Expert report of Yuliya Chernykh
Filed on behalf of the
Defendant/Applicant
31 January 2020

Claim No: CL-2017-000252

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT

IN AN ARBITRATION CLAIM BETWEEN:

PAO TATNEFT

Claimant/Respondent

-and-

UKRAINE

Defendant/Applicant

EXPERT REPORT OF YULIYA CHERNYKH

INTRODUCTION

1. I, Yuliya Chernykh, will say as follows:

2. I am an Of Counsel at Arbitrade, Attorneys at Law located at 8 Illinskaya str., entrance No. 11 Illinsky Business Center 04070, Kyiv, Ukraine. I have been practicing law for over 12 years in Ukraine. I graduated summa cum laude in law from National University of Kyiv-Mohyla Academy in Ukraine. Following this, I graduated *summa cum laude* from the Stockholm University with an LLM in International Commercial Arbitration. I am currently a doctoral research fellow at the Department of Private Law at the University of Oslo.

3. My CV containing information relating to my academic, practical and expert activities is attached hereto as exhibit **YC-1**.

4. My expertise includes Ukrainian civil, commercial and corporate law, and I have represented clients before Ukrainian courts of different branches and levels. Being a Chartered Arbitrator, I frequently act as a party-appointed arbitrator, a sole arbitrator or a chairman under the rules of leading arbitration institutions. I have acted as counsel or arbitrator in numerous arbitral proceedings under the rules of ICC, LCIA, ICAC Kyiv, ICAC Moscow, VIAC, VCCA, SCC, UNCITRAL, GAFTA, FOSFA, LMAA, Swiss rules and others. I have also acted as an expert in Ukrainian law in international arbitration. My main areas of expertise in dispute resolution include international sales, cross-border commercial transactions, investment, banking, energy, sport, M&A and joint ventures in Ukraine.

5. I have been asked by Winston & Strawn London LLP ("Winston & Strawn"), the solicitors acting for the Defendant/Applicant ("Ukraine") to prepare this report in connection with Ukraine's application in these proceedings.

6. I have no past or present relationship with the Parties, their counsel, the members of the Tribunal, or the other experts. For the purpose of full disclosure, I am currently serving as an expert on Ukrainian law in *Emergofin B.V. and Velbay Holdings Ltd. v. Ukraine*, ICSID Case No. ARB/16/35, in which I am instructed by counsel for the respondent, Ukraine. I have previously acted as counsel against Ukraine for the claimants in *City-State N.V., Praktyka Asset Management Company LLC, Crystal-Invest LLC and Prodiz LLC v. Ukraine*, ICSID Case No. ARB/14/9.

7. I confirm my independence and impartiality as an expert on Ukrainian law in this litigation.

8. In the course of preparing this report I have reviewed the relevant Ukrainian law, courts decisions and documents, including the materials set out at Annex 1 below. I have also been provided with the Sixth Witness Statement of Salah Mattoo submitted with this application.

9. This report is based on my own personal knowledge and experience as a practicing Ukrainian lawyer, including my experience with enforcement proceedings before Ukrainian courts involving foreign and domestic litigants.

10. In summary, I was instructed to consider and give an opinion on the following:

    (i) Whether the acquisition of the shares in Ukrtatnafta by Amruz Trading AG, a Swiss company ("Amruz") and Seagroup International Inc., an American company ("Seagroup") using promissory notes was in accordance with Ukrainian law (including Article 13 of the Law of Ukraine on Business Entities, Article 8 of the Law of Ukraine on Securities and Stock Exchange and the joint Resolution of the Cabinet of Ministers of

Ukraine and the National Bank of Ukraine of 10 September 1992 No. 528 on the "Rules of Issuance and Use of Promissory Notes Forms" (the "Rules on Promissory Notes"))?

(ii) Whether under Ukrainian law (including Article 33 of the Law on Business Entities) Amruz and Seagroup could acquire shares in Ukrtatnafta without making a full payment for them?

