

**UNDER THE 1976 ARBITRATION RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW**

**STABIL LLC; RUBENOR LLC; RUSTEL LLC; NOVEL-ESTATE LLC; PII KIROVOGRAD-NAFTA
LLC; CRIMEA-PETROL LLC; PIRSAN LLC (THE “PETROL STATION OWNERS”)**

-AND-

TRADE-TRUST LLC AND ELEFTERIA LLC (THE “PETROL STATION LESSEES”)

-AND-

VKF SATEK LLC AND STEMV GROUP LLC (THE “STORAGE FACILITY OWNERS”)

(Ukraine)

Claimants

v.

THE RUSSIAN FEDERATION

Respondent

NOTICE OF ARBITRATION

3 JUNE 2015

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I. DEMAND FOR ARBITRATION

1. This Notice of Arbitration concerns a dispute between the Petrol Station Owners, the Petrol Station Lessees, and the Storage Facility Owners (together, the “Petrol Companies” or “Claimants”), all as defined in paragraph 3 below, and the Government of the Russian Federation (“Russian Federation” or “Respondent”), within the meaning of Article 9 of the Agreement Between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments (the “Bilateral Investment Treaty” or “BIT”). The BIT was signed on 27 November 1998 and entered into force on 27 January 2000. A Russian language copy of the BIT (and a certified English translation) is attached hereto as Claimant’s Exhibit (“CE”) 1-R and a Ukrainian language copy is attached as CE-1-U.¹

2. The Petrol Companies submit this Notice of Arbitration in accordance with Article 3 of the 1976 Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL”) and demand arbitration of their dispute with the Russian Federation pursuant to Article 9 of the BIT.

II. THE PARTIES

A. Claimants

3. The Claimants are eleven companies organized under the laws of Ukraine. For ease of reference, this Notice of Arbitration groups the Claimants as follows:

- The Petrol Station Owners are: Stabil LLC, Rubenor LLC, Rustel LLC, Novel-Estate LLC, PII Kirovograd-Nafta LLC, Crimea-Petrol, LLC, and Pirsan LLC;

1. Article 14 of the BIT provides that it was “Executed in Moscow on November 27, 1998 in two counterparts, each one in the Russian and the Ukrainian languages, both texts having equal force.” A Russian language version of the BIT is available in the following collection of documents: U.U. Berestnev, *Agreements for Protection and Promotion of Investments: Collection of Documents* (2002). A Ukrainian language version of the BIT is available at the Ukrainian Parliament’s website: http://zakon4.rada.gov.ua/laws/show/ru/643_101.

- The Petrol Station Lessees are: Trade-Trust LLC and Elefteria LLC;
- The Storage Facility Owners are: VKF Satek LLC and Stenv Group LLC.

Claimants' registered addresses are set forth in Annex A to this Notice of Arbitration.

Correspondence addressed to Claimants should be sent to their counsel at the addresses set forth in paragraph 7 below.

4. Before the Russian Federation targeted Claimants in violation of the BIT (described in Section IV below), the Petrol Station Owners owned 31 petrol stations on the Crimean Peninsula, as well as other real estate properties and land plots. The Petrol Station Owners leased their stations to the Petrol Station Lessees, which operated the network of Crimean stations. The Storage Facility Owners owned two facilities on the Crimean Peninsula that supplied reserve fuel to the Petrol Station Owners' and Petrol Station Lessees' petrol stations in the event of market fluctuations or shortages.

5. The following map illustrates the approximate locations of the Petrol Companies' stations on the Crimean Peninsula.



6. The ultimate beneficial owners of the Petrol Companies include Mr. Igor Kolomoisky. Mr. Kolomoisky is a Ukrainian businessman and the former Governor of the Dnipropetrovsk Oblast State Administration in Ukraine. He has publicly opposed the annexation of Crimea by the Russian Federation and the Russian Federation's organization and support of illegal armed groups in eastern Ukraine. Mr. Kolomoisky has also been an outspoken critic of the policies of the Russian Federation authorities towards Ukraine.

7. The Petrol Companies are represented by:²

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Mr. James H. Boykin
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B. Respondent

8. Respondent is the Government of the Russian Federation, a sovereign state and a Contracting Party to the BIT. This Notice of Arbitration is being sent to the following representatives of Respondent:

2. See Powers of Attorney for the Petrol Companies (CE-2).

His Excellency Vladimir V. Putin
President of the Russian Federation
23 Ilyinka Ulitsa
Moscow 103132
The Russian Federation
8 (800) 200-23-16

His Excellency Dimitry A. Medvedev
Prime Minister of the Russian Federation
Government of the Russian Federation Building
2 Krasnopresnenskaya Naberezhnaya
Moscow 103274
The Russian Federation
8 (800) 200-84-42

His Excellency Anton G. Siluanov
Minister of Finance of the Russian Federation
Ministry of Finance
9 Ilyinka Ulitsa
Moscow 109097
The Russian Federation
(495) 987-91-01

His Excellency Alexander V. Kononov
Minister of Justice of the Russian Federation
Ministry of Justice
Ulitsa Zhitnaya, Dom 14
GSP-1
Moscow 119049
The Russian Federation
(495) 955-59-99

His Excellency Sergei V. Lavrov
Minister of Foreign Affairs of the Russian Federation
Ministry of Foreign Affairs
Smolenskaya-Sennaya Pl., 32/34
Moscow 119200
The Russian Federation
(499) 244-16-06

III. THE AGREEMENT TO ARBITRATE

9. In Article 9 of the BIT, the Russian Federation made a standing offer to arbitrate disputes that arise with Ukrainian investors in connection with their investments on the territory of the Russian Federation:

“1. Any dispute between either Contracting Party and an investor of the other Contracting Party arising in connection with the investments, including disputes concerning the amount, terms, and payment procedures of the compensation provided for by Article 5 hereof, or the payment transfer procedures provided for by Article 7 hereof, shall be subject to a written notice, accompanied by detailed comments, which the investor shall send to the Contracting Party involved in the dispute. The parties to the dispute shall endeavor to settle the dispute through negotiations if possible.

