

**IN THE MATTER OF AN ARBITRATION  
BEFORE A TRIBUNAL CONSTITUTED PURSUANT TO  
ARTICLE 7 OF THE 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 DATED 4 JULY 1989  
AND  
THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON  
INTERNATIONAL TRADE LAW, 1976  
(the “UNCITRAL Rules”)**

**-between-**

**MR. SERGEI VIKTOROVICH PUGACHEV**

**(the “Claimant”)**

**-and-**

**THE RUSSIAN FEDERATION**

**(the “Respondent”, and together with the Claimant, the “Parties”)**

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**PROCEDURAL ORDER NO. 1**

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**The Arbitral Tribunal**

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

1 March 2017

## **1. Place of Arbitration**

- 1.1. In accordance with Section 6.1 of the Terms of Appointment and Article 16(1) of the UNCITRAL Rules, the place of arbitration shall be Madrid, Spain. Nonetheless, the Tribunal may conduct hearings and meetings at any other location it deems appropriate, in consultation with the Parties and considering the circumstances of the case, including any special circumstances that may affect the possibility of a Party or a representative of a Party to be present at the place of arbitration.
- 1.2. The Tribunal may meet for deliberations at any place it considers appropriate.

## **2. Language**

- 2.1. In accordance with Section 7.1 of the Terms of Appointment, the language of the arbitration shall be English.
- 2.2. Documents, witness statements and expert reports submitted by any Party in any language other than English shall be accompanied by a translation into English. Whenever a Party considers that the content of a document of more than five pages in length is not relevant in its entirety, the translations may be limited to all relevant excerpts together with such other portions of the document as necessary to put such excerpts in proper context. A full translation shall be provided if the Tribunal, upon its own initiative or at the request of the other Party, decides that the document is relevant in its entirety.
- 2.3. Informal translations submitted by a Party will be accepted as accurate unless contested by the other Party, in which case, the Parties will attempt to reach agreement on the translation (including, if needed, through the introduction of certified translations). If no agreement is reached, the Tribunal may appoint a certified translator to have the document(s) in question translated.
- 2.4. During the hearing, oral testimony provided in a language other than English shall be simultaneously interpreted into English.

## **3. Procedural Timetable**

- 3.1. The procedural timetable is enclosed as Annex I to this Procedural Order.

- 3.2. Unless otherwise provided, all time limits in the Procedural Timetable shall refer to 10 p.m. at the place of arbitration on the day of the deadline.
- 3.3. Extensions may be granted by the Tribunal for justifiable reasons and provided that the request for an extension is submitted as soon as practicable after a Party becomes aware of the circumstances which prevent it from complying with the deadline.

#### **4. Communications**

- 4.1. Ordinary correspondence and submissions concerning procedural or non-substantive matters shall be sent as specified in Section 9.3 of the Terms of Appointment.
- 4.2. All written submissions shall be sent by e-mail and by courier delivery service. E-mail delivery shall include electronic copies of pleadings, expert reports, and witness statements (including translations, where relevant), factual exhibits and legal authorities.
- 4.3. Courier delivery shall be made within the next three business days following e-mail delivery and shall include a hard copy set of pleadings, expert reports and witness statements, (including translations, where relevant), together with a reproducible USB flash memory drive containing electronic copies of all the aforementioned documents, as well as factual exhibits and legal authorities, all of them provided as searchable Adobe Portable Document Format (“**PDF**”) files.
- 4.4. Hard copies of pleadings, expert reports, and witness statements shall be submitted in printed double sided in A5 paper, unbound in a self-standing ring binders (mini-binder format). To facilitate filing, citations and word processing, all written submissions, including pleadings, expert reports and witness statements shall be provided as searchable PDF files, and preceded by a hyper-linked table of contents. The electronic versions of the written submissions, the witness statements and the expert reports shall be also sent in Word format.
- 4.5. Written submissions will be considered to have been communicated to the Tribunal, the Parties and the Arbitral Secretary on a timely basis if sent by e-mail on or before the date of the deadline at the time of the place of arbitration.
- 4.6. For any simultaneous submissions, each Party shall submit all electronic and hard copies only to the Arbitral Secretary. The Arbitral Secretary will then distribute copies to the Tribunal and opposing counsel once both submissions have been received.