(iii) Review the relevant Ukrainian court decisions concerning the legality of Amruz and Seagroup's acquisition of shares in Ukrtatnafta and provide an opinion as to whether Ukrainian courts had a legal basis to annul Amruz's and Seagroup's share purchase agreements?

11. For the reasons set out below, in my opinion Amruz's and Seagroup's acquisition of Ukrtatnafta shares was illegal under Ukrainian law and was correctly invalidated by the Ukrainian courts.

12. In preparing this report I have relied on the exhibits listed in Annex 1, to which I will refer in the course of this report.

BACKGROUND AND SCOPE

13. I understand from the materials provided to me that Ukrtatnafta was "an integrated interstate economic complex of Ukraine and of the Republic of Tatarstan – a subject of the Russian Federation," which was created after the dismantling of the Soviet Union pursuant to the Treaty between the Governments of Ukraine and of the Republic of Tatarstan "On Creation of Transnational Finance and Production Petroleum Company 'Ukrtatnafta'" of 4 July 1995 ("Ukrtatnafta Treaty"), to ensure the supply and refining of Tatar oil at the Kremenchug refinery in Ukraine (**YC-2**).

14. I understand further from the Charter of Ukrtatnafta that it was established to operate as "an integrated interstate economic complex" and was organized under Ukrainian law in the form of a closed joint stock company (**YC-3**).

15. I understand from reviewing the Agreement on the Creation and Activity of Ukrtatnafta of 27 July 1995 ("Ukrtatnafta Agreement") that from its inception Ukrtatnafta had a significant governmental presence. On the Tatar side, the main shareholders included the Republic of Tatarstan (through its State Committee on State Property Administration, with its contribution of oil reserves and rights to use them for 25 years, and also Tatneft, with its contribution of oil fixtures. On the Ukrainian side, the main shareholder was Ukraine (through its State Property Fund), with its contribution of a Ukrainian company that operated the Kremenchug refinery (**YC-4**).

16. I am told by my instructing solicitors that the shareholding structure of Ukrtatnafta changed over the years and that foreign-incorporated companies with unclear beneficial ownership structure were allowed to enter the shareholding of Ukrtatnafta.

17. From my review of the Sales and Purchase Contract No. 02-1-99 between Ukrtatnafta and Amruz of 1 June 1999 and Sales and Purchase Contract No. 1747/12 between Ukrtatnafta and Seagroup of 1 June 1999, it appears that Amruz agreed to acquire 8.336% of the shares of Ukrtatnafta, and Seagroup agreed to acquire 9.960% of the shares in Ukrtatnafta, in both cases paying the required consideration by means of promissory notes on 1 June 1999 (**YC-5** and **YC-6**).

18. According to these documents, Amruz undertook to pay $30 million in consideration for a 8.336% shareholding in Ukrtatnafta. Amruz tendered 30 promissory notes, each in the amount of $1 million. I understand from the Sixth Witness Statement of Salah Mattoo that only one promissory note, in the amount of $1 million, was ever redeemed. This means that Amruz was able to secure a 8.336% stake in the company for $1 million dollars instead of the promised $30 million.

19. Similarly, according to the above documents, Seagroup contracted to pay $35,845,132 in consideration for a 9.960% stake in Ukrtatnafta. Seagroup tendered 36 promissory notes: 35 promissory notes in the amount of $1 million and one promissory note in the amount of $845,000. I understand from the Sixth Witness Statement of Salah Mattoo that ultimately Seagroup had not made any payments pursuant to the promissory notes, while retaining the shares.

20. I have been provided with Ukrainian court decisions in Cases Nos. 28/198 and 28/199 (**YC-12** through **YC-29**). I can see that in these legal proceedings, initiated by the Ukrainian State Property Fund against Ukrtatnafta, Amruz and Seagroup, Ukrainian courts ultimately annulled the share purchase agreements by which Amruz and Seagroup acquired shares in Ukrtatnafta using promissory notes for violation of Ukrainian law. This expert report covers the substantive aspects of the Cases Nos. 28/198 and 28/199 (i.e., whether it was legal for Amruz and Seagroup to acquire the shares in Ukrtatnafta using promissory notes). It does not cover any procedural aspects of these cases (i.e., whether it was proper to initiate cassation proceedings in these cases). I was not instructed to opine on procedural matters, and they are beyond the scope of this expert report.