2. If the dispute cannot be resolved in this manner within six months after the date of the written notice mentioned in Section 1 of this article, it shall be referred to:

- a) a competent court or arbitral tribunal of the Contracting Party on whose territory the investments were made;
- b) the Arbitration Institute of the Stockholm Chamber of Commerce;
- c) an “ad hoc” arbitration tribunal, in conformity with the Arbitration Regulations of the United Nations Commission for International Trade Law (UNCITRAL).

3. The arbitral award shall be final and binding upon both parties to the dispute. Each Contracting Party agrees to execute such awards in conformity with its respective laws.”

A. The Conditions Attached to the Russian Federation’s Offer in the BIT to Arbitrate Disputes Have Been Satisfied

10. Article 9 of the BIT establishes four conditions that must be satisfied before an investor can initiate arbitration against a Contracting Party: (1) there must be a dispute between a Contracting Party to the BIT and an investor of the other Contracting Party to the BIT; (2) that dispute must “aris[e] in connection with the investments”; (3) the investor must provide written notice to the Contracting Party of the existence of a dispute so that the investor and the Contracting Party can “endeavor to settle the dispute through negotiations”; and (4) at least six months must have elapsed from the date on which the pertinent Contracting Party was provided with notice of the dispute. All of Article 9’s requirements have been satisfied.

(1) The dispute is between a Contracting Party to the BIT and investors of the other Contracting Party

11. Ukraine and the Russian Federation are both Contracting Parties to the BIT.

12. Article 1(2)(b) of the BIT defines “Investor of a Contracting Party” as “any legal entity formed under the laws of the given Contracting Party, on the condition that the said legal entity is legally authorized under the laws of its respective Contracting Party to make investments on the territory of the other Contracting Party.”³ The Petrol Companies are legal entities incorporated in Ukraine. Their investments in Crimea were lawful under the laws of Ukraine when they were made. The Petrol Companies are thus “investors” for the purposes of Article 1(2)(b) of the BIT.

13. Therefore, the dispute between the Petrol Companies and the Russian Federation is a dispute between investors of a Contracting Party to the BIT (Ukraine) and the other Contracting Party (the Russian Federation).

(2) The dispute arose in connection with the Petrol Companies’ investments

14. The present dispute arose in connection with the Petrol Companies’ investments on the territory of the Russian Federation and the Russian Federation’s breaches of its obligations owed to the Petrol Companies and their investments under the BIT. Those breaches are described in Section IV below.

(a) The Petrol Companies made investments within the meaning of Article 1(1) of the BIT

15. Article 1(1) of the BIT defines “Investments” as follows:

“[A]ll kinds of material and intellectual property contributed by an investor of one Contracting Party on the territory of the other Contracting Party in conformity with the latter’s laws, including:

3. BIT, Art. 1(2)(b) (**certified English translation of CE-1-R**).

- a) movable and immovable property, as well as the associated property rights;
- b) cash, as well as securities, commitments, contributions and other forms of participation;
- c) intellectual property rights, including copyrights and related rights, trademarks, rights to inventions, industrial samples, models, engineering processes and know-how; [and]
- d) rights to engage in commercial activity, including rights to the exploration, development and exploitation of natural resources.”

16. Between 2000 and 2010, the Petrol Station Owners acquired title to 31 petrol stations in Crimea through which they sold fuel and other goods directly to the public. The Petrol Companies owned the land plots on which those stations were built, as well as other real estate.

17. The Petrol Station Lessees obtained the rights to operate the Petrol Station Owners’ stations in 2010 and 2011 through a series of lease agreements with the Petrol Station Owners.

18. The Petrol Station Lessees obtained all permits and licenses necessary to operate petrol stations in Crimea and they kept these permits and licenses current at all times.

19. The Petrol Station Lessees entered into contracts with vendors that provided goods and services integral to the operations of the Petrol Station Lessees’ stations, including, but not limited to, petroleum and LPG suppliers; shipping companies that transported fuel from those suppliers to the Petrol Station Lessees’ Crimean petrol stations; and contractors that provided, among other things, solid waste removal, electric power supply, and telecommunications.

20. Claimants made investments in equipment in connection with the operations of their Crimean petrol stations. Further, Claimants modernized, renovated, or made extensive repairs to several of their petrol stations.

21. The Storage Facility Owners held title to two storage facilities in Crimea. The Storage Facility Owners entered into lease agreements with another company that operated those two facilities.⁴

22. The Petrol Companies' property and contract rights and their operations in Crimea, described above, qualify as "investments" under Article 1(1) of the BIT.

(b) The Petrol Companies' investments were "on the territory" of the Russian Federation

23. Prior to the events described below, Crimea was part of the territory of Ukraine. In 1954, the Supreme Soviet of the Union of Soviet Socialist Republics (the "USSR") adopted an edict approving the transfer of the "Crimean Oblast" from the Russian Soviet Federative Socialist Republic to the Ukrainian Soviet Socialist Republic.⁵ Upon dissolution of the USSR in 1991, the Crimean Peninsula remained a part of the newly independent Ukraine as the Autonomous Republic of Crimea and the City with Special Status Sevastopol. However, when the Russian Federation occupied the Crimean Peninsula beginning in February 2014, it became part of the Russian Federation's territory for the purposes of Article 1(1) of the BIT, and the Petrol Companies' investments were therefore "on the territory" of the Russian Federation.

24. The Russian Federation made the Crimean Peninsula part of its territory *de facto* when it established control over the Peninsula through military force. Beginning in late February

4. The lessee of these facilities is not a party to the present dispute.

5. Presidium of the Supreme Soviet of the USSR, Edict On the Transfer of the Crimea Region from the RSFSR to the Ukrainian SSR dated 19 Feb. 1954.

