



**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. 2015-07

-between-

**(1) AEROPORT BELBEK LLC
(2) MR. IGOR VALERIEVICH KOLOMOISKY**

The Claimants

-and-

THE RUSSIAN FEDERATION

The Respondent

RULES OF PROCEDURE

The Arbitral Tribunal

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

Registry

Permanent Court of Arbitration

May 20, 2015

Having circulated the present document to the Parties in draft form on April 17, 2015 and invited the Parties to provide their comments, and having considered the comments received, the Tribunal hereby issues the following Rules of Procedure:

1. Place of Arbitration

1.1. In accordance with Section 5.1 of Procedural Order No. 1 and Article 16(1) of the UNCITRAL Rules, the Tribunal determines that the place of arbitration shall be The Hague, the Netherlands.

2. Procedural Timetable*

2.1. The Procedural Timetable in this case is:

Date	Party	Submission/Event
June 30, 2015	Claimants	Statement of Claim
September 30, 2015	Respondent	Statement of Defence and any Objection to Jurisdiction and/or Admissibility (including any application for bifurcation)
December 15, 2015	Claimants	Reply to any Objection to Jurisdiction and/or Admissibility (including any application for bifurcation)
January 25, 2016	Tribunal	Decision on bifurcation and, as appropriate, any subsequent procedure
February 10, 2016	Parties	Requests for production of documents
March 10, 2016	Parties	Production of requested documents or submission of objections/reasons for non-production
March 25, 2016	Parties	Comments on the other side's objections/reasons for non-production
April 25, 2016	Tribunal	Decision on contested requests
May 20, 2016	Claimants	Reply
September 10, 2016	Respondent	Rejoinder
September 30, 2016	Parties	Notification of witnesses and experts required for cross-examination at the hearing
October 10, 2016	All	Pre-hearing telephone conference
November 14-18, 2016	All	Hearing

* This Procedural Timetable is subject to adjustment by the Tribunal, after affording the Parties an opportunity to be heard, in the event that the Respondent raises any objection to jurisdiction and/or admissibility, or for any other reason concerning the efficient management of the proceedings.

- 2.2. In the event that either Party, without the leave of the Tribunal, fails to file a scheduled pleading on or before the date indicated in paragraph 2.1 above, the other Party may apply to the Tribunal for an accelerated timetable. Any such application shall propose specific dates and events in respect of such elements of the remaining timetable as are included in the application. The Tribunal, after affording the other Party an opportunity to be heard, shall rule on the application within 14 days. If the Tribunal accepts the application, it shall prescribe a modified timetable, including such steps as may be necessary and appropriate in the circumstances.
- 2.3. Extensions of time (and adjustments to the above calendar if needed) may be granted by the Tribunal in its discretion, in exceptional cases only, and provided that a duly justified request is submitted before or, if that is not possible, immediately after the event preventing a Party from complying with the deadline. The Parties may also agree between themselves short extensions of time, on the basis of mutual courtesy, as long as they do not materially affect the timetable and that the Tribunal is promptly informed.

3. Written Submissions and Documentary Evidence

- 3.1. The Parties shall submit their written submissions in accordance with the Procedural Timetable set out in Section 2 above and with the rules set out below.
- 3.2. In each of their written submissions, the Parties shall clearly indicate and provide the supporting evidence they invoke, including documentary evidence, legal authorities, factual witness statements and expert witness statements or reports.
- 3.3. No Party shall be permitted to advance any new factual allegations after the submission of the Reply and Rejoinder Memorials, whichever is relevant, unless expressly permitted by the Tribunal.
- 3.4. The paragraphs of all written submissions shall be numbered consecutively and the submissions shall include a table of contents.
- 3.5. All hard copy documents shall be provided in A4 binders and double-sided printing. Documentary evidence shall be submitted in the following form:
 - 3.5.1 exhibits shall be contained in separate binders, each exhibit having a divider bearing on the tab the exhibit's identification number;
 - 3.5.2 exhibits and legal authorities shall be numbered consecutively throughout these proceedings;
 - 3.5.3 the number of each exhibit containing a document submitted by the Claimants shall be preceded by the letter "CE-", except legal authorities, which shall be numbered separately, with each number preceded by "CA-"; the number of each exhibit containing a document submitted by the Respondent shall be preceded by the letter "RE-", except legal authorities, which shall be numbered separately, with each number preceded by "RA-";