21. I have also been provided with the Merits Award in the international arbitration *OAO Tatneft v. Ukraine*, which I understand to be at the origin of the English recognition and enforcement proceedings (**YC-30**). This is a lengthy and detailed document; I have not had the opportunity to study it in detail, nor have I been instructed to opine on its contents. I can see, however, that it has a section on annulment of shareholding of Amruz and Seagroup (starting on page 77), and particularly a subsection summarizing the tribunal's considerations in this regard (starting on page 90). From my review of this latter subsection, it does not appear to me that the tribunal has reached any definite conclusion as to whether it was legal for Amruz and Seagroup to acquire the shares in Ukrtatnafta using promissory notes, apart from observing rather in passing that the findings of the minority of Ukrainian courts endorsing the use of promissory notes were "tenable."

I. UNDER UKRAINIAN LAW, WAS IT LEGAL FOR AMRUZ AND SEAGROUP TO ACQUIRE THE SHARES IN UKRTATNAFTA USING PROMISSORY NOTES?

22. For the reasons explained below, I believe that it was illegal for Amruz and Seagroup to acquire the shares in Ukrtatnafta using promissory notes.

23. Article 13 of the Law of Ukraine on Business Entities (**YC-7**), applicable at the relevant time, provided that the contributions of shareholders and participants into the charter fund of a company could be buildings, constructions, equipment and other tangible assets, *securities*, rights for the use of land, water and other natural resources, as well as other property rights (including for intellectual property), funds (including in foreign currency).

24. The provision was rather unambiguous in emphasizing the property rights and vested interests as the kind of contributions (i.e., assets or resources) that may form the charter fund.

25. However, in my view, promissory notes contributed by an issuer, in turn, do not conform with the requirement in Article 13 of the Law of Ukraine on Business Entities. Despite formally being qualified as a *security*, by their nature, promissory notes represent *debt undertakings* of an issuer.

In their use as a contribution to the charter fund one may see an attempt to dress up a mere debt undertaking with a deferred date of payment into a legal construction that formally falls within Article 13, but that does not do justice to its entire purpose and content.

26. At its extreme, one may think of charter funds being entirely formed of promissory notes, i.e. of debt undertakings of the contributors with the deferred dates of payment. When judged against Article 13 of the Law of Ukraine, one would not have any difficulty in understanding that this is not the situation the Ukrainian legislature was aiming to achieve when specifying the kinds of *assets* that could constitute contributions in the charter fund.

27. Unsurprisingly, the use of promissory notes in Ukraine was intended for payment for supplied goods, performed works and provided services by the joint Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine of 10 September 1992 No. 528 on the "Rules for the Production and Use of the Note Forms" (the "Rules on Promissory Notes") (in Ukrainian: *"Правила виготовлення і використання вексельних бланків"*) (**YC-8**). The rule made perfect sense for the economy that experienced deficit of cash/money; economic realities reflected the use of promissory notes in the Ukrainian context. Contracting parties lacking cash could convert their debt obligations into an unconditional form of undertakings – promissory notes.

28. The above-mentioned restrictions on the use of promissory notes contained in the joint Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine of 10 September 1992 No. 528 operate as restrictions on the use of promissory notes as a contribution into the charter fund.

29. The above understanding of the prohibition of the use of promissory notes as a contribution into the charter fund found its express codification in 2001 when the Law of Ukraine "On the Circulation of Promissory Notes" No. 2374-III was adopted. Rather than being a novelty in and of itself, Article 12 of the above Law merely restated a pre-existing legal rule by saying: "*It is prohibited to use promissory notes as a contribution to the charter fund of a company*" (in Ukrainian: *"Забороняється використовувати векселі як внесок до статутного фонду господарського товариства."*) (**YC-9**).