2014, the Russian Federation commenced a military operation that swiftly established physical possession and control of Crimea.⁶ By 27 February 2014, the Russian flag was flying over Autonomous Republic of Crimea administrative buildings, including Parliament, all of which were guarded by Russian Federation soldiers.⁷ Access to Crimea, whether by air, sea, or land, was also under Russian Federation control.⁸ Russian Federation control over Crimea extended to blocking telecommunications.⁹

25. Although Russian Federation officials initially denied that the Russian military was engaged on the Crimean Peninsula, Russian President Vladimir Putin later admitted that the armed forces in Crimea were Russian military personnel.¹⁰ In a 17 November 2014 interview with the German news service ARD, President Putin said, “Yes, I make no secret of it, it is a fact and we never concealed that our Armed Forces, let us be clear, blocked Ukrainian armed forces stationed in Crimea.”¹¹ More recently, President Putin admitted in a documentary aired on

6. See, e.g., Paul Lewis, Spencer Ackerman, and Jon Swaine, *US concedes Russia has control of Crimea and seeks to contain Putin*, The Guardian (3 March 2014) (“The US conceded on Sunday that Moscow had ‘complete operational control of the Crimean peninsula’ and announced that the secretary of state, John Kerry, will fly to Kiev in an attempt to halt a further Russian advance into Ukraine”) (emphasis added) (CE-3).

7. Harriet Salem, Shaun Walker, and Luke Harding, *Crimean parliament seized by unknown pro-Russian gunmen*, The Guardian (27 Feb. 2014) (CE-4); David M. Herszenhorn, Mark Landler, and Alison Smale, *With Military Moves Seen in Ukraine, Obama Warns Russia*, The New York Times (28 Feb. 2014) (CE-5).

8. Paul Sonne, *Crimea Checkpoints Raise Secession Fears*, The Wall Street Journal (28 Feb. 2014) (CE-6); *Russian navy blocks channel between Crimea, Russia - Ukraine border guards*, Reuters (4 March 2014) (CE-7); The New York Times (28 Feb. 2014) (reporting on the seizure of Crimea’s main airports) (CE-5).

9. Pavel Polityuk and Jim Finkle, *Ukraine says communications hit, MPs phones blocked*, Reuters (4 March 2014) (CE-8).

10. *Direct Line with Vladimir Putin*, President of Russia Official Website (17 April 2014) (CE-9, p. 16); see also *Putin reveals secrets of Russia’s Crimea takeover plot*, BBC.com (9 March 2015) (CE-10); *Interview to German TV channel ARD*, President of Russia Official Website (17 Nov. 2014) (CE-11).

11. President of Russia Official Website (17 Nov. 2014) (CE-11).

Russian TV that he commenced “the work to bring Crimea back into Russia” in February 2014.¹² President Putin has also declared 27 February – the date on which Russian forces seized the Autonomous Republic of Crimea Parliament building – to be a national holiday: “Special Operations Forces Day.”¹³ Any lingering doubts regarding the Russian Federation’s deployment of its troops on the Crimean Peninsula were dispelled by Mr. Boris Nemtsov’s report on Russian military activity in Crimea published posthumously on 12 May 2015.¹⁴

26. After establishing *de facto* sovereignty over the Crimean Peninsula, the Russian Federation asserted *de jure* sovereignty. On 18 March 2014, the Russian Federation and persons claiming to act on behalf of the “Republic of Crimea”¹⁵ and the “Federal City of Sevastopol” signed a so-called “Treaty between the Russian Federation and the Republic of Crimea on the Acceptance of the Republic of Crimea into the Russian Federation and the Formation of New Constituent Parts within the Russian Federation” (the “Annexation Treaty”).

27. That same day, President Putin presented the Annexation Treaty to the Constitutional Court of the Russian Federation for a ruling on its constitutionality.¹⁶ The Constitutional Court issued a judgment the next day “recogniz[ing] the international treaty

12. BBC.com (9 March 2015) (noting that President Putin “ordered work on ‘returning Crimea’ to begin at an all-night meeting on 22 February”) (CE-10).

13. Decree No. 103 of the President of the Russian Federation, On the Establishment of “Special Operations Forces Day” dated 26 Feb. 2015 (CE-12).

14. *See Putin. War: According to the Materials of Boris Nemtsov* (12 May 2015). Mr. Nemtsov was an outspoken leader of the opposition in the Russian Federation and the former First Deputy Prime Minister of the Russian Federation. He was shot and killed outside the Kremlin on 27 February 2015. The report draws upon Mr. Nemtsov’s notes and documents and details the Russian Federation’s military intervention in Ukraine. *See, e.g.,* Andrew E. Kramer, *Kremlin Critic’s Posthumous Report Links Russian Soldiers to Ukraine* (12 May 2015) (CE-13).

15. Upon annexation into the Russian Federation, the Autonomous Republic of Crimea was designated the Republic of Crimea.

16. *Constitutional Court of the Russian Federation to Verify Constitutionality of International Treaty on Acceptance of Republic of Crimea into the Russian Federation*, Constitutional Court Website (18 March 2014).

between the Russian Federation and the Republic of Crimea . . . as consistent with the Russian Federation Constitution.”¹⁷

28. The State Duma (the lower house of the Russian Parliament) and the Federation Council (the upper house) approved the Annexation Treaty on 20 and 21 March 2014, respectively.¹⁸ On 20 March 2014, the State Duma also passed legislation implementing the annexation of Crimea. On 21 March 2014, the Federation Council approved this law.¹⁹ On 21 March 2014, President Putin signed the implementing legislation at a ceremony in the Kremlin.²⁰ Under its terms, the Annexation Treaty has thus been effective under Russian law since 18 March 2014.²¹

29. The Russian Federation’s invasion and annexation of Crimea violated international law. Nevertheless, from late February 2014, the Russian Federation has been in effective control of Crimea, and from at least the effective date of the Annexation Treaty, the Russian Federation has insisted internally and to the international community that Crimea is part of the Russian Federation. Regardless of the merits of the Russian Federation’s arguments or the legality of its actions, as a matter of international law, the “territory” of the Russian Federation under the BIT is the territory over which the Russian Federation effectively asserts sovereignty. The Russian Federation’s unilateral but effective assertions of *de facto* control and

17. Resolution No. 6-P of the Constitutional Court of the Russian Federation dated 19 March 2014.

18. Federal Law No. 36-FZ, On Ratification of the Treaty Between the Russian Federation and the Republic of Crimea on the Acceptance of the Republic of Crimea Into the Russian Federation and the Formation of New Constituent Parts Within the Russian Federation dated 21 March 2014.