## 5. Submissions, Evidence and Legal Authorities

- 5.1. When considering matters of evidence, the Tribunal may refer to, but shall not be bound by, the *Rules on the Taking of Evidence in International Arbitration issued by the International Bar Association in 2010* (the “**IBA Rules**”).
- 5.2. The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, factual exhibits, legal authorities and all other evidence in whatever form.
- 5.3. In their rebuttal submissions on jurisdiction and admissibility and/or the merits (*i.e.*, Reply and Rejoinder), as the case may be, the Parties shall submit only additional written witness testimony, expert opinion testimony and documentary or other evidence to respond to or rebut matters raised in the other Party’s immediately prior written submission, except for references to new evidence they receive through document production.
- 5.4. Following submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave on the basis of exceptional circumstances. Should such leave be granted to one Party, the other Party shall have an opportunity to submit counter-evidence.
- 5.5. The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimant shall begin with a letter ‘C’ followed by the applicable number (*i.e.*, C-1, C-2, etc.); each exhibit submitted by the Respondent shall begin with a letter ‘R’ followed by the applicable number (*i.e.*, R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings. Exhibits shall be contained in separate binders, each exhibit having a divider bearing on the tab the exhibit’s identification number. Each binder containing exhibits shall contain a list of the exhibits included in that binder, setting forth for each one: (a) the exhibit number; (b) its date; and (c) a brief description of the exhibit.
- 5.6. The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimant shall begin with the letters ‘CL’ followed by the applicable number (*i.e.*, CL-1, CL-2, etc.); each legal authority submitted by the Respondent shall begin with the letters ‘RL’ followed by the applicable number (*i.e.*, RL-1,

RL-2, etc.). The Parties shall use sequential numbering throughout the proceedings. The legal authorities shall be submitted electronically only.

- 5.7. All evidence submitted to the Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the evidence indicates the respects in which any document is incomplete.

## **6. Document Production**

- 6.1. The Tribunal may, at all times on its own initiative, or upon a specific and precise motion made by a Party in accordance with the procedural timetable, direct one Party to produce to the other Party and, if appropriate, to file with the Tribunal any documentary evidence in its possession, custody or control, which the Tribunal may deem relevant, also taking into consideration the Parties' burden of proof and all other applicable legal standards, provisions, and doctrines.
- 6.2. Requests for the production of documents shall be in writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents at the latest by the dates set forth in Annex I to this Procedural Order.
- 6.3. If the requested Party objects to production, the following procedure shall apply, pursuant to the timetable set forth in Annex I to this Procedural Order:
- 6.3.1. The requested Party shall submit a response stating which documents or classes of documents it objects to producing. The response shall state the reasons for each objection and shall indicate the documents, if any, that the Party would be prepared to produce instead of those requested.
- 6.3.2. The requesting Party shall respond to the other Party's objection, indicating, with reasons, whether it disputes the objection.
- 6.3.3. The Parties shall seek agreement on production requests to the greatest extent possible.
- 6.3.4. To the extent that agreement cannot be reached between the requesting and the requested Party, the Parties shall jointly submit all outstanding requests to the Tribunal for decision.

All other correspondence or documents exchanged in the course of the document productions phase shall not be copied to the Tribunal.

- 6.3.5. Document production requests submitted to the Tribunal for decision must be in the form of a “Redfern Schedule” appended to this Procedural Order as Annex II, detailing (i) the documents or category of documents requested; (ii) their relevance and materiality according to the requesting Party; (iii) the reasoned objection to the request by the objecting Party; and (iv) a brief response to the objection to document production request by the requesting Party. The Parties shall not submit with the Redfern Schedule memorials or letters with allegations related to the production requests submitted to the Tribunal for decision.
- 6.4. The Tribunal shall rule on any such application and may for this purpose refer to the IBA Rules. Documents ordered by the Tribunal to be disclosed shall be produced at the latest by the dates set forth in Annex I to this Procedural Order or any other date fixed by the Tribunal.
- 6.5. Should a Party fail to produce documents as ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate, taking into consideration all relevant circumstances.
- 6.6. Documents produced according to the above procedure shall not be considered on record unless and until a Party subsequently submits them in accordance with the procedural timetable set out in Annex I to this Procedural Order.