30. Thus, because the use of promissory notes as a contribution into the charter fund of a company was illegal at all relevant times for this matter, it was illegal for Amruz and Seagroup to acquire the shares in Ukrtatnafta using promissory notes.

31. On a separate note, while I have not had access to the promissory notes issued by Amruz and Seagroup in this matter, I understand from the materials provided to me that the promissory notes contained a reference to alternative means of payment (with money or delivery of oil). If the alternative nature of the promissory notes is understood as a sort of condition, it may undermine the validity of the promissory notes themselves, insofar as valid promissory notes must contain an unconditional undertaking to pay under Article 75 of the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes (**YC-10**). If the validity of the promissory notes issued by Amruz and Seagroup is undermined, there is no arguable basis to consider the contributions made by Amruz and Seagroup as being legal.

II. UNDER UKRAINIAN LAW, WAS IT LEGAL FOR AMRUZ AND SEAGROUP TO RETAIN THE SHARES IN UKRTATNAFTA WITHOUT MAKING A FULL PAYMENT FOR THEM?

32. Even if we assume the initial payment using promissory notes to be legal (for clarity, I do not support this proposition), Amruz and Seagroup were clearly under a time limit to make full payment in order to retain the shares.

33. Article 8(3) of the Law of Ukraine on Securities and Stock Exchange provides that shares may be rendered to the recipient (purchaser) only after full payment of their value (**YC-11**).

34. Furthermore, Article 33 of the Law of Ukraine on Business Entities provides that a shareholder has to pay for the shares no later than one year after the registration of a joint stock company (**YC-7**).

35. These provisions are of mandatory character. They essentially provide a second safety valve against attempts to bypass the requirement under Ukrainian law as to the kinds of contributions that are permissible into the charter fund. While Ukrainian law does not have a concept of *consideration* which is present in English contract law, it has various functional analogues. In the context of this particular case, rules of Ukrainian law on the timing of payment, together with the requirement of contribution of assets into the charter fund, operate to safeguard against situations where shares are acquired for nominal or zero consideration.

36. Because Amruz and Seagroup failed to pay in full for the shares in due time (Amruz and Seagroup between them redeemed only one of 66 promissory notes), their share purchase agreements came into violation with Ukrainian law and therefore were rightfully invalidated.

37. Here again, I believe that the use of promissory notes evidences an attempt to bypass the Ukrainian law requirement regarding the time of payment for shares, by transferring a mere undertaking to pay within the prescribed timeframe and creating a different timeframe by the terms of payment of the promissory notes. In view of Article 8 (3) of the Law of Ukraine on Securities and Stock Exchange and 33 of the Law of Ukraine on Business Entities, such an attempt is illegal.

III. DID UKRAINIAN COURTS HAVE A LEGAL BASIS TO ANNUL AMRUZ'S AND SEAGROUP'S SHARE PURCHASE AGREEMENTS?

38. Below I set out a chronology of the **Cases Nos. 28/198 and 28/199** based upon my review of the Ukrainian court decisions in these cases.

39. In **Case No. 28/198**, the State Property Fund of Ukraine filed a claim against Ukrtatnafta and Seagroup with the Economic Court of Kyiv, seeking to annul the share purchase agreement by which Seagroup had acquired Ukrtatnafta shares using promissory notes on 1 June 1999 (**YC-12**). The Economic Court of Kyiv rendered its judgment on 28 November 2001.

40. In its recitation of the facts, the court noted that in accordance with the contract, Seagroup paid for 147 535 115 Ukrtatnafta shares (i.e., 9.960%) using promissory notes (in Ukrainian: *прості векселі*).

