

10 февраля 2014 г.

To the President of Russian Federation

V.V.Putin

From ex-senator of the Russian Federation

S.V.Pugachev

Dear Mr President

Уважаемый Владимир Владимирович!

Introduction

The purpose of this letter is to formally notify the Russian Federation of a dispute with the undersigned, Sergei Pugachev, arising under the Bilateral Investment Treaty between the Russian Federation and the Republic of France (the **BIT**). Pursuant to Article 7 of the BIT, I am seeking negotiations with the Russian Federation in order to resolve this dispute amicably. In the event that such negotiations prove to be futile as they have in the past, or upon the expiry of six months, I will commence an international arbitration against the Russian Federation in accordance with the Arbitration Rules of the UN Commission on International Trade, as approved by the UN General Assembly Resolution No. 31/98 of 15 December 1976, as envisaged by Article 7 of the BIT.

Summary of the Dispute

The Russian Federation has, by the acts of its executive organs and judiciary, confiscated my principal assets in Russia. You will recall, Mr President, that I have previously informed you of some of these acts in written correspondence dated 31 March 2012.

My principal assets in Russia, which constitute protected investments under the BIT by virtue of my French nationality, were held through the following Russian companies: (1) *Severnaya Verf, Baltiyskiy Zavod* and Central Design Bureau Iceberg (the **Shipyards**); (2) *ZAO Eniseiskaya Promyshlennaya Kompaniya (EPK)* ("CJSC Eniseyskaya Industrial Company"), a company with the rights to develop a coking coal deposit in Tyva and a railway; (3) *Sredniye Torgoviye Ryady Limited* ("Middle Trading Rows Limited") (**STR**), a property development company with the rights to construct a major hotel and residential complex in Moscow; and (4) *ZAO Optik Trade (Optik Trade)*, a



company with the ownership of land plots in the Krasnogorsky District of the Moscow Region.

As a result of the Russian Federation's confiscatory acts, I have either been deprived of legal title to these investments or they have been rendered worthless. Given that these investments are in different economic sectors and are entirely unrelated save for my beneficial ownership of them, it is clear that Russian Federation has adopted a coordinated strategy to divest me of my assets in Russia.

In the paragraphs that follow I provide a brief outline of the Russian Federation's unlawful and confiscatory acts in respect of each of my four principal investments in Russia.

The Shipyards

The assets comprising the Shipyards were: Baltiysky Zavod, the global leader in the construction of icebreakers and ice class vessels; Severnaya Verf, one of the major military shipyards producing surface combat ships and various commercial vessels; and, Central Design Bureau Iceberg, Russia's leading designer of icebreakers and ice class vessels.

As you will recall, Mr President, we met in November 2009 in order to discuss the Russian Federation's proposal to acquire the Shipyards at market value. After that meeting, Minister of Finance Kudrin, called me to confirm that an agreement had been reached and to discuss the details of the acquisition, which he said was likely to be made by *Vnesheconombank (VEB)* ("Bank for Development and Foreign Economic Affairs"), a State bank. The Shipyards were valued by the international accountancy firm, BDO, at US\$3.282 billion, although the Japanese investment bank, Nomura, gave a higher range for the value of the assets at US\$4.23 billion.

It transpired, however, that the Russian Federation had resolved to confiscate the Shipyards for no consideration despite the understanding reached at our meeting in November 2009. From early January 2010 onwards, Deputy Prime Minister Sechin and other high ranking officials gave written instructions to various Russian State agencies, including the Ministry of Defence, the Federal Security Service and even the Supreme Arbitration Court, to prepare for the State's confiscation of the Shipyards. Mr Sechin was specifically tasked with this responsibility because he was, at the same time, the Chairman of the Board of United Shipbuilding Corporation (*USC*), a State enterprise that had been created to consolidate the Russian shipbuilding industry and to acquire the Shipyards.

The Russian Federation implemented the following scheme to confiscate the Shipyards. The Central Bank of Russia (**CB**) had extended liquidity support in the form of unsecured loans to many financial institutions in Russia, including International Industrial Bank (**IIB**). IIB, in turn, had pledges over the shares of the Shipyards. In July 2010, the CB suddenly demanded security for its loans to IIB against the threat of the withdrawal of IIB's banking licence. The CB's action towards IIB was highly discriminatory because such demands were not made in respect of similar financial institutions in Russia. The CB specifically ordered IIB to relinquish its pledges over the Shipyards. Once those pledges had been terminated, the CB then requested that I procure pledges over the Shipyards in favour of the CB as collateral for IIB's indebtedness to the CB pending the sale of the Shipyards to the Russian State at market value. Such pledges were executed in July 2010 and soon afterwards work commenced on arriving at a mutually acceptable valuation of the Shipyards in accordance with the procedure set out in the pledge agreements.