19. Federal Constitutional Law No. 6-FKZ, On Accepting the Republic of Crimea into the Russian Federation and Establishing New Constituent Entities in the Russian Federation: the Republic of Crimea and the Federal City of Sevastopol (the “Crimea Federalization Law”) dated 21 March 2014.

20. *Ceremony signing the laws on admitting Crimea and Sevastopol to the Russian Federation*, Kremlin Website (21 March 2014).

21. Annexation Treaty, Art. 10.

its assertions of *de jure* sovereignty make all of the Russian Federation's treaties, including the BIT, applicable to Crimea. Accordingly, Claimants' investments in Crimea were "on the territory" of the Russian Federation within the meaning of Article 1(1) of the BIT beginning in late February 2014 and by 18 March 2014, at the latest.

(3) The Petrol Companies notified the Russian Federation in writing of the existence of a dispute in connection with their investments

30. In two letters, dated 15 and 31 October 2014, the Petrol Companies, through their counsel, formally notified representatives of the Russian Federation of the present dispute under Article 9(1) of the BIT.²² The notice letters informed the Russian Federation of the basis for the dispute, including, without limitation, the primary treaty guarantees that the Russian Federation had violated, and requested consultations to reach a negotiated resolution. The Russian Federation has not acknowledged receipt of or otherwise responded to those letters.

(4) More than six months have elapsed since the Petrol Companies served formal notice on the Russian Federation

31. More than six months have elapsed since the Petrol Companies formally notified the Russian Federation of a dispute under the BIT. Upon such notice, Respondent was obliged to "endeavor to settle the dispute through negotiations if possible."²³ Respondent has not responded to the Petrol Companies' 15 and 31 October 2014 notice letters, much less engaged in negotiations to attempt to resolve the dispute. The Petrol Companies have therefore initiated arbitration under Article 9(2) of the BIT.

22. Letter from John M. Townsend to Prime Minister Medvedev dated 15 Oct. 2014 (CE-14); Letter from John M. Townsend to Prime Minister Medvedev dated 31 Oct. 2014 (CE-15).

23. BIT, Art. 9(1) (CE-1).

B. The Petrol Companies Accept the Russian Federation’s Offer in the BIT to Arbitrate

32. Pursuant to Article 9(2) of the BIT, the Petrol Companies hereby accept Respondent’s offer in the BIT to arbitrate their investment dispute described in this Notice of Arbitration, and consent to submit it to binding arbitration “in conformity with the Arbitration [Rules] of . . . UNCITRAL.”

33. The UNCITRAL Arbitration Rules were first published in 1976 (the “1976 Rules”). A revised version was published in 2010 (the “2010 Rules”). Although the 2010 Rules are presumed to apply to any arbitration agreement concluded after 15 August 2010,²⁴ “[t]hat presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.”²⁵

34. The Russian Federation made its offer to arbitrate when it concluded the BIT on 27 November 1998 – long before the adoption of the 2010 Rules – when only the 1976 Rules were available.²⁶ Therefore, the 1976 Rules apply to this arbitration unless the parties agree otherwise. The Petrol Companies invite Respondent to agree that this arbitration should proceed under the 2010 Rules.

24. UNCITRAL Arbitration Rules, as revised in 2010, Art. 1(2).

25. *Id.* The drafting history of the 2010 Rules reveals that, in limiting the presumption related to the applicability of the 2010 Rules to arbitration offers made after 15 August 2010, the drafters specifically contemplated treaty arbitration and intended for the arbitration rules in effect at the time a treaty was signed to govern disputes arising under that treaty. UNCITRAL, *Report of the Working Group on Arbitration and Conciliation on the work of its forty-eighth session*, 48th session (A/CN.9/646), ¶ 76, dated 4-8 Feb. 2008.

26. BIT, Art. 14 (CE-1).

IV. THE RUSSIAN FEDERATION'S MEASURES AGAINST THE PETROL COMPANIES VIOLATED THE BIT

A. The Russian Federation's Measures

35. The self-appointed Crimean authorities expropriated the Petrol Companies' investments because of their association with PrivatBank (the largest commercial bank in Ukraine) and Mr. Kolomoisky, who is publicly known to be one of PrivatBank's principal shareholders.

(1) The Russian Federation disrupted the Petrol Companies' operations after the annexation of Crimea

36. The fuel that the Petrol Companies sold to the Crimean public before the annexation by the Russian Federation originated from suppliers located outside of Crimea. Accordingly, the Petrol Companies arranged for shipping companies to transport that fuel to Crimea by either road or rail. In or around early April 2014, the Petrol Companies' stations stopped receiving their shipments of fuel from outside Crimea due to the deteriorated security situation on the Crimean Peninsula.

37. On 22 April 2014, heavily armed members of the "Crimean Self-Defense Forces" (a paramilitary group that acts at the direction of the Russian military and/or Russian Federation authorities and law enforcement agencies) executed a raid on the Petrol Companies' headquarters in Feodosia.²⁷ During the raid, the Russian-backed forces seized or destroyed the Petrol Companies' property (including computers, servers, permits and other documents, corporate stamps, and a substantial amount of cash) and harassed their employees. The seizure of the Petrol Companies' Feodosia headquarters made it impossible for management to communicate with the companies' Crimean stations and thus made it impossible for those stations to operate.

27. The Petrol Companies shared office space in Feodosia with the management of PJSC Ukrnafta (in which Mr. Kolomoisky also has an interest), on behalf of which a separate claim under the BIT is being made.

As a result, the Petrol Companies' management was forced to suspend all of the companies' Crimean operations.

38. In the days following the Crimean Self-Defense Forces' seizure of the Petrol Companies' Feodosia headquarters, those forces (or persons affiliated with those forces) began to take physical control of the Petrol Companies' stations.

39. Beginning in late April 2014, persons unaffiliated with the Petrol Companies took control of their Crimean stations and sold their remaining inventory (especially fuel) in Crimea. In June 2014, these same individuals abandoned the Petrol Companies' stations – evidently because the Petrol Companies' remaining inventory had dried up. To date, none of the revenues derived from the unauthorized sale of the Petrol Companies' fuel and other goods has reached the Petrol Companies.