41. The court found that Seagroup's payment for Ukrtatnafta shares using promissory notes violated Article 13 of the Law of Ukraine on Business Entities. Article 13 provides that contributions into the charter fund of a company can take the form of: buildings, structures, equipment and other tangible property; securities; rights to use land, water, other natural resources, buildings, structures,

equipment and other tangible property; money. Applying Article 13, the court reasoned that only *property rights* can constitute contributions into the charter fund, and that a promissory note (*вексель*) evidences *an obligation* and not *a right*, and therefore cannot constitute a contribution into the charter fund (**YC-7**).

42. The court also found Seagroup's payment for Ukrtatnafta shares using promissory notes inconsistent with the Rules on Promissory Notes, approved by the joint Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine as Resolution of 19 September 1992 No. 528, according to which promissory notes can only be used to pay for supply of goods, works performed and services provided (implying that they cannot be used to pay for shares) (**YC-8**).

43. Moreover, the court found that since Seagroup had not made payment pursuant to the promissory notes, it had not made any contribution into the charter fund of Ukrtatnafta. Accordingly, the charter fund of Ukrtatnafta was not properly formed, in violation of Article 13 of the Law of Ukraine on Business Entities (**YC-7**).

44. Thus, the court held that the share purchase agreement and amendments thereto were invalid, and ordered to make changes to the shareholder registry and register Ukrtatnafta as the owner of Seagroup's shares.

45. Seagroup lodged an appeal with the Economic Court of Appeal of Kyiv.

46. On 14 March 2002, the Economic Court of Appeal of Kyiv dismissed the appeal and upheld the judgment of the Economic Court of Kyiv, finding that the share purchase agreement and amendments thereto were invalid for similar reasons as below (**YC-14**).

47. First, Article 13 of the Law of Ukraine on Business Entities provides that contributions into the charter fund of a company must take the form of *property or property rights*, whereas promissory notes evidence *an obligation* and not *a right*.

48. Second, the Rules on Promissory Notes, approved by the joint Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine of 19 September 1992 No. 528, provide that promissory notes can only be used to pay for goods supplied, works performed and services rendered (implying that they cannot be used to pay for shares) (**YC-8**).

49. Based on the foregoing, the Economic Court of Appeal of Kyiv concluded that the share purchase agreement did not comply with the law. Thus, the courts of two instances recognized the illegality of Seagroup's acquisition of Ukrtatnafta shares using promissory notes.

50. Seagroup applied for cassation to the Higher Economic Court. On 29 May 2002, the Higher Economic Court granted cassation and thus reversed the judgments mentioned above for the following reasons (**YC-16**).

51. The Higher Economic Court noted that according to the Minutes of Ukrtatnafta's General Meeting of Shareholders dated 10 June 1999, the shareholders agreed that Seagroup would pay for Ukrtanafta shares using promissory notes.

52. Next, the Higher Economic Court noted that in the view of Article 13 of the Law of Ukraine on Business Entities, contributions of participants and founders to the charter fund can be made, inter alia, in the form of securities, promissory notes being formally one of the types thereto. As I have explained above, in my view, Article 13 contemplates the possibility of contribution of securities to the charter fund that by virtue of their nature certify property rights (e.g. shares, bonds, savings certificates).

53. Next, the cassation court noted that the Law of Ukraine on the Circulation of Promissory Notes (in Ukrainian: *Закон України «Про обіг векселів в Україні»*) referred to by the first-instance court — which provides in Article 4 that promissory notes can only be used to pay for goods supplied, works performed and services rendered — only entered into force on 4 May 2001, which is after the conclusion of the disputed contract. Thus, the prohibition contained therein did not apply to the disputed contract. I can see that the first-instance court *did* mention the aforementioned Law of Ukraine on the Circulation of Promissory Notes for this prohibition, but it referred to the Rules on promissory notes and Resolution of 19 September 1992 No. 528 for the same prohibition. It does not appear that the cassation court mentioned the Rules in its reasoning. Rather, it seems that the cassation court did not apply them in this case. In any event, in my opinion, the 2001 Law reflected the position as it already stood prior to its passing.

54. Finally, the cassation court applied Article 216 of the Civil Code of Ukraine to conclude that Seagroup's obligation to pay for shares terminated at the moment of its performance. Here, it appears that the cassation court meant to refer to Article 216 of the Civil Code of the *Ukrainian SSR* and not to the Civil Code of *Ukraine*; Article 216 provides that "*the obligation terminates when it is performed properly*" (in Ukrainian: *«зобов'язання припиняється виконанням, проведеним належним чином»*). The term "performed properly" (in Ukrainian: *«виконанням . . . належним чином»*) is not redundant and is there for a reason. Applying Article 216, the cassation court concluded that Amendment No. 1 to the contract suspended Seagroup's obligation to pay for the shares until 1 June 2003. The court concluded that the use of promissory notes constituted proper performance, insofar as the extension of time limits for payment under promissory notes was not a violation.

55. Subsequently, the State Property Fund of Ukraine applied for second cassation to the Supreme Court of Ukraine for improper application of the norms of substantive law by the Higher Economic Court. In its ruling of 18 July 2002, the Supreme Court panel did not reach a consensus regarding allowing the second cassation to proceed (**YC-18**). (Under the applicable rules of procedure, it was necessary to obtain consent of the Supreme Court for the second cassation to be heard.)

56. Apparently dissatisfied with the result, the State Property Fund of Ukraine once again applied for second cassation to the Supreme Court of Ukraine. The Supreme Court of Ukraine rejected the application on 1 November 2002 as it was a repeated application (**YC-20**).

57. Thereafter, the prosecutor, acting on behalf of the State Property Fund of Ukraine, applied for second cassation, arguing that the proceeding should be allowed to proceed pursuant to Article 53 of the Commercial Procedural Code of Ukraine. Under this Article, the court has the power to renew the statute of limitations upon application of a party, prosecutor or on its own initiate where a procedural deadline was missed for a "material reason" (in Ukrainian: *«поважна причина»*). As I understand, the prosecutor argued that that he had recently learned about inconsistent application of the law by the High Economic Court in analogous cases. The Supreme Court allowed the case to proceed (**YC-22**). This procedural issue is beyond the scope of this expert report, as I was

instructed to address the substantive issue of legality of the acquisition of the shares of Amruz and Seagroup using promissory notes.

58. On the substance, on 18 March 2008 the Supreme Court granted the prosecutor's application, overruled the judgments of the Higher Economic Court and remanded the case to the first-instance (**YC-24**). To conclude that the promissory notes provided by Seagroup could not be regarded as proper contributions into the charter fund of Ukrtatnafta, the Supreme Court relied on Article 13 of the Law of Ukraine on Business Entities, the same provision as relied upon by the first-instance and the appellate courts. The Supreme Court also relied on Article 75 of the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes, which particularly stipulates that simple promissory notes must contain an unconditional promise to pay a determined sum of money. The Supreme Court concluded that Seagroup's promissory notes issued in consideration for Ukrtatnafta shares were not a monetary contribution (in Ukrainian: *грошовий вклад*), but rather a debt obligation (in Ukrainian: *боргове зобов'язання*).

59. On remand, the Economic Court of Kyiv considered broader issues of illegality of the changes to the charter fund of Ukrtatnafta due to the violation of the principle of parity consecrated in the Ukrtatnafta Treaty. I understand that this issue was highly contested in the Ukrainian litigation and the international arbitration. I do not focus on this aspect of the Ukrainian judgments in this expert report (**YC-26**).

60. With regard to the substantive issues of importance to this expert report, the Economic Court of Kyiv once again held that Seagroup's issuance of debt obligations (in Ukrainian: *боргові зобов'язання*) in consideration for the shares in Ukrtatnafta was inconsistent with Article 13 of the Law of Ukraine on Business Entities.