The CB then abused its regulatory authority by revoking IIB's licence in October 2010 and immediately thereafter sought to enforce its security interests over the Shipyards by instituting court proceedings in violation of the valuation procedure stipulated in the pledge agreements. These court proceedings are characterized by a series of gross irregularities and interferences by the executive government, including, *inter alia*, the following:

- The courts unlawfully transferred the Shipyards into the trust management of CB, who immediately transferred it to USC, which, from the outset, was the State entity that was most likely to acquire the Shipyards. USC thus had control over the Shipyards in the period leading up to their auction and this allowed USC to adopt measures to facilitate an artificial reduction of the value of the Shipyards.
- The court-appointed valuation experts produced false valuations of the Shipyards that were vastly inferior to those produced by BDO and Nomura.
- The courts classified the proceedings as a State secret and sealed the files to ensure that these irregularities could not be exposed to the public and to deprive my legal representatives of the possibility of making informed submissions to defend my interests. To this day, for instance, the valuations produced by the court-appointed valuation experts have remained sealed.

- The resulting public auctions for the Shipyards were contrived to ensure that USC acquired these assets at a small fraction of their market value.

EPK

EPK held a licence to develop the coking coal deposit on the Elegest Plateau in the Tyva region of Russia. It also held rights over the Kyzyl-Kuragino railroad construction project.

You will recall, Mr President, that in 2010 you directed me not to sell my stake in EPK to the Japanese group Mitsui & Co. Ltd., with whom I was actively negotiating. Responding to your direction not to sell to a foreign company, I entered into a share purchase agreement (**SPA**) for my stake in EPK in June 2011 with the Russian businessman Igor Altushkin, the owner of Russian Copper Company. After the first installment had been paid by Mr Altushkin pursuant to the SPA, the Russian Federation once again took steps to confiscate EPK's assets. Officials of the *Agenstvo po strakhovaniyu vkladov* (**AVS**) ("Deposit Insurance Agency"), together with Ruslan Baysarov, the financier for the President of the Republic of Chechnya, conspired to confiscate the licence from EPK for no consideration by means of fraudulent misrepresentations (including a fraudulent application dated 26 July 2012 addressed to you, Mr President), corrupt judicial proceedings and as well by physical threats to me and my family. They achieved their objective: in December 2012 the Federal Agency for Mineral Resources of Russia withdrew the license from EPK and vested it in Mr Baysarov's company in April 2013.

The Elegest deposit of approximately 1 billion tons of coking coal was valued by KPMG in 2011 between US\$4.038 billion and US\$4.493 billion.

STR

STR concluded an agreement in August 2004 with the *Federalnoe Gosudarstvennoe Unitarnoe Predpriyatie* (**FGUP**) ("Federal State Unitary Enterprise") to construct a five-star hotel and residential complex at 5 Red Square in Moscow to be named "*Kremlevskii*". The plans for the complex, which were at an advanced stage, envisaged the construction of a 158-room hotel as well as separate apartments and a parking facility. In furtherance of that agreement, STR transferred RUB 1.5 billion to the Ministry of Defence of the Russian Federation for the construction of residences for military personnel and made significant expenditure on the project between 2005 and 2009. Without prior notice, in March 2009 the President of Russian Federation issued a decree transferring the building complex to the *Federalnaya Sluzhba Oxpранy* (**FSO**) ("Federal Guard Service") with the result

that STR's project was terminated. The order of the Russian Government envisaged that compensation would be paid to STR for the termination, however, no compensation has ever been forthcoming. STR then suffered a flagrant denial of justice in the Russian courts when it sought compensation against the Ministry of Finance for RUB 3.6 billion in expenses and RUB 41 billion in lost profits.

Optik Trade

Optik Trade was the owner of a land plot in the Krasnogorsky District of the Moscow Region with an area of 663,960 square meters. That land plot was originally owned by the collective farm *Leninskii Luch (LL)*, which in turn had contributed the plot to a new entity, *ZAO Dmitrovskii Sovkhoz (DS)*, in return for shares in that entity in 2003. Upon acquiring this land plot in August 2010, Optik Trade obtained permission from the relevant authorities to divide the plot into 167 separate plots for the construction of individual manors, cottages and low-rise houses. Optik Trade was the registered owner of all 167 separate land plots, which together were valued at approximately US\$740m.