- 3.5.4 each binder containing exhibits shall contain a list of the exhibits included in that binder, setting forth for each one:
- (a) the exhibit number;
 - (b) its date; and
 - (c) a brief description of the exhibit.
- 3.5.5 Whenever new exhibits and/or legal authorities are filed by any Party, that Party shall provide to the Tribunal and to the other side separate and updated index(es) of all its exhibits and/or legal authorities filed until that point.
- 3.6. Subject to Section 3.8, written submissions shall be sent by e-mail and by courier delivery service as specified in paragraph 8.2 of Procedural Order No. 1. E-mail delivery shall include electronic copies of pleadings, expert reports, and witness statements (including translations, where relevant). Courier delivery shall include a hard copy set of pleadings, expert reports, witness statements, and documentary evidence (including translations, where relevant), together with reproducible USB sticks, CD-ROM disks or DVD-ROM disks containing electronic copies of all of the aforementioned documents.
- 3.7. Electronic copies of all documents submitted by the Parties shall be in searchable PDF format, where possible.
- 3.8. Ordinary correspondence and submissions concerning procedural or non-substantive matters shall be sent as specified in paragraph 8.2 of Procedural Order No. 1, with any relevant enclosures in PDF format.
- 3.9. Written submissions will be considered to have been communicated to the Tribunal, the PCA, and the Parties on a timely basis if sent by e-mail on or before the date of the deadline at the time of the place of arbitration. Hard copies as well as electronic copies on USB sticks, CD-ROM and/or DVD-ROM disks shall be dispatched by courier not later than the following business day.
- 3.10. For simultaneous submissions, each side may submit electronic copies to the PCA. The PCA will distribute the electronic copies to the Tribunal and opposing counsel once both submissions have been received.
- 3.11. All documentary evidence submitted to the Tribunal shall be deemed true and complete, including documents submitted in the form of photocopies, unless a Party disputes its authenticity or completeness.
- 3.12. In accordance with Section 6 of Procedural Order No. 1, the language of the arbitration is English. Accordingly, documents submitted by any Party in any language other than English shall be accompanied by a translation into the English language. Whenever a Party considers that the content of a document of more than five pages in length is not relevant in its entirety, the translations may be limited to all relevant excerpts together with such other portions of the document as necessary to put such excerpts in proper context. A full translation shall be provided if the Tribunal decides that the document is relevant in its entirety at the request of the other side or upon the Tribunal's own initiative. Informal translations will be accepted as accurate unless contested by the other

side, in which case, the Parties will attempt to reach agreement on the translation (including, if needed, through the introduction of certified translations).

4. Document Production

- 4.1. When considering matters of evidence, the Tribunal may use, but shall not be bound by, the Rules on the Taking of Evidence in International Arbitration issued by the International Bar Association in 2010 (“**IBA Rules**”).
- 4.2. The Tribunal may, at all times on its own initiative, or upon a specific and precise motion made by a Party in accordance with the Procedural Timetable, direct one side to produce to the other side and, if appropriate, to file with the Tribunal any documentary evidence in its possession, custody or control, which the Tribunal may deem relevant, also taking into consideration the Parties’ burden of proof and all other applicable legal standards, provisions, and doctrines.
- 4.3. Requests for the production of documents shall be in writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents within the time limit set in the Procedural Timetable.
- 4.4. If the requested Party objects to production, the following procedure shall apply:
 - 4.4.1 The requested Party shall submit a response stating which documents or classes of document it objects to producing. The response shall state the reasons for each objection and shall indicate the documents, if any, that the Party would be prepared to produce instead of those requested.
 - 4.4.2 The requesting Party shall respond to the other Party’s objection, indicating, with reasons, whether it disputes the objection.
 - 4.4.3 The Parties shall seek agreement on production requests to the greatest extent possible.
 - 4.4.4 To the extent that agreement cannot be reached between the requesting and the requested Party, the Parties shall jointly submit all outstanding requests to the Tribunal for decision. All other correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal.
 - 4.4.5 Document production requests submitted to the Tribunal for decision must be in the form of a “Redfern Schedule” (Annex 1), detailing (i) the documents or category of documents requested; (ii) their relevance and materiality according to the requesting Party; (iii) the reasoned objection to the request by the objecting Party; and (iv) a brief response to the objection to document production request by the requesting Party.
 - 4.4.6 The Tribunal shall rule on any such application and may for this purpose refer to the IBA Rules. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set by it.

4.4.7 Should a Party fail to produce documents as ordered by the Tribunal, the Tribunal shall draw the inferences it deems appropriate, taking into consideration all relevant circumstances.

4.5. Documents produced according to the above procedure shall not be considered on record unless and until a Party subsequently submits them in accordance with the Procedural Timetable.

5. Witnesses

5.1. The Parties shall submit signed witness statements as they consider necessary for the presentation of their case in accordance with the provisions set out above.

5.2. Each witness statement shall:

5.2.1 contain the name and address of the witness, his or her relationship to any of the Parties (past and present, if any) and a description of his or her qualifications;

5.2.2 contain a full and detailed description of the facts, and the source of the witness' information as to those facts, sufficient to serve as that witness' evidence in the matter in dispute;

5.2.3 indicate whether and by whom the witness has been assisted in preparing the statement;

5.2.4 contain an affirmation of the truth of the statement; and

5.2.5 be signed by the witness and give the date and place of signature.

5.3. A Party may request the presence of any witness at the hearing for cross-examination. The fact that a Party does not request the presence of a witness for cross-examination does not mean that it accepts the content of that witness' statement submitted by the other side.

5.4. By the date set forth in the Procedural Timetable, each Party shall notify the other side, with a copy to the Tribunal, of the names of the witnesses of the other side whom that Party wishes to cross-examine at the hearing.

5.5. Each Party shall be responsible for ensuring the presence of its witnesses if they are to appear for examination at the hearing.

5.6. The Tribunal shall be entitled to draw any inferences with respect to the weight to be given to the contents of a witness statement as it may deem appropriate if a witness fails to testify, or if any Party fails to cooperate in ensuring that a witness testifies.

5.7. During the hearing, the examination of the witnesses shall proceed as follows:

5.7.1 the Presiding Arbitrator shall admonish the witness;

- 5.7.2 the Party presenting the witness may carry out a brief direct examination limited to new matters arising since that witness submitted his or her statement;
 - 5.7.3 following direct examination, the opposing side shall be entitled to cross-examine the witness;
 - 5.7.4 the Party presenting the witness shall then be entitled to redirect any questions to the witness solely in relation to matters raised in cross-examination or in questions from the Tribunal; and
 - 5.7.5 the Tribunal shall be entitled to examine the witness at any time before, during, or after examination by any of the Parties.
- 5.8. The Tribunal shall, at all times, have unfettered discretion over the conduct of witness examination. The Tribunal has the right, among others, to:
- 5.8.1 reject the need for witness evidence should it consider that the facts to be corroborated by the witness evidence have already been proven, or are irrelevant;
 - 5.8.2 limit or preclude a Party's right to cross-examine a witness in the event that a particular matter or issue is deemed to have been sufficiently covered by other evidence, including witness evidence, or to be irrelevant; and
 - 5.8.3 order a witness to testify again in order to answer any questions the Tribunal may deem appropriate.
- 5.9. During the hearing, oral testimony provided in a language other than English shall be simultaneously interpreted into English.
- 5.10. Each Party shall cover the costs of appearance of its own witnesses. The Tribunal shall decide upon the appropriate allocation of such costs in its final award, if requested by either side.

6. Experts

- 6.1. The submissions referred to in Section 3 of this Procedural Order may include any expert report or testimony that the Parties deem necessary.
- 6.2. The rules contained in Section 5 of this Procedural Order shall be applicable, *mutatis mutandis*, to any expert evidence. The expert shall issue a signed expert report which shall set out the opinion, and conclusions reached, by the expert, as well as the facts, reasoning, information, and methodology used to reach such conclusions.
- 6.3. The Tribunal shall be entitled to order, in light of any expert reports, in consultation with the Parties, the simultaneous testimony of any experts at the hearing (expert conferencing), or the appointment of a third expert. The expenses related to any Tribunal-appointed expert shall be shared equally by both sides, subject to the Tribunal's allocation, if any, of such expenses in an award.

7. Hearing

- 7.1. After consultation with the Parties, the Tribunal shall determine the place, time, agenda, and all other technical and ancillary aspects of any hearing.
- 7.2. No new evidence may be presented at the hearing, unless agreed by the Parties or authorised by the Tribunal. However, demonstrative exhibits may be created and shown using documents already submitted to the Tribunal in accordance with this Procedural Order.
- 7.3. The hearing shall be audio-recorded. The Registry shall arrange a live, real-time transcription service at the hearing. The costs of the recording, and of any transcription of the hearing shall be borne equally by both sides, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear these costs and to what extent.
- 7.4. The Tribunal shall establish, as necessary, procedures for the correction of transcripts. In the event of disagreement between the Parties on corrections to transcripts, the Tribunal shall determine whether or not any corrections should be adopted.

Date: May 20, 2015

Place of Arbitration: The Hague, the Netherlands



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

Annex 1: Model of Redfern Schedule for Document Production Requests

No.	Documents or category of documents requested (Requesting Party)	Relevance and materiality, incl. references to submission (Requesting Party)	Response/reasoned objections to document production request (Objecting Party)	Comments on objections to document production request (Requesting Party)	Decision (Tribunal)