61. The Economic Court of Kyiv also referred to Article 8 of the Law on Securities and Stock Exchange according to which shares can only be delivered to the shareholder after full payment for their value. The court noted that pursuant to the contested share purchase agreement, Seagroup acquired the shares before performing its debt obligations and making a full payment of their value, which contradicted Article 8 of the Law on Securities and Stock Exchange.

62. Additionally, the Economic Court of Kyiv applied Article 33 of the Law of Ukraine on Business Entities according to which a shareholder is required to make full payment for the shares within the time limit set by the general shareholder meeting, but no later than one year from the registration of the company. By extending the time limit for the payment under the promissory notes and, accordingly, not contributing anything of value to the charter fund of Ukrtatnafta until 1 June 2003, the shareholder violated Article 33 of the Law of Ukraine on Business Entities.

63. For the foregoing reasons, the Economic Court of Kyiv thus held that the share purchase agreement by which Seagroup acquired Ukrtatnafta shares was invalid and ordered the return of the disputed shares to Ukrtatnafta.

64. The above judgments were further upheld by the courts of appellate and cassation instances (**YC-28**).

65. **Case No. 28/199** regarding the annulment of the share purchase agreement by which Amruz had acquired Ukrtatnafta shares using promissory notes on 1 June 1999 is analogous, except that it involves Amruz's shares. This case followed the same procedural track and lead to the same result (**YC-13**, **YC-15**, **YC-17**, **YC-19**, **YC-21**, **YC-23**, **YC-25**, **YC-27** and **YC-29**).

66. In sum, this was a hard-fought litigation battle spanning over many years. When looked through the prism of substantive application of law, the proceedings are indicative of a self-correcting judicial system existent in Ukraine at that time. Indeed, the first two levels of courts got it right the first time when deciding the illegality of the share purchase agreements using promissory notes, then things went astray, then the judicial system corrected itself with the Supreme Court judgment of 18 March 2008 (**YC-24** and **YC-25**), and on remand the first-instance court essentially came back to its prior ruling but gave even more reasons, and any further appeal and cassation failed.

67. Without getting into detail on the prevailing reasoning of illegality of the share purchase agreements using promissory notes, it would suffice to say that it is consistent with my own opinions as summarized in Sections I and II above. The Ukrainian courts came to the conclusion on illegality of the use of promissory notes through a combined application of Articles 13 and 33 of the Law of Ukraine on Business Entities, Article 1 of the joint Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine on the Rules on Promissory Notes, Article 8 of the Law of Ukraine on Securities and Joint Stock and some other provisions. The debt nature of promissory notes, on the one hand, and the clear requirement of formation of the charter fund with assets and within a set timeline, on the other hand, became the core for their decisions. On this basis, Ukrainian courts had all the reasons to annul the share purchase agreements by which Amruz and Seagroup acquired Ukrtatnafta shares.

68. In this context, I find it difficult to understand how the Merits Award mentioning the number of judges at all judicial levels who ruled against the use of promissory notes nevertheless conclude that the decision of minority appeared tenable. For clarity, the Merits Award mentions in ¶ 311 that six out of seven Ukrainian courts at four judicial levels, with 21 out of 24 reviewing judges, ruled against the use of promissory notes to acquire company shares.

69. For the described reasons, I do agree with the conclusion of the Supreme Court's 2008 judgment and other courts finding that Amruz's and Seagroup's use of promissory notes to acquire their interests in Ukrtatnafta was not permissible as a matter of law.

IV. EXPERT DECLARATION

70. I have read and understood Part 35 of the Civil Procedure Rules together with the relevant Practice Direction, and the Guidance for the Instruction of Experts in Civil Claims 2014. I can confirm that I am aware of my duties as an expert witness and believe that I have complied with these duties at all times. In making this report I understand that, although I have been retained by Winston & Strawn, on behalf of Ukraine, my overriding duty is to the Court. I understand that my duty to the Court on matters that are within my expertise overrides any obligation I owe to Winston & Strawn or Ukraine. I have no interests which I consider require to be disclosed by me in connection with the preparation of this report and I have no material interest in the outcome of this case.