40. The Petrol Companies have filed complaints with Crimean and Russian authorities that were established in Crimea at that time concerning the raid on their Feodosia headquarters and the subsequent unauthorized takeover of their petrol stations. In response, those authorities avoided an objective examination of the Petrol Companies' claims, and therefore denied Claimants' the protection of their legal rights. Respondent took no actions to remove the individuals engaged in the illegal trade of stolen goods from the Petrol Companies' properties, and failed to otherwise remedy the situation described above.

(2) The Russian Federation nationalized the Petrol Companies' investments based on their association with Mr. Kolomoisky and PrivatBank

(a) The State Council of the Republic of Crimea nationalized the Petrol Companies' properties

41. By a decree dated 3 September 2014, the so-called State Council of the Republic of Crimea nationalized numerous properties associated with Mr. Kolomoisky. Previously, in

April 2014, the State Council of the Republic of Crimea had issued a decree that certain properties throughout the Republic of Crimea were to be nationalized (the “Nationalization Decree”).²⁸ On 3 September 2014, the State Council of the Republic of Crimea issued a further decree amending the Nationalization Decree to include additional properties, including 17 of the Petrol Companies’ stations, their Feodosia headquarters, one of their storage facilities, and additional real estate properties belonging to the Petrol Companies, as well as a list of other properties that were perceived to be associated with Mr. Kolomoisky (the “3 September 2014 Amendment”).²⁹ As a consequence of the 3 September 2014 Amendment, the rights and assets associated with the Petrol Companies’ properties in the Republic of Crimea were permanently transferred to the State, without payment of any compensation.

42. The State Council of the Republic of Crimea made no secret of the motive behind its issuance of the 3 September 2014 Amendment. Announcing the nationalizations, Mr. Sergei Aksyonov, chairman of the self-proclaimed Council of Ministers of Crimea, declared that “Kolomoisky is one of the oligarchs who initiated and has been financing military operations in the southeast of Ukraine where our compatriots are being killed; therefore it is our moral right and our moral duty to carry out this nationalization.”³⁰

28. Decree No. 2085-6/14 of the State Council of the Republic of Crimea dated 30 April 2014 (**English translation of CE-16-R-001**).

29. Decree No. 2474-6/14 of the State Council of the Republic of Crimea dated 3 Sept. 2014, *amending* the Nationalization Decree (**English translation of CE-16-R-002-006**); *see also* Decree No. 83-1/14 of the State Council of the Republic of Crimea dated 9 Oct. 2014, *amending* the Nationalization Decree (updating the description of Claimants’ property listed in line item number 53) (**English translation of CE-16-R-011**). Annex B identifies Claimants’ petrol stations and other properties that were nationalized by the State Council of the Republic of Crimea.

30. *Crimea’s State Council rules to nationalize [Igor Kolomoisky’s] property in Crimea*, ITAR-TASS (3 Sept. 2014) (**CE-17**).

43. After the State Council of the Republic of Crimea issued the 3 September 2014 Amendment, the Crimean authorities ordered the transfer of the rights to the Petrol Companies' properties (discussed in ¶ 41 above) to a state-owned entity.³¹

44. As noted above, Mr. Aksyonov candidly explained that the purpose of the 3 September 2014 Amendment was to nationalize Mr. Kolomoisky's properties. Earlier decisions of the Kievsky District Court in Simferopol foreshadowed the new Crimean authorities' intention to nationalize any property they perceived to be associated with Mr. Kolomoisky or PrivatBank. On 18 August 2014 and 1 September 2014, the Simferopol court granted requests of the Ministry of Internal Affairs of the Republic of Crimea to attach numerous petrol stations belonging to the Petrol Companies (as well as numerous other Crimean properties owned by companies it perceived to be affiliated with Mr. Kolomoisky and PrivatBank). The court did so on the explicit grounds that (1) the petrol stations were connected to PrivatBank and Mr. Kolomoisky, (2) an officer of PrivatBank allegedly committed a crime that endangered funds belonging to PrivatBank's Crimean depositors, and (3) attaching the petrol stations was therefore necessary to

31. See Order No. 918-r of the Council of Ministers of the Republic of Crimea dated 11 Sept. 2014; Order No. 1016-r of the Council of Ministers of the Republic of Crimea dated 7 Oct. 2014, according to which the Council of Ministers of the Republic of Crimea ultimately ordered the transfer of the petrol stations and other real estate to the state-owned Feodosia Enterprise for Supply of Petroleum (later renamed SUE Crimean Fuel Alliance). On 11 March 2015, the Crimean Council of Ministers issued a decree merging SUE Crimean Fuel Alliance into SUE Chernomorneftegaz. See Order No. 182-r of the Council of Ministers of the Republic of Crimea dated 11 March 2015. Notably, Feodosia Enterprise for Supply of Petroleum and SUE Chernomorneftegaz were subject to both European Union and United States sanctions following the annexation. See *Ukraine-related Sanctions; Publication of Executive Order 13662 Sectoral Sanctions Identifications List*, U.S. Department of Treasury Website (16 July 2014); Adrian Croft and Justyna Pawlak, *EU adds top Putin aide, two Crimea energy firms to sanctions list*, Reuters (12 May 2014); *Treasury Designates Seven Individuals and One Entity Contributing to the Situation in Ukraine*, U.S. Department of Treasury Website (11 April 2014). Upon information and belief, SUE Chernomorneftegaz is controlled by the Beim family, which now owns approximately one-third of the petrol stations on the Crimean Peninsula. See *Petrol flows in the family*, Kommersant Newspaper (12 March 2015). At present, the Petrol Companies' former stations that were the subject of the 3 September 2014 Amendment are operating under the GOST brand. See *id.*

protect the bank’s Crimean depositors.³² The Simferopol court claimed that the Petrol Companies were “directly involved in the business of [PrivatBank]” and “may be financially liable for the acts of officers of [PrivatBank], in the business of which they are involved.”³³ However, the Petrol Companies are distinct legal entities that have no legal responsibility for the allegedly criminal conduct of PrivatBank’s officers or PrivatBank’s obligations to its depositors. Tellingly, the Simferopol court’s decisions noted that “PrivatBank . . . is part of the Privat financial group which, like PrivatBank . . . , is owned by Igor Valeryevich Kolomoisky”³⁴

(b) The Government of the Federal City of Sevastopol nationalized the Petrol Companies’ properties

45. The Government of the Federal City of Sevastopol (the “Sevastopol Government”) nationalized the Petrol Companies’ stations and sole storage facility located in Sevastopol, and eventually transferred the rights to those properties to a state-owned entity. On 17 March 2014, the Chairman of City Council of Sevastopol issued a resolution providing that “[a]ll institutions, enterprises and other organizations established by or with the participation of Ukraine in the City of Sevastopol shall become institutions, enterprises and other organizations established by the City of Sevastopol,” and that “State property of Ukraine located in the City of Sevastopol as of the day this resolution is passed shall become the property of the City of Sevastopol.”³⁵ On 24 April 2014, the Interim Governor of Sevastopol signed a law declaring

32. Decision of the Simferopol Kievsky District Court, Case No. 3/6-291/2014 dated 18 Aug. 2014 (CE-18); Decision of the Simferopol Kievsky District Court, Case No. 3/6-319/2014 dated 1 Sept. 2014 (CE-19).

33. *E.g.*, Decision of the Simferopol Kievsky District Court, Case No. 3/6-319/2014 dated 1 Sept. 2014 (CE-19).

34. *Id.*

35. *See* City Council of Sevastopol Resolution No. 7156, On the Status of City-Hero Sevastopol dated 17 March 2014 (CE-20).

that “all the land within the boundaries of the federal city of Sevastopol, except for land privately held as of March 17, 2014, is state property of the federal city of Sevastopol.”³⁶

46. Although the terms of the 17 March 2014 resolution and the 24 April 2014 law applied only to entities owned by the Government of Ukraine, the Sevastopol Government implemented the resolution and the law so as to apply to the petrol stations and the storage facility owned by the Petrol Companies, notwithstanding the fact that none of those properties were owned by the Government of Ukraine. On 11 November 2014, the Sevastopol Government issued an order assigning the ownership rights to 13 petrol stations located in Sevastopol and belonging to the Petrol Companies, as well as one of their storage facilities, to the state-owned SUE City Petrol Station Complex.³⁷

B. The Breaches of the BIT

(1) The Russian Federation Breached Article 2 of the BIT

47. Article 2(1) of the BIT provides that the Russian Federation “shall encourage the investors of [Ukraine] to make investments on its territory and shall allow such investments in conformity with its respective laws.” Article 2(2) further provides that the Russian Federation “shall guarantee, in conformity with its own laws, the complete and unconditional legal protection of investments by [Ukrainian investors].”

48. The Russian Federation failed to provide the Petrol Companies’ investments the “complete and unconditional” protection of its domestic laws (which, among other things, ensured that investors were permitted to maintain their property rights in Crimea after Crimea

36. See City of Sevastopol Law No. 3-3C, On former state property of Ukraine and establishing the procedure for inventory, management and disposal of City of Sevastopol Property dated 24 April 2014 (CE-21).

37. Order No. 401 of the Sevastopol Government, On the assignment of property under right of economic management to SUE City Petrol Station Complex dated 11 Nov. 2014 (CE-22). Annex C identifies the 13 stations belonging to the Petrol Companies that were the subject of the 11 November 2014 order of the Sevastopol Government.

became a part of the Russian Federation) when it: (1) looted and seized the Petrol Companies' Feodosia headquarters; (2) prevented the Petrol Station Lessees from operating their petrol stations; and (3) allowed individuals unaffiliated with the Petrol Companies to operate (and profit from) those stations without the Petrol Companies' authorization. The Russian Federation further failed to provide the Petrol Companies' investments complete and unconditional legal protection when the State Council of the Republic of Crimea and the Sevastopol Government together nationalized all of the Petrol Companies' operative petrol stations and their storage facilities, as well as their Feodosia headquarters and additional properties belonging to the Petrol Companies, without the payment of compensation.

(2) The Russian Federation Breached Article 3 of the BIT

49. Article 3 of the BIT requires the Russian Federation to ensure that the treatment on its territory of investments of Ukrainian investors, as well as the activities involved in making those investments, "shall be no less favorable than the treatment given to its own investors or investors of any third state, precluding the use of discriminatory measures that could interfere with the management and disposal of those investments."

50. The Russian Federation violated this obligation. Russian and other investors in Crimea were permitted to continue operating their businesses after the annexation. In fact, Russian and other businesses were granted subsidies and exemptions from taxes to ease Crimea's economic integration into the Russian Federation. The Petrol Companies, on the other hand, were impeded from operating their network of Crimean petrol stations. Respondent has given no objective or reasoned basis for its series of targeted measures against the Petrol Companies, relying instead on their associations with Mr. Kolomoisky and PrivatBank.

51. In addition, Article 3 of the BIT entitles the Petrol Companies to any more favorable protections contained in investment treaties between the Russian Federation and third

states. The Russian Federation has provided a number of additional protections to investors from certain other nations that are made applicable to the Petrol Companies' investments by virtue of Article 3 of the BIT. The Russian Federation has breached these obligations, including, for example:

- A requirement in the Canada-USSR BIT that “[i]nvestments or returns of investors . . . shall at all times be accorded fair and equitable treatment in accordance with principles of international law”;³⁸
- A requirement in the Canada-USSR BIT that “[i]nvestments or returns of investors . . . shall enjoy full protection and security within the territory”;³⁹ and
- An obligation in the Japan-Russian Federation BIT not to “impair by unreasonable or discriminatory measures the business activities in connection with the investments of investors.”⁴⁰

52. The measures taken by the Russian Federation against the Petrol Companies and their Crimean investments (as described in ¶¶ 35-46 above) breached these guarantees. In addition to the above-referenced provisions contained in investment treaties between the Russian Federation and third states, the Petrol Companies reserve the right to rely on any more favorable treatment of investments accorded by the Russian Federation to its own investors or to investors of any third state.