## **7. Witnesses**

- 7.1. Any person may present evidence as a witness, including a Party or a Party’s officer, employee or other representative.
- 7.2. For each witness, a written statement shall be submitted to the Tribunal. Witness statements shall be filed with the Parties’ written submissions. Witness statements submitted after the relevant written submission will not be considered by the Tribunal, unless the Party obtains leave from the Tribunal by demonstrating good cause as to why the statement could not have been timely submitted, and the other Party is given an appropriate opportunity to respond to such late testimony.
- 7.3. Each witness statement shall contain at least the following:
  - 7.3.1. the name, date of birth and address of the witness;

- 7.3.2. a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;
  - 7.3.3. a description of any past or present relationship, if any, between the witness and the Parties, counsel or members of the Tribunal;
  - 7.3.4. a full and detailed description of the facts on which the witness's testimony is served and, if applicable, the source of the witness's knowledge;
  - 7.3.5. an indication of whether and by whom the witness has been assisted in preparing the statement; and
  - 7.3.6. the signature of the witness.
- 7.4. Witness statements shall stand in lieu of direct examination. Accordingly, witnesses shall testify at the oral hearing only if they are called by the opposing party or the Tribunal for examination or cross-examination. Before the Hearing, on the dates indicated in the scenarios established in Annex 1 to this Procedural Order, each Party shall file a notification regarding the witnesses and experts presented by the other Party that it wishes to cross-examine at the Hearing.
- 7.5. The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear.
- 7.6. Each Party shall be responsible for ensuring the presence of its witnesses if they are to appear for examination at the hearing.
- 7.7. The Tribunal shall be entitled to draw any inferences with respect to the weight to be given to the contents of a witness statement as it may deem appropriate if a witness having been summoned fails to appear to be examined, or if any Party fails to cooperate in ensuring that a witness is examined.
- 7.8. The Tribunal may direct that witnesses be examined through means of telecommunication that do not require their physical presence at the hearing (such as video-conference). In such event, the Tribunal shall verify that the telecommunication means in question ensure proper and secure communication with the witness and allow for effective examination or cross-examination. The Tribunal shall ensure, before initiating an examination by such

telecommunication means, that the witness is alone in the room when testifying and does not communicate with any third person during his or her examination or cross-examination. A third person may only be present at the telecommunications to confirm the witness's identity, and to ensure that the witness does not receive any external help from any person by any means.

7.9. Each Party shall cover the costs of appearance of its own witnesses. The Tribunal will decide upon the appropriate allocation of such costs in its final award.

7.10. At any hearing, the examination of each witness shall proceed as follows:

7.10.1. the presiding arbitrator shall admonish the witness;

7.10.2. although direct examination will be given in the form of witness statements and expert reports, the party presenting the witness may conduct a brief direct examination lasting no more than 15 minutes;

7.10.3. the adverse Party may then cross-examine the witness on relevant matters that were addressed or presented in the witness statement;

7.10.4. the Party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and

7.10.5. the Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties.

7.11. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:

7.11.1. refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant;

7.11.2. limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or

7.11.3. direct that a witness be recalled for further examination at any time.



7.12. Unless the Parties agree otherwise, a factual witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony, prior to his or her examination.

## **8. Experts**

8.1. Each Party may retain and submit the evidence of one or more experts to the Tribunal. Save as set out below, the procedural rules set out in Section 7 *supra* shall apply, mutatis mutandis, to the evidence of experts.

8.2. Each expert's report shall contain the information required by Article 5(2) of the IBA Rules.

8.3. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit shall suffice.

8.4. Expert reports shall be filed with the Parties' written submissions. The Tribunal shall not admit any report that has not been filed with the written submissions.

8.5. Unless the parties agree otherwise, expert witnesses shall be allowed to be present in the hearing room at any time.

8.6. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

## **9. Hearings**

9.1. After consultation with the Parties, the Tribunal shall determine the place, time, agenda, and all other technical and ancillary aspects of any hearing.

9.2. A pre-hearing organizational meeting shall be held on a date set out in the scenarios provided for in Annex I to this Procedural Order, or as determined by the Tribunal after consultation with the Parties, by telephone or video conference in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing. If necessary, the Tribunal shall issue a further procedural order following this meeting to resolve any such matters in advance of the hearing.