STATEMENT OF TRUTH

71. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I have clearly stated any qualifications to my opinion.

72. I may provide more details, further explanations and/or amend this expert report, if needed in due course.

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Yuliya Chernykh

Dated: 31 January 2020

Annex 1

Exhibit YC-1	Yuliya Chernykh's CV
Exhibit YC-2	Treaty between the Governments of Ukraine and of the Republic of Tatarstan "On Creation of Transnational Finance and Production Petroleum Company Ukrtatnafta" of 4 July 1995 ("Ukrtatnafta Treaty")
Exhibit YC-3	Charter of Closed Joint Stock Company Transnational Finance and Production Petroleum Company Ukrtatnafta of 1995 ("Charter of Ukrtatnafta")
Exhibit YC-4	Agreement on the Creation and Activity of Ukrtatnafta of 27 July 1995 ("Ukrtatnafta Agreement")
Exhibit YC-5	Sales and Purchase Contract No. 02-1-99 between Ukrtatnafta and Amruz Trading AG of 1 June 1999
Exhibit YC-6	Sales and Purchase Contract No. 1747/12 between Ukrtatnafta and Seagroup of 1 June 1999
Exhibit YC-7	Law on Business Entities, Articles 13, 33
Exhibit YC-8	Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine of 10 September 1992 No. 528 on the "Rules of Issuance and Use of Promissory Notes Forms" ("Rules on Promissory Notes")
Exhibit YC-9	Law of Ukraine On the Circulation of Promissory Notes No. 2374-III, Article 12
Exhibit YC-10	Convention providing a Uniform Law for Bills of Exchange and Promissory Notes, Article 75
Exhibit YC-11	Law of Ukraine on Securities and Stock Exchange, Article 8
Exhibit YC-12	Judgment of the Economic Court of Kyiv in Case No. 28/198 of 28 November 2001
Exhibit YC-13	Judgment of the Economic Court of Kyiv in Case No. 28/199 of

	28 November 2001
Exhibit YC-14	Judgment of the Economic Court of Appeal of Kyiv in Case No. 28/198 of 14 March 2002
Exhibit YC-15	Judgment of the Economic Court of Appeal of Kyiv in Case 28/199 of 14 March 2002
Exhibit YC-16	Judgement of the Higher Economic Court in Case No. 28/198 of 29 May 2002
Exhibit YC-17	Judgment of the Higher Economic Court in Case No. 28/199 of 29 May 2002
Exhibit YC-18	Judgment of the Supreme Court of Ukraine in Case No. 28/198 of 18 July 2002
Exhibit YC-19	Judgment of the Supreme Court of Ukraine in Case No. 28/199 of 18 July 2002
Exhibit YC-20	Judgment of the Supreme Court of Ukraine in Case No. 28/198 of 1 November 2002
Exhibit YC-21	Judgment of the Supreme Court of Ukraine in Case No. 28/199 of 1 November 2002
Exhibit YC-22	Ruling of the Supreme Court in Case No. 28/198 of 21 February 2008
Exhibit YC-23	Ruling of the Supreme Court in Case No. 28/199 of 21 February 2008
Exhibit YC-24	Judgement of the Supreme Court in Case No. 28/198 of 18 March 2008
Exhibit YC-25	Judgment of the Supreme Court in Case No. 28/199 of 18 March 2008
Exhibit YC-26	Judgement of the Economic Court of Kyiv in Case No. 28/198 of

	28 May 2008
Exhibit YC-27	Judgment of the Economic Court of Kyiv in Case No. 28/199 of 2 June 2008
Exhibit YC-28	Judgement of the Supreme Court of Ukraine in Case No. 28/198 of 27 November 2008
Exhibit YC-29	Judgement of the Supreme Court of Ukraine in Case No. 28/199 of 11 December 2008
Exhibit YC-30	*OAO Tatneft v. Ukraine*, Merits Award of 29 July 2014