In 2012, LL brought a suit against DS, Optik Trade and others for a declaration that it was the lawful owner of the land plot on the basis that the decision of LL's general meeting of members by which it was agreed that the land plot was to be transferred to DS in return for shares was invalid. At no point in time was Optik Trade informed about the existence of these court proceedings. On 23 January 2013, the Moscow Arbitration Court of the Moscow Region upheld LL's request. This decision is manifestly unlawful: not only was Optik Trade not informed about the court proceedings, the particular declaration sought by LL could only be granted under Russian law if LL were in possession of the land plots. It was Optik Trade who was in possession of the land plots at the time as evidenced by its payment of the land taxes and the physical presence of its contractors on the land (such as security personnel and workers engaged in various improvements to the land).

Optik Trade subsequently discovered the existence of the court proceedings when DS forwarded its appeal petition to it in March 2013 (DS subsequently withdrew its appeal). Optik Trade then appealed itself before every judicial instance in the Russian court system and on each occasion the court declined to hear the appeal because the time limit had expired.

By the unlawful acts and omissions of the Russian court system, Optik Trade has thus been deprived of its valuable land plot in the Krasnogorsky District of the Moscow Region.



Outline of the Claims under the BIT

The aforementioned acts and omissions attributable to the Russian Federation in relation to my four principal investments in Russia constitute violations of Articles 3, 4 and 8 of the BIT, which provide, *inter alia*:

Article 3

1. Each of the Contracting Parties shall extend, on its territory and its maritime zone, fair and equitable treatment conforming to the principles of international law, to investments made by the investors of the other Contracting Party, excluding any measure unjust or discriminatory which could impede the management, maintenance, enjoyment or disposal of these investments.

Article 4

1. Investments made by investors of one Contracting Party shall enjoy full and complete protection and security on the territory and in the maritime area of the other Contracting Party.

2. Returns from investments, and in the event of reinvestment, returns from reinvestments, shall enjoy the same protection as investments.

3. Neither Contracting Party, on its territorial and its maritime area, shall take any measures of expropriation or nationalization or any other measures having the effect of dispossessing investors of the other Contracting Party of their investments, except in the public interest and provided that these measures are neither discriminatory, nor contrary to a commitment to an investor as provided in Article 8.

Measures of dispossession which may be taken shall give rise to prompt and adequate compensation, the amount of which shall be equal to the real value of the investments concerned on the day before such measures were adopted or became known to the public.

This compensation shall be freely transferable and shall be paid without delay to the investors in freely convertible currency. Interest shall be payable on the compensation at an appropriate rate following thirty days from the date when the measures were adopted or became known to the public until the date of payment.

Article 8

Each Contracting Party shall observe any obligation it has assumed in relation to an investor of the other Contracting Party relating to an investment made by that investor on the territory or in the maritime area of the first Contracting Party.

Mr President, the situation concerning my interests in Russia is rapidly deteriorating. A criminal charge was made against me in November 2013 under Article 160 of the Criminal Code and an arrest warrant was issued *in absentia*, which is legally impossible under the Criminal Procedure Code. The existence of the charge was also concealed from me and my legal representatives until after the first instance decision of the Basmany District Court, by which time it was discovered through my own investigations. The allegations set out in the criminal charge are both groundless and fanciful and it has clearly been made in furtherance of the scheme to confiscate my assets as outlined above. The arrest warrant was quashed following the intervention of the Moscow City Court only for the Prosecution to seek a new arrest warrant, which was then granted. Meanwhile, several former employees of IIB have also been arrested and are reported to have made "confessions" of their guilt while in police custody. According to a press statement by investigator Alexander Drusko, one such former employee, Dmitri Amunz, has even been kept in police custody despite having made such a confession because of the risk that I present to his safety! As you are aware, Mr President, I left Russia in January 2011 because I was advised that it was no longer safe for me to remain there and I have not returned to Russia since then.

This deplorable use of the Russian criminal justice system to fabricate a case against me only exacerbates the dispute that I have outlined above.

I look forward to receiving your office's proposal for constructive negotiations at your earliest convenience.

I remain in your disposal



With hope for your understanding

S.V.P.