9.3. Hearings shall be audio recorded and the recording shall be made available to the Parties.

- 9.4. The Parties shall arrange verbatim transcription by a professional transcript provider and using LiveNote or similar software so that the transcript is available on a real-time basis. At the end of each day of hearings, the Parties shall be provided with the transcript of that day.
- 9.5. Without prejudice to the Tribunal's final allocation of costs, the costs of the transcription and sound recordings shall be borne by both parties in equal shares.
- 9.6. No new evidence may be presented at the hearing except with leave of the Tribunal. Demonstrative exhibits may, however, be shown using documents submitted earlier in accordance with this Order. Should the Tribunal grant leave to a party to present new evidence in the course of the hearing, it should grant the other party the opportunity to introduce new evidence to rebut it.
- 9.7. Whether there will be post-hearing briefs, and if so, their content and format, will be addressed at the close of hearings. No additional documentary evidence may be produced together with the post-hearing briefs, except with leave from or at the request of the Tribunal.

## **10. Confidentiality**

- 10.1. Hearings shall be held in camera unless the Parties agree otherwise (UNCITRAL Rules Article 25(4), first sentence).
- 10.2. The award and any decisions leading up to the final award shall only be made public if the Parties so agree (UNCITRAL Rules Article 32(5)). No document or information that is otherwise available in the public domain shall become subject to confidentiality by reason of it being introduced into this proceeding.
- 10.3. The deliberations of the Tribunal are and shall remain confidential.
- 10.4. Unless the parties agree otherwise, they shall keep confidential all materials submitted by either Party in the framework of the arbitral proceedings, not already in the public domain, except and to the extent 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.
- 10.5. As per the order of the Tribunal dated 9 November 2016, the Parties shall refrain from making any public statements or disclosure that undermines the integrity and efficiency of this

arbitration. Furthermore, this order includes the disclosure of any material referred to in Section 10.4 *supra*.

**So ordered by the Tribunal.**



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Dr. Eduardo Zuleta Jaramillo  
Presiding Arbitrator

On Behalf of the Tribunal

**ANNEX I TO PROCEDURAL ORDER No. 1**  
**PROCEDURAL TIMETABLE**

Scenario 1: The following timetable shall apply in the event Respondent does not raise preliminary objections or Respondent raises preliminary objections but does not seek bifurcation:

<b>Date</b>	<b>Period of Time</b>	<b>Party / Tribunal</b>	<b>Submission / Event</b>
29 September 2017	N/A	CLAIMANT	Statement of Claim (“SOC”)
9 May 2018	7 months and 10 days from SOC	RESPONDENT	Statement of Defense (“SOD”)
30 May 2018	3 weeks from SOD	PARTIES	Simultaneous exchange between the Parties of any Document Requests
13 June 2018	2 weeks from the Document Requests	PARTIES	Simultaneous exchange between the Parties of Responses to the other Party’s Document Requests (including the grounds for any objections)
20 June 2018	1 week from Responses to other Party’s Document Requests	PARTIES	Simultaneous exchange between the Parties of Replies to the other Party’s Responses to its Document Requests and submission of Completed Redfern Schedules to the Tribunal
27 June 2018	1 week	PARTIES	Simultaneous exchange between the Parties of Documents responsive to the Document Requests to which the producing Party has not objected
11 July 2018	2 weeks from Parties’ Replies to the other Party’s Responses to its Document Requests	TRIBUNAL	Tribunal ruling on any unresolved Document Requests (“ <b>Order to Produce</b> ”)
25 July 2018	2 weeks from Tribunal’s Ruling	PARTIES	Production of Documents that must be produced pursuant to any Order to Produce


26 November 2018	4 months from production of Documents pursuant to any Order to Produce	CLAIMANTS	Reply
26 March 2019	4 months from Reply	RESPONDENT	Rejoinder
TBD	45 days before hearing	CLAIMANTS AND RESPONDENT	Identification of witnesses to be called for cross-examination
TBD	30 days before hearing	ALL	Pre-Hearing Organizational Meeting
TBD	10 days reserved from [ ]	ALL	Hearing
TBD		TRIBUNAL	Deliberations

Scenarios 2 and 3: The following procedural timetable shall apply in the event preliminary objections are raised and Respondent seeks bifurcation:

Date	Period of Time	Party / Tribunal	Submission / Event
29 September 2017	N/A	CLAIMANTS	Statement of Claim (“SOC”)
30 October 2017	4 weeks from SOC	RESPONDENT	Request for Bifurcation
27 November 2017	4 weeks	CLAIMANTS	Observations on Request for Bifurcation
22 December 2017	4 weeks	TRIBUNAL	Decision on Request for Bifurcation

Scenario 2: The following timetable shall apply in the event the Tribunal decides to join the preliminary objections to the merits:

Date	Period of Time	Party / Tribunal	Description
23 April 2018	4 months from Tribunal’s Decision on Bifurcation	RESPONDENT	Statement of Defence (“SOD”)
14 May 2018	3 weeks from SOD	PARTIES	Simultaneous exchange between the Parties of any Document Requests
28 May 2018	2 weeks from the Document Requests	PARTIES	Simultaneous exchange between the Parties of Responses to the other Party’s Document Requests (including the grounds for any objections)

Date	Period of Time	Party / Tribunal	Description
4 June 2018	1 week from Responses to other Party's Document Requests	PARTIES	Simultaneous exchange between the Parties of Replies to the other Party's Responses to its Document Requests and submission of Completed Redfern Schedules to the Tribunal
11 June 2018	1 week	PARTIES	Simultaneous exchange between the Parties of Documents responsive to the Document Requests to which the producing Party has not objected
25 June 2018	2 weeks from Parties' Replies to the other Party's Responses to its Document Requests	TRIBUNAL	Tribunal ruling on any unresolved Document Requests (" <b>Order to Produce</b> ")
9 July 2018	2 weeks from Tribunal's Ruling	PARTIES	Production of Documents that must be produced pursuant to any Order to Produce
9 November 2018	4 months from production of Documents pursuant to any Order to Produce	CLAIMANTS	Reply
11 March 2019	4 months from Reply	RESPONDENT	Rejoinder
TBD	45 days before hearing	CLAIMANTS AND RESPONDENT	Identification of witnesses to be called for cross-examination
TBD	30 days before hearing	ALL	Pre-Hearing Organizational Meeting
TBD	10 days reserved from 	ALL	Hearing
TBD		TRIBUNAL	Deliberations

Scenario 3: The following timetable shall apply in the event the Tribunal decides to bifurcate:

Date	Period of Time	Party / Tribunal	Description
22 March 2018	3 months from Tribunal Decision on Request for Bifurcation	RESPONDENT	Memorial on Jurisdiction
22 June 2018	3 months from Memorial on Jurisdiction	CLAIMANTS	Counter-Memorial on Jurisdiction
13 July 2018	3 weeks	PARTIES	Simultaneous exchange between the Parties of any Document Requests
27 July 2018	2 weeks from the Document Requests	PARTIES	Simultaneous exchange between the Parties of Responses to the other Party's Document Requests (including the grounds for any objections)
3 August 2018	1 week from Responses to other Party's Document Requests	PARTIES	Simultaneous exchange between the Parties of Replies to the other Party's Response to its Document Requests and submission of Completed Redfern Schedules to the Tribunal
10 August 2018	1 week	PARTIES	Simultaneous exchange between the Parties of Documents responsive to the Document Requests to which the producing Party has not objected
24 August 2018	2 weeks from Parties' Replies to the other Party's Response to its Document Requests	TRIBUNAL	Tribunal ruling on any unresolved Document Requests (" <b>Order to Produce</b> ")
7 September 2018	2 weeks from Tribunal's Ruling	PARTIES	Production of Documents that must be produced pursuant to any Order to Produce
7 December 2018	3 months from production of Documents pursuant to any Order to Produce	RESPONDENT	Reply on Jurisdiction
7 March 2019	3 months from Reply on Jurisdiction	CLAIMANTS	Rejoinder on Jurisdiction
TBD	30 days before hearing on jurisdiction	CLAIMANTS and RESPONDENT	Identification of witnesses to be called for cross-examination

<b>Date</b>	<b>Period of Time</b>	<b>Party / Tribunal</b>	<b>Description</b>
TBD	20 days before hearing on jurisdiction	ALL	Pre-Hearing Organizational Meeting
TBD	3 days reserved from □	ALL	Hearing on Jurisdiction
TBD		TRIBUNAL	Deliberations

In scenario 3, if any issue remains after the phase on jurisdiction, the remainder schedule for further proceedings will be fixed by the Tribunal following submissions by the Parties on the issue.