38. Agreement between the Government of Canada and the Government of the Union of Soviet Socialist Republics for the Promotion and Reciprocal Protection of Investments, Art. 3(1), 20 Nov. 1989 (the “Canada-USSR BIT”); *see also* treaties with Denmark, Egypt, Ethiopia, Greece, Hungary, India, Japan, Kuwait, Lithuania, Norway, South Korea, Sweden, Turkey, and United Kingdom.

39. Canada-USSR BIT, Art. 3(1); *see also* treaties with Denmark, Ethiopia, Greece, Hungary, India, Japan, Lithuania, Norway, South Korea, Sweden, Turkey, and United Kingdom.

40. Agreement Between the Government of the Russian Federation and the Government of Japan Concerning the Promotion and Protection of Investments, Art. 3(3), 13 Nov. 1998; *see also* treaties with Denmark, Egypt, Greece, Kuwait, Lithuania, Sweden, Turkey, and United Kingdom.

(3) The Russian Federation Breached Article 5 of the BIT

53. Article 5 of the BIT provides that an investment “shall not be subject to expropriation, nationalization or other measures equivalent in effect to expropriation . . . except in cases where such measures are taken in the public interest according to the procedures established by law, are not of a discriminatory nature and are accompanied by prompt, adequate and effective compensation.”

54. The Respondent’s actions breached Article 5 of the BIT. The nationalizations of all of the Petrol Companies’ operable stations, their headquarters, their storage facilities, and other properties belonging to them by both the State Council of the Republic of Crimea and the Sevastopol Government resulted in the total deprivation of the value of the Petrol Companies’ investments in Crimea. The nationalizations were not required by any public interest, nor did they follow any legal process. To the contrary, the Crimean authorities’ actions were part of their broader efforts to target investments associated with Mr. Kolomoisky and PrivatBank.

55. The Respondent has not offered “prompt, adequate, and effective compensation” for its unlawful nationalizations of the Petrol Companies’ Crimean stations, headquarters, storage facilities, and other properties. Indeed, Respondent has provided the Petrol Companies no compensation whatsoever.

(4) The Russian Federation Breached Article 6 of the BIT

56. Article 6 of the BIT defines Respondent’s obligations to Ukrainian investors in the event that their “investments suffer damage on the territory . . . as a result of war, civil unrest or other similar events.” Specifically, Article 6 requires the Russian Federation to treat Ukrainian investors no less favorably than “investors of any third state in relation to any measures which it takes in connection with such damage.” At least one arbitral panel has concluded that a treaty provision similar to Article 6 of the BIT provides “a floor treatment for

the investor in the context of the measures adopted in respect of the losses suffered” and “ensures that any measures directed at offsetting or minimizing losses will be applied in a non-discriminatory manner.”⁴¹

57. The Respondent has entered into multiple BITs with other countries that contain a broader and more favorable guarantee than the BIT with Ukraine that, in the case of war, civil unrest, or similar circumstances, the Russian Federation shall treat foreign investors no less favorably than investors from any third state *and* no less favorably than investors of the Russian Federation.⁴² The Petrol Companies are entitled by Article 3 of the BIT to rely on the more favorable provisions contained in those treaties. Accordingly, the Russian Federation was required to treat Ukrainian investors no less favorably than Russian investors.

58. Following its assertion of sovereignty over the Crimean Peninsula, the Russian Federation took measures to address the resulting economic turmoil and uncertainty. Specifically, the Russian Federation enacted laws that ensured that investors from the Russian Federation and from other states were permitted to maintain their investments on the Crimean Peninsula after Crimea became a part of the Russian Federation. The Russian Federation, however, deprived the Petrol Companies (as well as other companies associated with Mr. Kolomoisky and PrivatBank) of this opportunity. Rather than being allowed to transition into the Russian economy, the Petrol Companies were excluded from it.

41. *CMS Gas Transmission v. Argentina*, ICSID No. ARB/01/8, Award, ¶ 375 (12 May 2005).

42. The Russian Federation has several treaties in force which promise that measures in response to war, civil unrest, or similar conditions will be no less favorable than those meted out to Russian nationals, as well as third state investors. These include treaties with Greece, Hungary, India, Japan, Kuwait, Lithuania, Norway, South Korea, and Sweden.

V. RELIEF SOUGHT

59. As a result of the Russian Federation's measures in breach of the BIT, the Petrol Companies' investments in Crimea have been wiped out, without the payment of any compensation. In this arbitration, the Petrol Companies request that the Tribunal grant relief, including an award of compensation to be proven in the arbitration, which is sufficient to "wipe out all the consequences of the illegal act[s] and reestablish the situation which would, in all probability, have existed if [those] act[s] had not been committed."⁴³

60. The Petrol Companies will also seek an award from the Tribunal of interest and all costs and legal fees incurred by the Petrol Companies in connection with this arbitration in accordance with Article 38 of the UNCITRAL Rules.

VI. PROCEDURAL MATTERS

61. In accordance with Article 3(3)(g) of the UNCITRAL Rules, the Petrol Companies propose that the Tribunal consist of three members. The Petrol Companies further propose that they and Respondent each name an arbitrator, and that the two named arbitrators shall select the third, who will act as chair. If the two party-appointed arbitrators are unable to agree on a third arbitrator, the Petrol Companies invite Respondent to discuss whether the parties to this arbitration might reach agreement upon the designation of an appointing authority to name the third arbitrator. The Petrol Companies propose that the Secretary General of the Permanent Court of Arbitration in The Hague, The Netherlands should, in that event, act as the appointing authority.

62. Article 3(4)(b) of the UNCITRAL Rules provides that a notice of arbitration may include "[t]he notification of the appointment of an arbitrator referred to in Article 7." The

43. *Case concerning the Factory at Chorzów*, Judgment No. 13, ¶ 125, 13 Sept. 1928, PCIJ Ser. A, No. 17, at p. 47.

