) Denies Respondent's additional relief requested in the letter dated 8 March 2017;
 - (v) Orders each Party and their respective counsel to refrain from commenting or making any public statement to any third party (including reporters, news organizations or media networks) on any matter or fact regarding this arbitration, including any matter addressed in the Available Documents, without prior leave from the Tribunal;

- (vi) Orders each Party and their respective counsel to abstain from publishing or disclosing any Confidential Information regarding this arbitration without prior leave from the Tribunal. Accordingly, the Parties are only allowed to publish or disclose the Available Documents in strict accordance with the terms set forth in PO2 or any amendment thereto by the Tribunal;
- (vii) Orders Claimant to refrain from posting or publishing, without prior leave from the Tribunal, any information or comment on this arbitration other than the Available Documents, on the website www.pugachevsergei.com, or on any other website or digital platform;
- (viii) Orders Claimant to provide a statement to this Tribunal on or before 17 July 2017 accepting and acknowledging that any posts or publications concerning this arbitration, other than the Available Documents, have been removed from the website www.pugachevsergei.com; and
- (ix) Reserves the question of costs associated with the Request for Interim Measures, Respondent's Security for Costs Application and all applications and cross-applications concerning confidentiality to a future stage.

THE TRIBUNAL:

Professor Thomas Clay

Date:

Dr. Bernardo M. Cremades

Date:



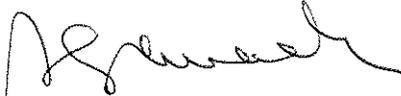
Dr. Eduardo Zuleta Jaramillo
Presiding Arbitrator

Date: 7 July 2017

THE TRIBUNAL:

Professor Thomas Clay

Date:



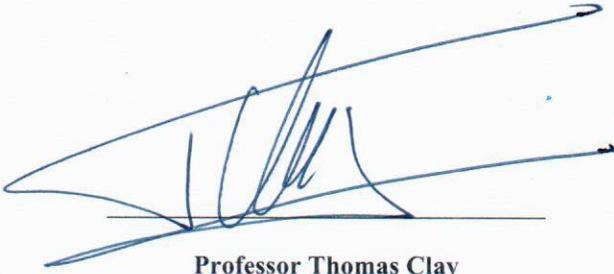
Dr. Bernardo M. Cremades

Date:

7 July 2017

Dr. Eduardo Zuleta Jaramillo
Presiding Arbitrator

Date:



Professor Thomas Clay

Date:

Dr. Bernardo M. Cremades

Date:

Dr. Eduardo Zuleta Jaramillo
Presiding Arbitrator

Date: