

COUR PERMANENTE D'ARBITRAGE



PERMANENT COURT OF ARBITRATION

**IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED IN
ACCORDANCE WITH**

**THE AGREEMENT BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION
AND THE CABINET OF MINISTERS OF UKRAINE ON THE ENCOURAGEMENT AND
MUTUAL PROTECTION OF INVESTMENTS DATED NOVEMBER 27, 1998**

- and -

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

PCA CASE NO. 2015-21

- between -

JSC CB PRIVATBANK

The Claimant

- and -

THE RUSSIAN FEDERATION

The Respondent

PROCEDURAL ORDER NO. 23

The Arbitral Tribunal

Professor Pierre-Marie Dupuy (Presiding Arbitrator)
Sir Daniel Bethlehem QC
Dr. Václav Mikulka

Registry

Permanent Court of Arbitration

18 May 2022

1. Introduction

- 1.1 [REDACTED]
- 1.2 By Procedural Order No. 22 dated 23 March 2022, the Tribunal postponed the hearing, deciding that it will be held by videoconference from 6-12 June 2022, or during such shorter period commencing 6 June as may be appropriate (the “**Hearing**”).
- 1.3 In the light of objections from the Respondent, the Tribunal affirmed its decision to proceed with the Hearing in the period from 6-12 June 2022 by videoconference in a letter dated 25 March 2022 and at a procedural conference held with the Parties on 20 April 2022.
- 1.4 [REDACTED]
- 1.5 By letter dated 9 May 2022, the Tribunal indicated that, having regard to all of the circumstances, it had concluded that it would be appropriate to confine the Hearing to opening submissions by the Parties and responses to questions from the Tribunal. The Tribunal accordingly envisaged a hearing schedule providing for three hours of opening submissions by the Claimant (including Tribunal questions) on the morning of Monday, 6 June 2022; three hours of opening submissions by the Respondent (including Tribunal questions) on the morning of Tuesday, 7 June 2022; and three hours reserved on the morning of Wednesday, 8 June 2022 for any additional questions the Tribunal may wish to put to the Parties. Having regard to the Respondent’s comments concerning the availability of its representatives, the Tribunal indicated that it was willing to entertain a timely request for an adjustment of this schedule, within the previously-reserved period of 6-12 June 2022, for the Respondent’s submissions. To this end, the Tribunal would shortly circulate for the Parties’ comments a draft procedural order with its detailed directions on the conduct of the hearing.
- 1.6 A draft of this Procedural Order was circulated to the Parties for their comments on 10 May 2022. The Parties submitted their written comments on 13 May 2022.
- 1.7 Taking into account the Parties’ comments, the Tribunal makes the following directions for the procedure of the hearing.

2. Date, Time and Video-Conferencing Platform

- 2.1 The Hearing shall take place from Monday, 6 June 2022 to Wednesday, 8 June 2022. It shall commence each day at the following time:

	London (GMT+1)	The Hague (GMT+2)	Moscow/Kyiv (GMT+3)
Start	9:00	10:00	11:00

- 2.2 The Hearing shall be held by video-conference using the Zoom video-conference platform, and shall be administered by the PCA. There shall be one electronic hearing room, and three electronic breakout rooms (one for each side and one for the Tribunal).

- 2.3 Unique log-in details for each day of the video-conference shall be circulated by the PCA on the eve of each Hearing day.

3. Participants

- 3.1 Access to the video-conference shall be restricted to the Members of the Tribunal, the Parties' representatives and counsel, the fact and expert witnesses (if any), PCA staff, court reporters, interpreters (if any) and any further technical support personnel retained by the PCA or the Parties in connection with the Hearing ("**Participants**"). The log-in details for the video-conference shall not be shared with any non-Participants. All Participants bear an ongoing duty to warn the PCA of the presence of any other unauthorized person on the video-conference.
- 3.2 An indicative list of the persons who will be attending the Hearing on behalf of the Claimant and their locations, e-mail addresses and mobile phone numbers is as follows:
- i) [REDACTED]
[REDACTED]
 - ii) [REDACTED]
[REDACTED]
 - iii) Alex Gerbi ([REDACTED]), from London, United Kingdom, [REDACTED]
[REDACTED] Quinn Emanuel Urquhart & Sullivan UK LLP;
 - iv) Epaminontas Triantafylou ([REDACTED]), from London, United Kingdom, [REDACTED], Quinn Emanuel Urquhart & Sullivan UK LLP;
 - v) Tetyana Yaremko ([REDACTED]), from London, United Kingdom, [REDACTED], Quinn Emanuel Urquhart & Sullivan UK LLP
 - vi) Ion Tzifras ([REDACTED]), from London, United Kingdom, [REDACTED]
[REDACTED] Quinn Emanuel Urquhart & Sullivan UK LLP;
 - vii) Eirini Tsoutsou ([REDACTED]), from London, United Kingdom, [REDACTED], Quinn Emanuel Urquhart & Sullivan UK LLP;
 - viii) Eirini Kikarea ([REDACTED]), from London, United Kingdom, [REDACTED]
[REDACTED], Quinn Emanuel Urquhart & Sullivan UK LLP;
 - ix) Oksana Legka ([REDACTED]) from London, United Kingdom, [REDACTED]
[REDACTED], Asters Consult LLC; and
 - x) Anna Tkachova ([REDACTED]), from Ukraine, [REDACTED]
Asters Consult LLC.
- 3.3 The Respondent, having failed to provide an indicative list of the persons who will be attending the Hearing on its behalf, and their locations, e-mail addresses and phone numbers, is directed to inform the Tribunal and the Claimant by no later than **27 May 2022** (a) whether it will be participating in the scheduled June 2022 hearing, and (b), if so, the details (as herein specified) of those persons who will be attending the Hearing on its behalf.

3.4 An indicative list of the persons who will be attending the Hearing on behalf of the Tribunal and the PCA and their locations is as follows:

- i) Professor Pierre-Marie Dupuy (Presiding Arbitrator) – Berlin, Germany;
- ii) Sir Daniel Bethlehem QC (Arbitrator) – London, United Kingdom;
- iii) Dr. Václav Mikulka (Arbitrator) – Czech Republic;
- iv) Mr. Martin Doe (PCA) – The Hague, the Netherlands;
- v) Ms. Evgeniya Goriatcheva (PCA) – The Hague, the Netherlands;
- vi) Ms. Rhianna Vonk (PCA) – The Hague, the Netherlands;
- vii) Ms. Bojana Ristić (PCA) – The Hague, the Netherlands;
- viii) Ms. Sofia Boqué (PCA) – Buenos Aires, Argentine Republic.

3.5 The Parties are each requested to provide a final list of the representatives who will attend the Hearing on their behalf, including their locations, individual e-mail addresses and mobile phone numbers, by no later than **Wednesday, 1 June 2022**. Any person not included on the lists of representatives provided by the Parties will not be admitted to the video-conference, unless otherwise decided by the Tribunal upon request by any of the Parties.

3.6 On each day of the Hearing, Participants will join the video-conference through a “waiting room” to be managed by the PCA. Participants will be admitted one-by-one to the video-conference, and should have their video and audio turned on for identification purposes. Following identification, the PCA shall direct the Tribunal and each side to their respective breakout rooms.

3.7 Each Participant shall use the following format for their username on the video-conference platform: [C/R/T/PCA] [First name] [Surname]. The PCA may re-name Participants on the platform to conform to this format. Where multiple individuals are in the same location accessing the video-conference together as a group, the username should clearly indicate the group’s affiliation.

4. Hearing Schedule

4.1 A detailed hearing schedule is attached hereto as “Annex A”. The hearing schedule is subject to any changes that the Tribunal may deem necessary or appropriate to make during the Hearing. In particular, the Tribunal may adjust the schedule of the Hearing if additional time is required for questions from the Tribunal or in the event of delays or other interruptions caused by technical problems in the functioning of the video-conference. The Parties are requested to ensure that they, including all relevant representatives, are available for at least the hour following the scheduled conclusion of the Hearing on each day in case it is necessary to use this time to ensure the efficient management of the Hearing or to accommodate time taken up with technical difficulties or other practicalities.

4.2 Participants may join the video-conference up to 45 minutes prior to the scheduled start time and in any event shall join at least 20 minutes prior to the scheduled start time. All Participants shall remain connected to the video-conference at all times for the duration of the Hearing, including during breaks. Expert witnesses may be, but do not have to be, connected at all times for the

duration of the Hearing. The PCA shall direct the Tribunal and each side to their respective breakout rooms at the commencement of each break.

5. Allocation of Time

- 5.1 In accordance with the hearing schedule set out in Annex A, three hours shall be allocated to each Party for its opening submissions. The time allocations for each Party shall include time taken up by Tribunal questions and the answers to such questions, it being the responsibility of counsel for each Party to manage the time available to it effectively.
- 5.2 Time will be kept by the PCA.

6. Scope of the Hearing

- 6.1 The scope of oral submissions at the Hearing shall be as determined in Procedural Order No. 7 and further elaborated in the PCA's letter dated 9 May 2022.

7. Examination of Fact and Expert Witnesses

- 7.1 In accordance with the Tribunal's determination as set out in the PCA's letter dated 9 May 2022, there shall be no examination of fact or expert witnesses at the Hearing. The Parties may nevertheless rely on the expert reports and witness statements on the record during their opening statements, without prejudice to the final determination by the Tribunal of the admissibility and weight to be given to this evidence.

8. Evidence and Demonstrative Exhibits

- 8.1 The Parties shall present any evidence, authority, or demonstrative exhibit they wish to show at the Hearing through Zoom's screen-sharing function.
- 8.2 In accordance with paragraph 7.2 of the Rules of Procedure and paragraph 2.5 of Procedural Order No. 22, no new evidence may be presented at the Hearing unless agreed by the Parties or authorized by the Tribunal. However, the Parties may make use of demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.), provided that those materials reflect and reference (with exhibit numbers and page or paragraph citations, if applicable) evidence on the record and do not introduce new evidence, directly or indirectly, without leave of the Tribunal. Should a Party request leave to introduce new evidence, the other Party shall be given the opportunity to comment on the request before the Tribunal's determination on the admissibility of the evidence in question.
- 8.3 The Parties shall provide electronic copies of any demonstrative exhibits to be displayed during the Hearing by e-mail or secure file-sharing platform to the other side, the Members of the Tribunal and the PCA at least one hour prior to the start of the session in which they will be used. Upon receipt, the PCA shall distribute such documents to the interpreters (if any) and court reporters.

- 8.4 Each Party shall designate, by **Wednesday, 1 June 2022**, one or more persons who will be responsible for the presentation of documents through the screen-sharing function of the Zoom platform during the Hearing.
- 8.5 The Parties shall provide, by no later than **Monday, 30 May 2022**, a consolidated electronic bundle containing, as relevant to the present phase of proceedings, all procedural orders, submissions, exhibits and legal authorities on the record as at that date, as well as copies of correspondence as between the Parties and as between the Parties and the Tribunal. The bundle shall be provided by USB flash drive and through the use of a secure file-sharing platform to each Member of the Tribunal and the PCA.

9. Transcription

- 9.1 Further to paragraph 7.3 of the Rules of Procedure, a real-time transcript of the Hearing will be provided in English by Ms. Dawn K. Larson, and shall be made available on a separate text-streaming platform during the Hearing. Electronic copies of the transcripts shall be provided to the Parties and the Tribunal on a daily basis. In advance of the Hearing, the PCA shall make available to Ms. Larson such documents from the record as are necessary for her preparation.
- 9.2 The PCA shall circulate the connection details for the transcript on the day prior to the start of the Hearing.
- 9.3 The need and schedule for corrections to the transcript will be discussed at the conclusion of the Hearing.

10. Recording

- 10.1 Further to paragraph 7.3 of the Rules of Procedure, the PCA shall make audio and video recordings of the Hearing, which will be made available to the Parties after the Hearing.
- 10.2 No other Participants shall record (whether by video, audio or screenshot) any part of the Hearing, unless otherwise decided by the Tribunal.

11. Interpretation

- 11.1 Unless otherwise requested by the Parties by **Friday, 13 May 2022**, no interpretation services shall be arranged for the Hearing.

12. Internet Connection and Devices

- 12.1 The Parties are responsible for ensuring that each of their representatives connects to the video-conference through a stable internet connection offering sufficient bandwidth, and that each representative uses a camera, microphone, and speaker of adequate quality.
- 12.2 Participants should consider using a wired Ethernet connection instead of WiFi, if possible. If using WiFi, only password-protected, secure wireless connections shall be used. Public WiFi networks should not be used. Participants shall be prohibited from joining the Hearing from any public setting which may jeopardize the privacy and security of the Hearing.
- 12.3 Where multiple individuals are in the same location accessing the video-conference together as a group, the audio and microphone equipment in the venue should be set up in a suitable manner to ensure stable and clear communication between the group and other Participants attending the Hearing.

- 12.4 Each Participant is encouraged to have at least two devices or screens available for use during the Hearing, one to connect to the video-conference and another for viewing the transcript. Participants should also consider using a complete headset (headphones with integrated microphone) of good quality.

13. Technical Problems

- 13.1 A dial-in telephone audio option shall be offered as a backup option for Participants experiencing difficulties with computer audio. Essential Participants (those without whom the Hearing cannot proceed) and any other Participants who intend to connect through this means shall provide a telephone number to the PCA by **Wednesday, 1 June 2022**, so that the PCA may identify them if they connect through this means.
- 13.2 The Parties shall designate a representative to act as “Emergency Contact Person” for the purposes of notifying the PCA and the Tribunal of any technical incidents that arise during the video-conference and provide a phone number for that representative by **Wednesday, 1 June 2022**.
- 13.3 If an essential Participant from their side is disconnected or otherwise cannot participate such that the Tribunal is requested to suspend the Hearing, the Emergency Contact Person shall intervene directly in the Hearing and request such suspension. Otherwise, the Emergency Contact Person shall notify any technical issues to Ms. Sofía Boqué (tel.: +54 9 11 6801 7634; e-mail: sboque@pca-cpa.org) or Ms. Evgeniya Goriatcheva (tel.: +31 70 302 4175; e-mail: egoriatcheva@pca-cpa.org) of the PCA, without interrupting the Hearing.
- 13.4 The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the video-conference system to be inadequate or likely to prejudice the due process rights of any of the Parties or the integrity of the proceeding or if the Tribunal has cybersecurity concerns, or for any other valid reason. The Parties are asked to bear in mind that full recordings and transcripts of the Hearing will be available, mitigating the prejudice arising from the failure of any given Participant to be able to follow the entire Hearing during the video-conference.

14. Test Calls

- 14.1 Each Party shall reach out to the PCA at least one week in advance of the Hearing in order to hold a test call.
- 14.2 During any test call, each Participant should strive to replicate the conditions under which they will participate in the Hearing, for example, by joining the test call using the same device(s) and internet connection from the same physical location that they intend to use during the Hearing.

15. Online Etiquette

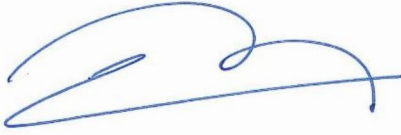
- 15.1 Following their identification as provided for in paragraph 3.6 above, all Participants without an active role at any given moment shall mute their audio and turn off their video.
- 15.2 Participants should join the Hearing from a location without background noise and with adequate lighting, and are invited to dress in business casual attire for the Hearing.
- 15.3 The Parties shall identify the individuals who will speak to each point on the day’s agenda by e-mail to all other Participants at least one hour prior to the start of each day.
- 15.4 In order to facilitate the accurate interpretation (if any) and transcription of the Hearing, the Parties should, insofar as possible, circulate any speaking notes to the court reporters and

interpreters (via the PCA) prior to the start of any relevant session. The Parties are also encouraged to speak slowly and with pauses between sentences.

- 15.5 The instant messaging (chat) functionality of Zoom shall be disabled save for communications between Participants and the PCA. Each Party is responsible for arranging its own procedures (in addition to the virtual breakout rooms) for internal communications during the course of the Hearing.

Date: 18 May 2022

Place of Arbitration: The Hague, the Netherlands.



On behalf of the Tribunal
Professor Pierre-Marie Dupuy
Presiding Arbitrator

**ANNEX A
HEARING SCHEDULE**

Activity	Duration	London (GMT +1)	The Hague (GMT +2)	Moscow/Kyiv (GMT +3)
Day 1 – Monday, 6 June 2022				
Housekeeping	30 minutes	9:00-9:30	10:00-10:30	11:00-11:30
Claimant's opening submissions (including Tribunal questions)	1 hour, 30 minutes	9:30-11:00	10:30-12:00	11:30-13:00
<i>Break</i>	<i>15 minutes</i>	11:00-11:15	12:00-12:15	13:00-13:15
Claimant's opening submissions (including Tribunal questions)	1 hour, 30 minutes	11:15-12:45	12:15-13:45	13:15-14:45
Day 2 – Tuesday, 7 June 2022				
Respondent's opening submissions (including Tribunal questions)	1 hour, 30 minutes	9:00-10:30	10:00-11:30	11:00-12:30
<i>Break</i>	<i>15 minutes</i>	10:30-10:45	11:30-11:45	12:30-12:45
Respondent's opening submissions (including Tribunal questions)	1 hour, 30 minutes	10:45-12:15	11:45-13:15	12:45-14:15
Day 3 – Wednesday, 8 June 2022				
Additional Tribunal questions	1 hour, 30 minutes	9:00-10:30	10:00-11:30	11:00-12:30
<i>Break</i>	<i>15 minutes</i>	10:30-10:45	11:30-11:45	12:30-12:45
Additional Tribunal questions	1 hour, 30 minutes	10:45-12:15	11:45-13:15	12:45-14:15