ARBITRATION UNDER THE 1976 UNCITRAL RULES

SERGEI VIKTOROVITCH PUGACHEV

CLAIMANT

– v –

THE RUSSIAN FEDERATION

RESPONDENT

Claimant's Reply to Respondent's Security for Costs Application

10 MARCH 2017

BEFORE:

Dr Eduardo Zuleta-Jaramillo, President of the Tribunal
Professor Thomas Clay, Arbitrator
Professor Bernardo Cremades, Arbitrator

TABLE OF CONTENTS

INTRODUCTION

1. This Response to Respondent's Security for Costs Application, together with its Legal Exhibits (**CL-52** to **CL-74**), is respectfully submitted on behalf of Sergei Viktorovich Pugachev ("***Claimant"*** or "***Mr. Pugachev***"), *as per* the Arbitral Tribunal's email dated 20 February 2017.[1]

2. In its Security for Costs Application dated 10 February 2017, Respondent requests the Arbitral Tribunal to order Claimant (i) to provide security for costs in the amount of USD 800,000, "*as an initial deposit*" in the form of (a) a payment into an account of White & Case LLP within 14 days of the Tribunal's order, and (b) an undertaking by White & Case LLP to hold these monies subject to further directions of the Tribunal and to pay the monies over to Respondent in the event that the Tribunal so directs,[2] and (ii) to disclose the name of any third-party funders as well as the terms of any funding agreement.[3]

3. Claimant would like to make the following preliminary remarks that actually put into perspective the attitude and the actions of Respondent that are evidently contrary to any security for costs request.

4. Indeed, as with the plethora of criminal and civil proceedings initiated worldwide by Respondent, not even mentioning the latest politically motivated request for extradition, Respondent is attempting to put unacceptable pressure on Claimant to force Mr. Pugachev to relinquish his claims and prevent him from participating and from defending himself in the present arbitration proceedings.

5. Respondent should thus not be allowed to further exploit its misconduct and breaches of international treaties.

6. But Respondent does not even appear to be itself convinced of the strength and credibility of its own request. Indeed, Respondent failed to substantiate its allegations by any factual or legal evidence. Respondent's Security for Costs Application is a mere dilatory tactic to put undue pressure on Claimant.

7. Furthermore, as already demonstrated in the RIM, Respondent has obtained a

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1 For ease of reference, definitions used in Claimant's Notice of Arbitration, Claimant's Request for Interim Measures and subsequent exchanges of letters are used therein and references will occasionally be made to the relevant sections of such submissions. Further, and for the avoidance of doubt, all of Respondent's allegations and characteristics are denied, unless expressly admitted.

2 Respondent's Security for Costs Application, 10 February 2017, §§ 30-31, p. 11.

3 Respondent's Security for Costs Application, 10 February 2017, § 37, p. 13.

Worldwide Freezing Order consisting in the freezing of all of Claimant's assets.[4] As a result, Respondent has already a clear vision of Claimant's assets and of his current financial situation and is already the beneficiary of conservatory measures in France that still constitute a guarantee, notwithstanding their illegality, against Mr. Pugachev.

8. The Worldwide Freezing Order is no more than one of the many direct consequences of Respondent's abusive conduct, of the violations of the BIT which are the very subject matter of this arbitration. Respondent attempts today to further extend the range of the harms it inflicts to Claimant, as its request for security for costs is another manifestation of its hidden scheme consisting in attempting to put an end to the present proceedings by any means.

9. Respondent is trying to mislead the Arbitral Tribunal by alleging that the real beneficiary of such Worldwide Freezing Order is the DIA and not Respondent.[5]

10. Indeed, Respondent has continuously attempted to allege that the DIA is a separate and independent body from Respondent.[6] However, the DIA, a "State Corporation" as indicated in the headers of all UK proceedings, is no more than the Russian Federation itself since: (i) a majority of the members of the DIA's board of directors are appointed by Respondent (notably the General Director) and are part of Respondent's administration,[7] (ii) DIA's assets are exclusively constituted by contributions of the Russian Federation (RUB 3 billion),[8] and (iii) DIA's officials have taken, and take, part in Government meetings.[9]

11. As it will be demonstrated below, the Arbitral Tribunal cannot grant Respondent's Security for Costs Application based on the consequences of the surrounding legal background created by Respondent which is detrimental to Claimant's rights.

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4 **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.

5 Respondent's Security Costs Application, 10 February 2017, § 13, p. 6 "[t]*he Claimant further seeks relief in respect of proceedings worldwide to which the Respondent is not a party*".

6 Respondent's Response to Claimant's Urgent Request, 10 January 2017, §§ 11-14, p. 3; Respondent's Security Costs Application, 10 February 2017, § 13, p. 6.

7 **Exhibit C-84:** List of the members of the DIA's Board of Directors at https://www.asv.org.ru/en/dia/directors/; **Exhibit C-85:** A. Wierzbicki, D. Yakovenko, "Glade Nabiullina: The Bank of Russia will have full control of the DIA", *Forbes*, 12 October 2016.

8 **Exhibit CL-36:** Article 50 of the Federal Law "On Insurance of Individuals' Deposits in Banks of Russian Federation" N 177- FZ dated 23 December 2003.

9 For example, the DIA attended and actively participated to the 4 September 2012 Government's meeting, organised by President Putin and headed by Mr. Shuvalov, First Deputy Prime Minister, during which the expropriation of JSC Enisey Production Company's mining license and railway construction project (EPC) to the benefit of a company owned by Mr. Baisarov was discussed.

12. Thus, Respondent's Security for Costs Application should be denied as security for costs can only be granted in extraordinary and exceptional circumstances (**I.**), which Respondent failed to prove (**II.**). Respondent's request for disclosure of any third-party funding arrangement should also be rejected by the Arbitral Tribunal (**III.**).

I. SECURITY FOR COSTS IS AN EXTRAORDINARY AND EXCEPTIONAL MEASURE

13. It is not contested that UNCITRAL tribunals have the power to grant security for costs, and that requests for security for costs are often requested in investment arbitration but barely granted.[10]

14. As recognised by Respondent, the requesting party must establish that there is a reasonable possibility that it will succeed in its defence to the claim, and it is likely to be awarded costs (**A.**), and that there exist extreme and exceptional circumstances warranting a security for costs (**B.**).[11]

15. In addition, the requesting party must demonstrate that granting its request for security for costs would not disproportionately burden the party against whom the measure is sought (**C.**). None of these elements are present in Respondent's application.

A. THE REQUESTING PARTY SHOULD ESTABLISH A PLAUSIBLE DEFENCE ON THE MERITS AND A LIKELIHOOD TO BE AWARDED COSTS

16. The party requesting security for costs should establish, on a preliminary basis, that it has a reasonable possibility of success on the merits of the case.

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[10] Claimant's Request for Interim Measures, 19 December 2016, §§ 71-72, pp. 21-22; Respondent's Response to Request for Interim Measures, 10 February 2017, § 193, p. 55.

[11] Respondent's Security for Costs Application, 10 February 2017, §§ 8-10, pp. 5-6, §§ 12-14, p. 6.

17. Authors consider that the applicant's prospects of success in the arbitration should be assessed to establish whether or not the request for security for costs should be granted.[12]

18. In addition, the requesting party must establish a likelihood that it will be awarded costs. According to Respondent, investment arbitration tribunals apply the "costs follow the event" principle and allocate costs in proportion to the relative success of the parties.[13]

19. However, the trend in investment arbitration is actually not to automatically shift costs onto the unsuccessful claimant.

20. Article 40(1) of the UNCITRAL Rules (1976) expressly provides that the tribunal retains discretion not to apply the "Loser Pays" principle.[14]

21. Investment tribunals have actually not followed this rule and costs awards against unsuccessful claimants are exceedingly rare and the standard to be met is extremely high.[15] As noted by an author, "[i]*n the case of victorious respondents, most awards do not shift costs* [except potentially for cases of] *abuse of process, fraud or other such misconduct by claimants*".[16]

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12 **Exhibit R-20:** A. Redfurn, S. O'Leary, "Why is it time for international arbitration to embrace security for costs", *Arbitration International*, 2016, Vol. 32, pp. 397-413, at p. 410; **Exhibit RL-55:** CIArb Guidelines, Article 1(2).

13 Respondent's Security for Costs Application, 10 February 2017, § 4, p. 4.

14 Article 40(1) of the UNCITRAL Rules (1976) states that: "[e]*xcept as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral* ***tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable****, taking into account the circumstances of the case*" (emphasis added).

15 **Exhibit CL-52:** *SD Myers Inc.* v. *Government of Canada*, UNCITRAL (1976), NAFTA, Final Award concerning the apportionment of costs between the disputing parties, 30 December 2002, at § 19: "[t]*he Majority considers that neither party has achieved absolute "success" in the sense used in Article 40.1 of the UNCITRAL Rules, and that there must be some apportionment as mandated by that Rule. Overall, taking into account "the circumstances of the case" as provided for in Article 40.1 of the UNCITRAL Rules, the Majority considers that SDMI is entitled to recover a significant portion of its arbitration costs, but not all of them. It was not successful on all of the positions it advanced in the liability phase of the arbitration, but it did establish liability. The amount of compensation awarded was very substantially less than the amount claimed, but some compensation was awarded*"; **Exhibit CL-53:** *Continental Casualty Company* v. *Argentine Republic*, ICSID Case No. ARB/03/9, Award, 5 September 2008, at §§ 318-319; **Exhibit CL-54:** *Metalpar S.A. and Buen Aire S.A.* v. *The Argentine Republic*, ICSID Case No. ARB/03/5, Award on the Merits, 6 June 2008, at § 234; **Exhibit CL-55:** *Helnan International Hotels A/S* v. *The Arab Republic of Egypt*, ICSID Case No. 05/19, Award, 3 July 2008, at §§ 173-174; **Exhibit CL-56:** *Noble Ventures Inc.* v. *Romania*, ICSID Case No. ARB/01/11, Award, 12 October 2005, at §§ 234-236.

16 **Exhibit CL-57:** D. Smith, "Cost-and-Fee Allocation in International Investment Arbitration", *Virginia Journal of International Law*, 2011, Vol. 51, Issue 3, pp. 749-784, at p. 768; **Exhibit CL-58:** J. von

22. It results from the above that the "Loser Pays" principle cannot be relied upon by a requesting party in order to ground a request for security for costs based on the likelihood that it will be awarded costs.

B. THE REQUESTING PARTY SHOULD DEMONSTRATE THE EXISTENCE OF EXTREME AND EXCEPTIONAL CIRCUMSTANCES

23. Investment tribunals have held that security for costs can only be granted in extreme and exceptional circumstances.[17] In *Libananco Holdings Co. Limited* v. *Republic of Turkey*, the arbitral tribunal ruled that:

> "*In these circumstances, the Tribunal takes the view that it would only be* ***in the most extreme case – one in which an essential interest of either Party stood in danger of irreparable damage*** *– that the possibility of granting security for costs should be entertained at all*". (emphasis added)[18]

24. In determining whether or not there exist any extreme and exceptional circumstances, investment tribunals gave little consideration to the financial situation of the claimant (**1.**), held that the existence of third-party funders is not *per se* sufficient (**2.**), took into account any history of unpaid adverse costs award (**3.**), and gave particular weight to the payment by the claimant of its share of the advance of costs (**4.**).

Goeler, *Third-Party Funding in International Arbitration and its Impact on Procedure*, International Arbitration Law Library, 2016, Vol. 35, Chapter10: Awarding of Costs and Third-Party Funding, pp 367-424, at p. 375: "[a]*n empirical study of thirty-one investment arbitration awards rendered between 2008 and 2009 shows that 58.3% of successful claimants and 31.6% of successful respondents were able to recover all or part of their arbitration costs and party costs. Another study found that out of fifty-two final investment treaty awards, the majority (thirty-three) did not feature cost shifting, with the remaining awards applying the loser pays-rule or a factor-based approach*".

17 Respondent's Response to Request for Interim Measures, 10 February 2017, § 193, p. 55; **Exhibit RL-49:** *South American Silver Limited* v. *The Plurinational State of Bolivia*, PCA Case No. 2013-15, Procedural Order No. 10, 11 January 2016, at § 59: "*tribunals considering requests for security for costs have emphasized that they may only exercise the 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*".

18 **Exhibit CL-25:** *Libananco Holdings Co. Limited* v. *Republic of Turkey*, ICSID Case No. ARB/06/8, Decision on Preliminary Issues, 23 June 2008, at § 57.

1. Mere financial difficulties are not sufficient

25. Respondent relies on Claimant's alleged lack of available assets, arguing that this would indicate "*a risk of non-compliance with an adverse costs order* [and that this] *state of uncertainty requires the Tribunal to award security for costs in the Respondent's favour*".[19]

26. This reasoning is however incorrect since it is accepted that the financial distress of a party (even if it is the subject of bankruptcy proceedings) or the risk that an adverse costs award will go unpaid do not justify ordering security for costs.

27. In *South American Silver Limited (Bermuda)* v. *The Plurinational State of Bolivia*, an arbitral tribunal ruled that:

> "*In sum, the general position of investment tribunals in cases deciding on security for costs is* ***that 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 company are not per se reasons or justifications sufficient to warrant security for costs***". (emphasis added)[20]

28. Allowing a State to request security for costs every time there is a risk that an adverse costs award might go unpaid would elevate the financial standing of an investor into a

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19 Respondent's Security for Costs Application, 10 February 2017, § 19, p. 8.

20 **Exhibit RL-49:** *South American Silver Limited (Bermuda)* v. *The Plurinational State of Bolivia*, UNCITRAL Rules (2010), PCA Case No. 2013-15, Procedural Order No. 10, 11 January 2016, at § 63. See also, **Exhibit CL-59:** *EuroGas Inc. & Belmont Resources Inc.* v. *Slovak Republic*, ICSID Case No. ARB/14/14, Procedural Order No. 3, Decision on the Parties' Request for Provisional Measures, 23 June 2015, at § 123: "[t]*he Tribunal is of the view that financial difficulties and third party-funding – which has become a common practice – do not necessarily constitute per se exceptional circumstances justifying that the Respondent be granted an order of security for costs*"; **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, at § 5.19: "[i]*n an ICS1D arbitration, it is also doubtful that a* ***showing of an absence of assets alone ,would provide a sufficient basis for such an order.*** *First, as was pointed out in Libananco, it is far from unusual in ICSID proceedings to be faced with a Claimant that is a corporate investment vehicle, with few assets, that was created or adapted specially for the purpose of the investment. Second, as was noted by the Casado Tribunal,* ***it is simply not part of the ICSID dispute resolution system that an investor's claim should be heard only upon the establishment of a sufficient financial standing of the investor*** *to meet a possible costs award*" (emphasis added); **Exhibit CL-24:** *Burimi S.RL. & Eagle Games SH.A* v. *Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2 (Provisional Measures Concerning Security for Costs), 3 May 2012, at § 41.

condition to resort to arbitration and frustrate access to international justice.[21] Otherwise, a State could simply seize all of a company's assets and then demand in the arbitration that the claimant post security for costs.

29. Security for costs are particularly inappropriate when a claimant's financial situation is alleged to derive from the State's measures at issue in the arbitration:

> "*This is particularly true when the merits of the case at hand are difficult to assess at the preliminary stage and the claimant is factually unable to post a bond, where security for costs can stifle legitimate actions or even lead to a miscarriage of justice. In such circumstances,* ***it would be unfair to reward the respondent's success in undermining the claimant's financial health by insulating him from any arbitral action, especially where a claimant's lamentable financial situation could well be the result of the respondent's improper behavior***". (emphasis added)[22]

30. It is therefore admitted that the requesting party cannot be allowed to rely on its own misconduct to substantiate a request for security for costs.

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[21] **Exhibit CL-24:** *Burimi S.RL. & Eagle Games SH.A* v. *Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2 (Provisional Measures Concerning Security for Costs), 3 May 2012, at § 41: "[e]*ven if there were more persuasive evidence than that offered by the Respondent concerning the Claimants' ability or willingness to pay a possible award on costs, the Tribunal would be reluctant to impose on the Claimants what amounts to an additional financial requirement as a condition for the case to proceed*". See also **Exhibit CL-61:** *Hesham Talaat M. Al-Warraq* v. *The Republic of Indonesia*, UNCITRAL Rules (2010), Award on Respondent's Preliminary Objections to Jurisdiction and Admissibility of the Claims, 21 June 2012, at § 109: "*the Claimant is not required to demonstrate sufficient financial standing to meet a possible adverse cost award, or to provide security for such a sum, as a precondition of pursuing an investor-state arbitration*".

[22] **Exhibit CL-62:** W. Gu, "Security for Costs in International Commercial Arbitration", *Journal of International Arbitration*, 2005, Vol. 22, Issue 3, pp. 167-205, at p. 190; **Exhibit R-23:** J. Waincymer, Procedure and Evidence in International Arbitration (2012), at p. 647. **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, at § 2: "[t]*hat the claimant does not have funds to meet costs orders if unsuccessful is no reason to make orders for security. Commonly,* ***this situation is contended to arise from the matters of complaint, and it would be inconsistent with the BIT entitlements for such financial issues arising from its lack of funds to derogate from the investor's treaty entitlements***" (emphasis added).

2. Third-party funding does not warrant security for costs

31. Contrary to what Respondent seems to contend,[23] it is generally accepted that the mere existence of a third-party funding arrangement does not warrant security for costs.

32. In *Guaracachi America, Inc. and Rurelec plc* v. *The Plurinational State of Bolivia*, an arbitral tribunal ruled:

> "[A]*n order for the posting of security for costs remains a very rare and exceptional measure…* [...] *respondent has not shown a sufficient causal link such that the tribunal can infer from the mere existence of third party funding that the claimant will not be able to pay an eventual award of costs rendered against them, regardless of whether the funder is liable for costs or not*".[24]

33. This ruling was confirmed by other arbitral tribunals in *EuroGas Inc. and Belmont Resources Inc.* v. *Slovak Republic*[25] and more recently in *South American Silver Limited* v. *The Plurinational State of Bolivia*, quoted by Respondent,[26] in the following terms:

> "*If the existence of these third-parties alone, without considering other factors, becomes determinative on granting or rejecting a request for security for costs, respondents could request and obtain the security on a systematic basis, increasing the risk of blocking potentially legitimate claims*".[27]

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23 Respondent's Security for Costs Application, 10 February 2017, § 8, p. 5.

24 **Exhibit CL-64:** *Guaracachi America, Inc. and Rurelec plc* v *The Plurinational State of Bolivia*, UNCITRAL, PCA Case No 2011-17, Procedural Order No 14, 11 March 2014, at §§ 6-7.

25 **Exhibit CL-59:** *EuroGas Inc. and Belmont Resources Inc.* v. *Slovak Republic*, ICSID Case No. ARB/14/14, Procedural Order No. 3, Decision on the Parties' Request for Provisional Measures, 23 June 2015, at § 123. In this case, the tribunal rejected the request for security for costs and held that "*financial difficulties and third-party funding – which has become a common practice – do not necessarily constitute per se exceptional circumstances justifying that the Respondent be granted an order of security for costs*".

26 Respondent's Security for Costs Application, 10 February 2017, § 35, p. 12.

27 **Exhibit RL-49:** *South American Silver Limited (Bermuda)* v. *The Plurinational State of Bolivia*, UNCITRAL Rules (2010), PCA Case No. 2013-15, Procedural Order No. 10, 11 January 2016, at §§ 76-77. In *RSM* v. *Saint Lucia*, the tribunal reached its decision on security for costs before taking into account the existence of third-party funding and addressed it in an *obiter dictum* (**Exhibit CL-63:** *RSM Production Corporation* v. *Saint Lucia,* ICSID Case No. ARB/12/10, Decision on Saint Lucia's

34. In this case, the tribunal specifically rejected that a third-party funding agreement could be a decisive factor. This opinion is also supported by many commentators who consider that "***the existence of a funding agreement cannot automatically lead the tribunal to order security for costs, particularly under the currently prevailing standards for such orders***. *For instance, it might well be that the funded party has substantial financial resources but decided to use third-party funding for other reasons (e.g., to manage risk or facilitate cash flow)*". (emphasis added)[28]

35. Consequently, allegations of the mere existence of third-party funding agreement cannot warrant granting a request for security for costs.

3. History of unpaid adverse costs awards in similar circumstances can be taken into account

36. It is common knowledge that the only investment tribunal that has ever issued security for costs did so primarily because of the claimant's notorious history of failing to pay prior costs‡ awards in similar circumstances.[29]

37. In that particular case, the claimant had previously failed to comply with its payment obligations in two arbitrations: (i) in an annulment proceeding, where the claimant's repeated failures to comply with the tribunal's calls for advance payments had caused the arbitration to be discontinued, and (ii) in another ICSID arbitration, where the respondent had to seek enforcement of the cost award against one of the claimant's shareholder.[30]

Request for Security for Costs, 13 August 2014, at § 83). See **Exhibit CL-65:** J.C. Honlet, "Recent decisions on third-party funding in investment arbitration", *ICSID Review*, 2015, Vol. 3, Issue 3, pp. 699-712, at pp. 704-705 who commented on the RSM case, stating that: "[t]*he context is essential.* [...] *The tribunal therefore reached its conclusion* before *taking into account the existence of third party funding in the case. Third party funding was not completely foreign to the tribunal's decision, however, but the tribunal devoted only one paragraph to it on fifteen pages of reasons*".

[28] **Exhibit CL-66:** M. Scherer, *Third-party Funding in International arbitration*, Dossiers ICC Institute of World Business Law, Chapter 8: Third-party funding in international arbitration. Towards mandatory disclosure of funding agreements?, pp. 95-100, at p. 97. See also **Exhibit CL-67:** L. Levy, R. Bonnan, *Third-party funding in International arbitration*, Dossiers ICC Institute of World Business Law, Chapter 7: Third-party funding. Disclosure, joinder and impact on arbitral proceedings, pp. 79-94, at p. 80.

[29] **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, 13 August 2014, Assenting reasons of Gavan Griffith, at § 10.

[30] **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, 13 August 2014, at §§ 75-82.

38. As such, the conduct of the opposing party in previous similar arbitration proceedings can, in some particular circumstances, be taken into account when ruling on a request for security for costs.

4. Timely payment of the advance on costs is relevant

39. Arbitral tribunals have recognised that the claimant's timely payment of the advance on the tribunal's costs militates against an order for security for costs.[31] For instance, in *Mr. Saba Fakes* v. *Republic of Turkey*, the arbitral tribunal ruled that:

> "[T]*he Claimant paid the advance requested by ICSID, and no incident relating to the Claimant's alleged insolvency occurred in the course of the present arbitration*".[32]

40. According to an author, "*a respondent must show good faith by paying his own portion of administrative fees before a security for costs application could be entertained* [otherwise] *the respondent might be deemed to have "unclean hands" and be deprived of the right to raise the defence of* cautio judicatum solvi".[33]

41. The timely payment of an advance on costs is therefore given particular weight by arbitral tribunals.

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31 **Exhibit CL-68:** *Guaracachi America, Inc. and Rurelec plc* v. *The Plurinational State of Bolivia*, UNCITRAL, PCA Case No 2011-17, Claimant's Response to Respondent's security for costs application, 20 February 2013, at p. 5, fn. 18 citing *Unete Telecomunicaciones S.A. and Clay Pacific S.R.L.* v. *Republic of Ecuador*, UNCITRAL, Procedural Order No. 5, 29 September 2010.

32 **Exhibit CL-69:** *Mr. Saba Fakes* v. *Republic of Turkey*, ICSID Case No ARB/07/20, Decision on Preliminary Issues, 1st October 2008, at § 71. See also **Exhibit CL-64:** *Guaracachi America, Inc. and Rurelec plc* v. *The Plurinational State of Bolivia*, UNCITRAL, PCA Case No 2011-17, Procedural Order No 14, 11 March 2014, at § 7: "*the Claimants have promptly paid all the requested deposits of costs with no suggestion that they have had trouble finding the necessary funds to do so*"; **Exhibit CL-59:** *EuroGas Inc. & Belmont Resources Inc.* v. *Slovak Republic*, ICSID Case No. ARB/14/14, Procedural Order No. 3, Decision on the Parties' Request for Provisional Measures, 23 June 2015, at § 123: "[t]*he claimants have not defaulted on their payment obligations in the present proceedings or in other arbitration proceedings*".

33 **Exhibit CL-62:** W. Gu, "Security for Costs in International Commercial Arbitration", *Journal of International Arbitration*, 2005, Vol. 22, Issue 3, pp. 167-205, at pp. 194-195; **Exhibit R-23:** J. Waincymer, Procedure and Evidence in International Arbitration (2012), at p. 650.

C. THE SPECULATIVE RISK OF UNPAID ADVERSE COSTS AWARD WOULD NOT SUBSTANTIALLY OUTWEIGH THE CERTAIN HARM OF SECURITY FOR COSTS

42. As stated in Claimant's Request for Interim Measures, UNCITRAL tribunals require that the risk of harm of the requesting party "substantially outweigh" the risk of harm to the party against whom the measure is imposed.[34]

43. The party requesting the posting of a security for costs must therefore establish that the harm that it will likely suffer in case such measure is not ordered by the tribunal substantially outweighs the harm that will likely be imposed on the other party.

44. This was specifically recalled by the tribunal in *Burimi S.R.L & Eagle Games SH. A.* v. *Republic of Albania* when it decided on a security for costs application:

> "*In assessing necessity, tribunals usually weigh the interests of both parties and order the measure only if the harm spared the petitioner "exceeds greatly the damage caused to the party affected*".[35]

45. Consequently, the arbitral tribunal must analyse the balance of the risks and the potential harm on both claimant and respondent to decide whether to grant a request for security for costs.

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[34] Claimant's Request for Interim Measures, 19 December 2016, §§ 112-115, p. 32.

[35] **Exhibit CL-24:** *Burimi S.R.L. & Eagle Games SH.A* v. *Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2 (Provisional Measures Concerning Security for Costs), 3 May 2012, at § 35.

II. RESPONDENT FAILED TO SATISFY THE STANDARD TO OBTAIN A SECURITY FOR COSTS

46. In his Request for Interim Measures, Claimant has demonstrated that all the conditions for ordering Respondent to provide a security for costs were met. Indeed, Claimant established that (i) he has a *prima facie* case on the merits and that he is likely to be awarded costs, (ii) there exist exceptional circumstances that justify that Respondent provides a security for costs, and (iii) granting Claimant's request for security for costs would not disproportionately burden Respondent.[36]

47. For its part, Respondent's failed to satisfy all these requirements:

- Respondent failed to establish any plausible defence on the merits and the likelihood that it will be awarded costs (**A.**);
- Respondent failed to demonstrate the existence of any extreme or exceptional circumstances that would warrant a security for costs (**B.**);
- Respondent failed to prove that the speculative risk of unpaid adverse costs award could substantially outweigh the harm to Claimant (**C.**).

A. RESPONDENT FAILED TO ESTABLISH A PLAUSIBLE DEFENCE ON THE MERITS AND A LIKELIHOOD THAT IT WILL BE AWARDED COSTS

1. Respondent has no plausible defence on the merits

48. In support of its Security for Costs Application, Respondent claims that "[t]*he Claimant has a low prospect of success in the arbitration claim*".[37] This is a blunt and unsubstantiated allegation with no factual nor legal basis. Thus, the Tribunal is asked to take Respondent's word as face value. This must be rejected by the Arbitral Tribunal in the strongest terms.

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36 Claimant's Request for Interim Measures, 19 December 2016, §§ 116-342, pp. 33-94.

37 Respondent's Security for Costs Application, 10 February 2017, §§ 12-14, p. 6.

49. Indeed, and to the contrary, Respondent's success is impossible, considering the numerous breaches of the BIT it committed. Respondent illegally expropriated Claimant of his investment and this is hardly contestable. In fact, as already demonstrated in Claimant's Notice of Arbitration, Respondent has notably:

- Wrongfully expropriated Claimant's assets without compensation in violation of the BIT;[38]
- Violated its obligation under the BIT to afford Claimant a Fair and Equitable Treatment;[39]
- Failed to afford Claimant full protection and security in violation of the BIT;[40]
- Committed a denial of justice vis-à-vis Claimant;[41]
- Failed to afford Claimant the Most Favored Nation treatment under the BIT.[42]

50. But Respondent went a step further by pressuring Claimant all over the world, throughout various judicial proceedings amounting to harassment, based on the illegal judicial proceedings politically monitored before Russian courts.[43]

51. In reality, Respondent's Security for Costs Application and its Response to Claimant's Request for Interim Measures do not provide any substantiated defence besides mere assertions. Respondent has thus failed to present any plausible defence on the merits.

2. It is unlikely that Respondent will be awarded costs

52. In its Security for Costs Application, Respondent assumes that if it wins on the merits, it will automatically be awarded costs based on the so-called "Loser Pays" principle that seems to be, according to Respondent, unanimously followed by investment tribunals.[44]

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38 Claimant's Notice of Arbitration, 21 September 2015, §§ 120-125, pp. 28-30.
39 Claimant's Notice of Arbitration, 21 September 2015, §§ 126-129, p. 30.
40 Claimant's Notice of Arbitration, 21 September 2015, §§ 130-132, p. 31.
41 Claimant's Notice of Arbitration, 21 September 2015, §§ 133-135, pp. 31-32.
42 Claimant's Notice of Arbitration, 21 September 2015, §§ 136-137, p. 32.
43 Claimant's Request for Interim Measures, 19 December 2016, §§ 170-333, pp. 49-92.
44 Respondent's Security for Costs Application, 10 February 2017, § 4, p. 4.

53. As demonstrated above,[45] investment tribunals do not follow this rule and award costs against unsuccessful claimants only when faced with abuse of process, fraud or other such misconduct.

54. In the present case, there is no reason that the Tribunal will deem Claimant's case to be of such nature as to require him to pay to Respondent the costs and expenses it will incur. Respondent has not even asserted such misconducts on Claimant's part in any event.

55. In other words, Respondent's theoretical right to an award on costs, based on the unlikely hypothesis that it would prevail in the present arbitration, is not established either.

B. RESPONDENT HAS FAILED TO DEMONSTRATE THE EXISTENCE OF EXCEPTIONAL CIRCUMSTANCES JUSTIFYING THAT ITS REQUEST BE GRANTED

56. As aforementioned, investment tribunals have held that orders for security for costs can only be issued in extreme and exceptional circumstances.[46] However, there is no exceptional circumstances that could justify the granting of a security for costs in favour of Respondent.

1. Claimant does not have a history of unpaid awards

57. In the present case, it is not Claimant that has a history of unpaid awards.[47] Quite the contrary.

58. Short of arguments, Respondent relies on Claimant's alleged failure to comply with orders issued by the English High Court and other proceedings initiated by Respondent on the basis of the illegal Subsidiary Liability Judgment to argue that there is a "*real risk of non-enforcement of any costs award*".[48]

59. However, as recognised by Respondent, the UK proceedings which resulted in the Worldwide Freezing Order, and the other legal actions initiated worldwide by Respondent go at the heart of this arbitration and constitute a breach of the BIT.[49]

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45 See above at §§ 16-22.

46 See above at §§ 23-24.

47 See above at §§ 36-38.

48 Respondent's Security for Costs Application, 10 February 2017, § 23, p. 9.

49 Respondent's Security for Costs Application, 10 February 2017, § 20, p. 8.

60. Indeed, these proceedings form the core of the present arbitration proceedings and Respondent cannot rely on them to justify its illegitimate request for security for costs whereas Claimant was simply trying to protect his rights and his access to international justice. But Respondent failed to point to any international arbitral award, be it commercial or based on a bilateral investment treaty, that Claimant would not have respected and which could have justified its request. The reason is simple, there is no such award.

61. Contrary to Claimant, Respondent is notorious for resisting enforcement of the investment awards rendered against it.[50] Russia has bluntly declared that it does not intend anymore to abide by international decisions rendered against it and has taken every possible measure to ensure that enforcement of international awards against it would be almost impossible, notably in Russia.[51]

62. These are precisely the reasons which prompted Claimant to request the Arbitral Tribunal to order Respondent to provide a security for costs.[52] These recent decisions have thus reinforced Claimant's arguments contained in its RIM and illustrate, *a contrario*, that Respondent has failed to establish a similar case against Mr. Pugachev.

2. Claimant has timely paid all the advance on costs

63. Claimant has timely performed all his financial obligations since the outset of this arbitration.

64. On the contrary, Respondent failed to timely pay its share of the deposit of costs and has been quite vague regarding its future payment of such share, not being able to provide any date. To the best of Claimant's knowledge, as of today, Respondent has not paid its advance.

65. This goes to show that, by submitting its Security for Costs Application, Respondent lacks good faith and cannot make such a request.[53] Indeed, Respondent requests that Claimant, who has timely paid his portion of the administrative fees, should be ordered to provide further security for costs to Respondent, when Respondent itself did not yet fulfill its financial obligation under this arbitration.

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50 Claimant's Request for Interim Measures, 19 December 2016, §§ 292-301, pp. 83-86.

51 Claimant's Request for Interim Measures, 19 December 2016, §§ 314-315, p. 88; **Exhibit CL-70:** "No need to comply with European ruling on Yukos, says Russian court", *GAR*, 19 January 2017.

52 Claimant's Request for Interim Measures, 19 December 2016, §§ 328-333, pp. 91-92.

53 See above at §§ 39-41.

66. The form of the security for costs envisaged by Respondent aims at obtaining a deposit in a bank account under its full discretion. However, this is contrary to all principles regulating security for costs when the request aims to obtain cash deposit. Indeed, as in the present case, the amount requested as security for costs cannot be under the full discretion of the requesting party but rather typically takes the form of a bank guarantee, parent company guarantee bond, payments into escrow account, liens on property, insurance coverage, assignment of a financial instrument, deposit with an independent stakeholder (such as an arbitrator or the institution) or a joint account controlled by the parties' counsel.[54]

67. What Respondent is trying to obtain has never been requested in international arbitration. Indeed, whenever addressing the issue of the form which security for costs take, authors have stressed on the fact that a cash deposit could be acceptable only if controlled by an independent stakeholder, deposited in an escrow account or in a joint account controlled by the parties' counsel.[55] This is a further reason to deny Respondent's request as it could otherwise very well use such amount to pay its advance on costs.

68. Finally, Respondent has failed to demonstrate that Claimant is unwilling or unable to pay the costs. In fact, nothing indicates that, in the event of a costs award against him, he will not abide by it. This clearly confirms that Respondent, under the applicable legal standards, cannot be granted its request for security for costs.

3. Claimant's financial situation is a result of Russia's illegal expropriation

69. Respondent relies on Claimant's alleged lack of available assets, arguing that this would indicate "*a risk of non-compliance with an adverse costs order* [and that this] *state of uncertainty requires the Tribunal to award security for costs in the Respondent's favour*".[56]

70. However, it is not surprising that Claimant's financial situation deteriorated after he was illegally deprived of his most valuable and promising investments in Russia. In addition, and since then, Respondent has attempted to seize all the assets of Claimant by initiating illegal enforcement and interim proceedings worldwide.

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54 **Exhibit RL-55:** Article 5, Paragraph 3 of CIArb Guidelines.

55 **Exhibit CL-71:** A. Henderson, *Security for Costs in Arbitration in Singapore*, Kluwer International, 2011, Vol. 7, Issue 1, pp. 55-75, at p. 74; **Exhibit RL-55:** Article 5, Paragraph 3 of CIArb Guidelines.

56 Respondent's Security for Costs Application, 10 February 2017, § 19, p. 8.

71. Granting to 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.

72. Respondent cannot therefore rely on the alleged existence of any financial difficulties to substantiate its Security for Costs Application.[57] Furthermore, requesting the Tribunal to impose on Claimant an additional financial burden, before allowing him to seek benefit of the protection he is entitled to under the BIT, is unacceptable.

73. It is no more than a further attempt to pressure Claimant into silence and to *"stifle legitimate actions or even lead to a miscarriage of justice*".[58] Respondent should thus not be able to rely on such an argument to support its request.

4. Third-party funding does not warrant security for costs

74. Respondent requests that the Tribunal orders Claimant to disclose the name of any third-party funder as well as the terms of any funding arrangement.[59] Respondent contends that the existence of a third-party funding arrangement warrants security for costs.[60]

75. However, as demonstrated above, allegations of third-party funding are not "*exceptional circumstances*" that would warrant granting a request for security for costs.[61]

76. It follows that Respondent's unjustified request for disclosure of the existence of any third-party funding agreement (or allegations of third-party funding) is improper and cannot, in any event, substantiate Respondent's Security for Costs Application.

77. In any event, no such third-party funding agreement exists in the present case and this argument is therefore moot.

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57 See above at §§ 25-30.

58 **Exhibit CL-62:** W. Gu, "Security for Costs in International Commercial Arbitration", *Journal of International Arbitration*, 2005, Vol. 22, Issue 3, pp. 167-205, at p. 193-194; See above at § 28.

59 Respondent's Security for Costs Application, 10 February 2017, §§ 33-37, pp. 12-13.

60 Respondent's Security for Costs Application, 10 February 2017, § 8, p. 5.

61 See above at §§ 31-35.

C. THE SPECULATIVE RISK OF UNPAID ADVERSE COSTS AWARD ALLEGED BY RESPONDENT WOULD NOT SUBSTANTIALLY OUTWEIGH THE CERTAIN HARM THAT CLAIMANT WOULD SUFFER

78. In its submission, Respondent has exclusively focused on arguments attempting to show that it will likely suffer harm resulting from unpaid adverse costs award in the absence of any security for costs. However, Respondent failed to demonstrate that the risk of an unpaid adverse costs award substantially outweighs the certain harm that an order for security for costs would impose on Mr. Pugachev.

79. In any event, the remote risk on Respondent of an award of costs, let alone an unpaid adverse costs award, do not substantially outweigh the harm that would be imposed on Mr. Pugachev.[62]

80. First, Respondent assumes that it will prevail on its merits defences. As demonstrated above, Respondent failed to put forward any plausible argument in that respect.[63]

81. Second and finally, Respondent assumes that the Tribunal will also issue an award of costs in its favour. As stated above, there is no reason why the Tribunal will deem Claimant's case to be of such nature as to require him to pay Respondent the costs and expenses it will incur.[64] Respondent has thus failed to provide any evidence of potential harm, let alone actual harm, that would warrant granting a security for costs.

82. To the contrary, the harm that an order for security for costs would impose on Mr. Pugachev would be immediate and significant. Indeed, Mr. Pugachev is an individual, a private person fighting against one of the most powerful States in the world and the harm is already self-evident. Such measure would create an unfair imbalance between the Parties, putting further financial pressure and harm on an investor already suffering daily from Respondent's illegal financial measures.

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83. Based on the foregoing, Respondent failed to discharge its burden of proof to demonstrate that the conditions for the granting of this exceptional measure are met.

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62 See above at §§ 42-45.

63 See above at § 48-51.

64 See above at §§ 52-55.

III. CLAIMANT SHOULD NOT BE ORDERED TO DISCLOSE ANY INFORMATION RELATING TO HIS FINANCIAL SITUATION

84. In its Security for Costs Application, Respondent requests that Claimant disclose the name of any third-party funder and the terms of any funding agreement.[65]

85. However, there is no general duty to disclose confidential information regarding the financial situation and funding of the parties in international arbitration:

> "*At present, parties to an international commercial or investment arbitration* ***are under no procedural duty to disclose the fact that they are being funded****. No arbitral laws or rules currently require a party to disclose how it finances its claim or defence. A general duty or practice of funded parties to disclose the sources of their funds, for example, 'as a matter of fairness', is not recognized*". (emphasis added)[66]

86. The rationale behind the absence of a general duty to disclose information relating to the financing of the arbitration is clear:

> "*Funding legal proceedings is a private matter and may give rise to issues of contractual confidentiality given that "most funding agreements contain confidentiality provision.* ***Sensitive information such as the economic terms of the agreement could be revealed****, and this might enable other parties to know or predict the funded party's settlement value*". (emphasis added)[67]

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65 Respondent's Security for Costs Application, 10 February 2017, § 37, p. 13.

66 **Exhibit CL-72:** J. von Goeler, *Third-Party Funding in International Arbitration and its Impact on Procedure*, International Arbitration Law Library, 2016, Vol. 35, Chapter 4: Disclosure of Third-Party Funding in International Arbitration Proceedings, pp. 125-162, at p. 125; **Exhibit CL-67:** L. Levy, R. Bonnan, *Third-party funding in International arbitration*, Dossiers ICC Institute of World Business Law, Chapter 7: Third-party funding. Disclosure, joinder and impact on arbitral proceedings, pp. 79-94, at p. 79 noting that: "[w]*hat it does mean is that third party funding should have no an impact on the merits of the case. Perhaps this explains (at least partly) why no generally accepted rules or practice in international arbitration require that a party disclose the way in which it is funding its claim or defense.* [...] [A] *party is under no obligation, as such, to reveal that its costs are funded by a professional funder*".

67 **Exhibit CL-67:** L. Levy, R. Bonnan, *Third-party funding in International arbitration*, Dossiers ICC Institute of World Business Law, Chapter 7: Third-party funding. Disclosure, joinder and impact on arbitral proceedings, pp. 79-94, at p. 79.

87. Disclosure of information relating to the financing of international arbitration may only be required in exceptional circumstances, where there exists a significant risk of disruption to the proceedings:

> "*The current trend in case law suggest that tribunals would recognize challenges to the involvement of third-party funders* ***only when a significant risk of disruption to the proceedings existed. This would likely have to rise to the level of abuse of process or to an undermining of the tribunal's jurisdiction****. While unclear,* [...] *these disruptions might include proof that the third-party funder actually* ***controls the proceedings****, that a* ***conflict of interest exists*** *between the third-party funder and the tribunal or that* ***the investor is deemed to have transferred it ownership in the claim*** *to a third-party before the tribunal's jurisdiction has been established*". (emphasis added)[68]

88. This assertion is confirmed by the decision of the tribunal in *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti.* v. *Turkmenistan* cited by Respondent, in which the tribunal ruled that disclosure should only be ordered when necessary to preserve the parties' rights and the integrity of the arbitration process:

> "*The Tribunal considers that it has inherent powers to make orders of the nature requested* ***where necessary to preserve the rights of the parties and the integrity of the process***". (emphasis added)[69]

89. In this case, the tribunal only granted the request for disclosure of third-party funding because there was a plausible risk of conflict of interests,[70] notably because one of the members of the arbitral tribunal had for some time advised a London-based litigation funder.[71]

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68 **Exhibit CL-73:** A. Meya, "Chapter 10: The Elephant in the Room", *Third-party funding in International arbitration*, Dossiers ICC Institute of World Business Law, pp. 122-136, at p. 132.

69 **Exhibit CL-74:** *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti.*v. *Turkmenistan*, ICSID Case No. ARB/12/6, Decision on respondent's Objection to Jurisdiction Under Article VII(2) of the Turkey-Turkmenistan Bilateral Investment Treaty, 13 February 2015, at § 50.

70 The tribunal had first refused to grant the order for disclosure on the ground that: "[t]*here is no suggestion that there is any issue of conflict of interest due to third party funding, and no suggestion has been made concerning the disclosure or misuse of confidential information. None of the other considerations that could justify an order for disclosure of the kind sought by Respondent have been presented*" (**Exhibit CL-74:** *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti.* v. *Turkmenistan*, ICSID Case No. ARB/12/6, Decision on respondent's Objection to Jurisdiction Under

90. Respondent also relies on *South American Silver Limited (Bermuda)* v. *The Plurinational State of Bolivia* to allege that "*the tribunal ordered the Claimant to inform the tribunal of the name or names of any third-party funder*" but "*rejected Bolivia's request for the disclosure of the terms of the financing*".[72] However, Respondent omitted to state that, in this case, the claimant itself had proposed to disclose the identity of the third-party funder.[73]

91. In the present dispute, there is no reason that would warrant the disclosure by Claimant of any third-party funding arrangement, since there is none. In any event, Respondent failed to demonstrate that such disclosure would be necessary to preserve the rights of the parties and the integrity of the arbitration process, or that there could exist any conflict of interests.

92. Respondent's request for disclosure of Claimant's financial situation is no more than, yet another, attempt to put undue pressure on Claimant, which should have no place in the present arbitration proceedings.

93. Since the filing of the Notice of Arbitration, Respondent has notably used the UK Courts to force Mr. Pugachev to disclose assets under threat of contempt and imprisonment, and used such disclosure to enforce or take interim measures with respect to Claimant's assets worldwide.

94. Respondent cannot instrumentalise this arbitration and use its own violations of the BIT to obtain information in the present arbitration proceedings to further damage Claimant before national courts.

Article VII(2) of the Turkey-Turkmenistan Bilateral Investment Treaty, 13 February 2015, at § 50).

71 **Exhibit CL-72:** J. von Goeler, *Third-Party Funding in International Arbitration and its Impact on Procedure*, International Arbitration Law Library, 2016, Vol. 35, Chapter 4: Disclosure of Third-Party Funding in International Arbitration Proceedings, pp. 125-162, at p. 135.

72 Respondent's Security for Costs Application, 10 February 2017, §§ 35-36, pp. 12-13.

73 **Exhibit RL-49:** S*outh American Silver Limited (Beremuda)* v. *The Plurinational State of Bolivia*, UNCITRAL Rules (2010), PCA Case No. 2013-15, Procedural Order No. 10, 11 January 2016, § 79. The Tribunal ruled in favour of disclosure "*given the position of the Parties*".

IV. CLAIMANT'S PRAYER FOR RELIEF

95. For all the aforementioned reasons, Mr. Pugachev respectfully requests the Arbitral Tribunal:

- to reject Respondent's Request for Security for Costs dated 10 February 2017 in its entirety, and

- to order Respondent to immediately reimburse Claimant for all the costs related to defending himself against this frivolous Request, together with the interests on such costs.

Mr. Pugachev reserves all his rights to modify and supplement his position should this prove to be necessary at a later stage.

Respectfully submitted on 10 March 2017

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betto seraglini

LIST OF EXHIBITS

LEGAL EXHIBITS

NUMBER	DESCRIPTION
CL-52	*SD Myers Inc.* v. *Government of Canada*, UNCITRAL (1976), NAFTA, Final Award concerning the apportionment of costs between the Disputing Parties 30 December 2002.
CL-53	*Continental Casualty Company* v. *Argentine Republic*, ICSID Case No. ARB/03/9, Award, 5 September 2008.
CL-54	*Metalpar S.A. and Buen Aire S.A.* v. *The Argentine Republic*, ICSID Case No. ARB/03/5, Award on the Merits, 6 June 2008.
CL-55	*Helnan International Hotels A/S* v. *The Arab Republic of Egypt*, ICSID Case No. 05/19, Award, 3 July 2008.
CL-56	*Noble Ventures Inc.* v. *Romania*, ICSID Case No. ARB/01/11, Award, 12 October 2005.
CL-57	D. Smith, "Cost-and-Fee Allocation in International Investment Arbitration", *Virginia Journal of International Law*, 2011, Vol. 51, Issue 3, pp. 749-784.
CL-58	J. von Goeler, *Third-Party Funding in International Arbitration and its Impact on Procedure*, International Arbitration Law Library, 2016, Vol. 35, Chapter10: Awarding of Costs and Third-Party Funding, pp 367-424.
CL-59	*EuroGas Inc. & Belmont Resources Inc.* v. *Slovak Republic*, ICSID Case No. ARB/14/14, Procedural Order No. 3, Decision on the Parties' Request for Provisional Measures, 23 June 2015.
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.
CL-61	*Hesham Talaat M. Al-Warraq* v. *Indonesia*, UNCITRAL Rules (2010), Award on Respondent's Preliminary Objections to Jurisdiction and Admissibility of the Claims, 21 June 2012.
CL-62	W. Gu, "Security for Costs in International Commercial Arbitration", *Journal of International Arbitration*, 2005, Vol. 22, Issue 3, pp. 167-205.
CL-63	*RSM Production Corporation* v. *Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's request for security for costs, 13 August 2014.

CL-64	*Guaracachi America, Inc. and Rurelec plc* v *The Plurinational State of Bolivia*, UNCITRAL, PCA Case No 2011-17, Procedural Order No 14, 11 March 2014.
CL-65	J.C. Honlet, "Recent decisions on third-party funding in investment arbitration", *ICSID Review*, 2015, Vol. 3, Issue 3, pp. 699-712.
CL-66	M. Scherer, *Third-party Funding in International arbitration*, Dossiers ICC Institute of World Business Law, Chapter 8: Third-party funding in international arbitration. Towards mandatory disclosure of funding agreements?, pp. 95-100.
CL-67	L. Levy, R. Bonnan, *Third-party funding in International arbitration*, Dossiers ICC Institute of World Business Law, Chapter 7: Third-party funding. Disclosure, joinder and impact on arbitral proceedings, pp. 79-94, at p. 80.
CL-68	*Guaracachi America, Inc. and Rurelec plc* v. *The Plurinational State of Bolivia*, UNCITRAL, PCA Case No 2011-17, Claimant's response to Respondent's security for costs application, 20 February 2013.
CL-69	*Mr. Saba Fakes* v. *Republic of Turkey*, ICSID Case No ARB/07/20, Decision on Preliminary Issues, 1st October 2008.
CL-70	"No need to comply with European ruling on Yukos, says Russian court", *GAR*, 19 January 2017.
CL-71	A. Henderson, *Security for Costs in Arbitration in Singapore*, Kluwer International, 2011, Vol. 7, Issue 1, pp. 55-75.
CL-72	J. von Goeler, *Third-Party Funding in International Arbitration and its Impact on Procedure*, International Arbitration Law Library, 2016, Vol. 35, Chapter 4: Disclosure of Third-Party Funding in International Arbitration Proceedings, pp. 125-162.
CL-73	A. Meya, "Chapter 10: The Elephant in the Room", *Third-party funding in International arbitration*, Dossiers ICC Institute of World Business Law, pp. 122-136.
CL-74	*Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti.*v. *Turkmenistan*, ICSID Case No. ARB/12/6, Decision on respondent's Objection to Jurisdiction Under Article VII(2) of the Turkey-Turkmenistan Bilateral Investment Treaty, 13 February 2015.