Petrol Companies hereby designate Daniel M. Price as their appointed arbitrator. Mr. Price's contact information is as follows:

Daniel M. Price
Daniel M. Price PLLC
1401 I Street, N.W., Suite 1120
Washington, DC 20005
United States of America
Tel: +1 202 903 0619
dmprice@danielmpricepllc.com

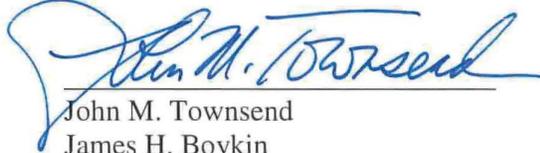
63. Pursuant to Article 17 of the UNCITRAL Rules, the Petrol Companies request that the language of arbitration be English.

64. The Petrol Companies invite Respondent to discuss where the arbitration should take place. The Petrol Companies propose The Hague, The Netherlands.

65. The Petrol Companies invite Respondent to agree that the Secretariat of the Permanent Court of Arbitration be asked to act as Registry to provide administrative support to this arbitration.

3 June 2015

HUGHES HUBBARD & REED LLP

A handwritten signature in blue ink, appearing to read "John M. Townsend", is written over a horizontal line.

John M. Townsend
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Annex A

(Claimants and Registered
Addresses)

Name of Claimant	Registered Address
Stabil LLC	49000 Dnepropetrovsk ul. Karla Libnekhta 11 Ukraine
Rubenor LLC	49600 Dnepropetrovsk ul. Mironova 30 Office 70 Ukraine
Rustel LLC	03113 Kiev Pr. Pobedy, 62-B Ukraine
Novel-Estate LLC	49083 Dnepropetrovsk Pr. Imeni Gazety "Pravda" 29 Ukraine
PII Kirovograd-Nafta LLC	25006 Kirovograd ul. Lenina 13 Ukraine
Crimea-Petrol LLC	49083 Dnepropetrovsk Pr. Imeni Gazety "Pravda" 29 Ukraine
Pirsan LLC	49022 Dnepropetrovsk ul. Okeanskaya 11 Ukraine
Trade-Trust LLC	49033 Dnepropetrovsk ul. Akademika Yangelya 30 Ukraine
Elefteria LLC	49051 Dnepropetrovsk ul. Bogdana Khmel'nitskogo 14 Ukraine
VKF Satek LLC	49000 Dnepropetrovsk ul. Karla Libnekhta 11 Ukraine
Stemv Group LLC	58000 Chernovtsy ul. Toreza Morisa 76 Ukraine

Annex B

(Claimants' Properties
Expropriated by the State
Council of the Republic of
Crimea Pursuant to the 30 April
2014 Decree and 3 September
2014 Amendment Thereto
(CE-16))

<u>No.</u>	<u>Property Address</u>	<u>Owner</u>	<u>Lessee</u>	<u>Line Item No. in 3 September 2014 Amendment (CE-16)</u>
1	2-A Simferopolskoye Highway, Blizhnyee Village, Feodosia	Rubenor LLC		54
2	23 Kerchenskoye Highway, Feodosia			47
3	25 Simferopolskoye Highway, Feodosia			68
4	2-A Montazhnikov Lane, Simferopol			51
5	105 Pobedy Prospect, Simferopol			52
6	4 Yalta-Yevpatoria Bypass Road, Simferopol			49
7	5 Yalta-Yevpatoria Bypass Road, Simferopol		Trade-Trust LLC	50
8	2-A Yaltinskaya Street, Lozovoye Village, Simferopolsky District	Stabil LLC		64
9	26 Zarechnaya Street, Novopavlovka Village, Bakhchisaraysky District			61
10	Simferopol-Kharkov Road (42 km), Amurskoye Village, Oktyabrskoye Township, Krasnogvardeisky District			69
11	2 Yuzhnoberezhnoye Highway, Vinogradnoye Township, Yalta			48
12	1-A Lineinaya Street, Oktyabrskoye Village, Krasnogvardeisky District		<i>Inoperative</i>	86
13	84 Krymskaya Street, Space 2, Feodosia			55
14	20 Donskaya Street, Apt. 53, Simferopol			65
15	Simferopol-Nikolayevka Road (22 km+400 (left)), Pozharsky Village Council, Simferopolsky District	Rustel LLC		110
16	1 Obyezdnaya Street, Sadovod Garden Association, Molodezhnensky Village Council, Simferopolsky District			111
17	Kherson-Krasnoperekopsk-Simferopol Road (252 km+700 (right)), Mirnoye Village, Simferopolsky District	Novel-Estate LLC	Elefteria LLC	58
18	Moscow-Simferopol Road (1392 km+400 m), Mirnensky Village Council, Simferopolsky District	Crimea-Petrol LLC		63

<u>No.</u>	<u>Property Address</u>	<u>Owner</u>	<u>Lessee</u>	<u>Line Item No. in 3 September 2014 Amendment (CE-16)</u>
19	4 Smozhevskaya Street, Kerch	Crimea-Petrol LLC		53
20	95 Frunze Street, Sofiyevka Village, Simferopolsky District	Pirsan LLC	Elefteria LLC	83
21	53 Danilov Street, Simferopol	VKF Satek LLC		66

Annex C

(Claimants' Properties
Expropriated by the Sevastopol
Government Pursuant to Order
No. 401 (CE-22))

<u>No.</u>	<u>Property Address</u>	<u>Owner</u>	<u>Lessee</u>		
1	5-A Fiolentovskoye Highway, Sevastopol	Rustel LLC	Elefteria LLC		
2	23 Kamyshovoye Highway, Sevastopol				
3	10 Industrialnaya Street, Sevastopol				
4	12 Balaklavskoye Highway, Sevastopol				
5	6 Khrustaleva Street, Sevastopol				
6	28 Sapungorskaya Street, Sevastopol				
7	59 Bogdanova Street, Sevastopol				
8	85-A Tyukova Street, Sevastopol	Novel-Estate LLC	Elefteria LLC		
9	2 Neftyanaya Street, Sevastopol (Petrol Station)				
10	15 Goroskoye Highway, Sevastopol	PII Kirovograd-Nafta LLC		Elefteria LLC	
11	146 Gorpishenko Street, Sevastopol				
12	12 Monastyrskoye Highway, Sevastopol				
13	117 Chelyuskintsev Street, Sevastopol	Stenv Group LLC			<i>Inoperative</i>
14	2 Neftyanaya Street, Sevastopol (Storage Facility)				