Title:
UNCITRAL Award of March 30, 2012, Dr. Carl A. Sax v. The City of St. Petersburg

Table of Contents:
A. The Parties, their Representatives and the Arbitrators
B. Claimant's Summarized Chronology of the Circumstances Underlying the Present Dispute
C. The Arbitration Clause and Choice of Law Agreements
D. The Parties Requests, Prayers for Relief
   I. Claimant's Requests
   II. The Tribunal's Classification of Claimant's Claims
   III. Respondents' Requests
E. Summarized History of the Arbitral Proceedings
F. Claimant's Requests Regarding Interim Relief for His Re-Instatement, and the Tribunal's Preliminary Determination
   I. Claimant's Requests ("Interim Requests")
   II. Respondents' Denial Regarding Interim Relief
   III. The Tribunal's Procedural Decision as per the 24th Order of 8 February 2011
G. The Further Procedure After the Tribunal's Ruling on Interim Relief of 8 February 2011 up to the Closing of the Proceedings - The Liability Phase
H. Locus standi, Jurisdiction and Valid Representation
   I. Arbitrability
   II. Claimant's locus standi - The Parties' Arguments
   III. Claimant's locus standi - The Tribunal's Determination
   IV. Jurisdiction over Respondents
   V. Valid Designation and Representation of Respondents
I. A First Review of the "Investment Contract" and Supporting Documents Filed in this Arbitration
J. References to Provisions of Russian Law
K. Introduction to the Substantive Discussion
L. Issue 1:
   I. Claimant's Position
   II. Respondents' Position
   III. The Tribunals's Observations and Assessment
M. Issue 2:
   I. Claimant's Position
   II. Respondents' Position
   III. The Tribunal's Assessment and Decision
N. Issue 3:
   I. Claimant's Position
   II. Respondents' Position
   III. The Tribunal's Assessment and Decision
O. Issue 4:
   I. Claimant's Position
   II. Respondents' Position
   III. The Tribunal's Assessment and Decision
P. Issue 5:
   I. Claimant's Position
   II. Respondents' Position
   III. The Tribunal's Assessment and Decision
Q. Issue 6:
   I. Claimant's Position
   II. Respondents' Position
   III. The Tribunal's Assessment and Decision
R. Issue 7:
   Claimant's Investor Claim
   I. Claimant's Position
   II. Respondents' Position
The Arbitral Tribunal has considered the following:

A. The Parties, their Representatives and the Arbitrators

The names and further details of the Parties and their representatives in these proceedings are as named on the first two pages of this Award.

Likewise, the Arbitrators, their nomination and their addresses are as shown on the first page of this Award.

Claimant Dr Carl A Sax, a US citizen, lawyer and entrepreneur, described himself as a developer who had created and led partnerships corporations engaged in the development, construction, ownership, syndication and management of income-producing properties for more than 20 years and who was, in the 1990s, the Senior Vice President and General Counsel of Atlantic Coast Airlines.

In his written witness statement of 15 October 2010 (CWS-1), Mr Sax referred to 14 airport projects around the globe in which Strategic Partners (Holdings) Limited (CI) (“SPH”) and Mr Sax personally (as the Vice Chairman) were involved in proposed developments; these included projects in Russia, Vietnam, Gibraltar, the Philippines, Guatemala, Congo, Ecuador, Indonesia, Honduras, Armenia, Jamaica and Uruguay.¹

In the EBRD Memorandum, CX-23, Mr Sax was described, as "the principal legal advisor and negotiator for the American sponsors; he is the leading force behind the Project; he was formerly an associate at Dewey Ballantine LLP, and subsequently worked in the in-house legal departments of United Express and Continental Airlines, giving him a wide range of contacts in the international airline business."
Mr Sax bases the claims submitted in this arbitration on a purchase agreement between Strategic Partners (Holdings) Limited (Cayman Islands) (SPH) and its 100% subsidiary Pulkovo (Strategic Partners) Limited (Cyprus) (PSP), as sellers/transferors/assignors, and Mr Carl A. Sax as purchaser/transferree/assignee, dated 17 December 2002 (CX-66/CX-59), under which Mr Sax became the assignee of a "US$ 20+ million pre-development expense receivable from IAT Pulkovo" and a purchaser and transferee of a 29.7% stock-interest in IAT Pulkovo.

Strategic Partners (Holdings) Limited (SPH), ad described in the EBRD Memorandum, CX-23, is a limited liability company with a capital of US$ 10'000.--, created by the STV Group as well as numerous other shareholders, including Sax (Holdings) Ltd, with a share of 28.82%, and STV International, AIG, DMG, several junior lenders, Charles Bauccio, TF Comeau & Assoc., AvPride Petroleum, Quantum Investments, and seven further shareholders. SPH was created for developing and eventually carrying out airport investments world-wide, whereby SPH would be the provider of know-how.

SPBD Investment Ltd, is a Cyprus company incorporated in 1991, acting as a consultant and liaison for investors developing projects in Russia and FSU countries, owned by CEBM, Inc. (New Jersey) whose principals were described being Russian American individuals, Mark and Lena Zilberquit, and Valentina Lifton. CX-23, EBRD Memorandum p. 51.

STV Group is a US architecture, designer and engineering company, and shareholder of SPH. Head-quartered in New York, STV was described as having a staff of about 1'000 persons. CX-23, EBRD Memorandum page 49.

Respondent 1 is the City of St. Petersburg, and Respondent 2 is the Property Management of the City of St. Petersburg, an agency of Respondent 1, established as a separate corporate body.

Respondent 3, State Enterprise "Pulkovo", "SEP", was described as being the owner of the assets at Pulkovo Airport and the entity directing the flow of air traffic; on 9 June 2006, a Decree was passed permitting the privatization of State Enterprise Pulkovo. CX-145, On 1 March 2007, it was converted into an open joint-stock company, thus named (OJSO) "Airport Pulkovo"; on information, the Russian Federation became the owner (CX-83).

As Claimant explained, the Pulkovo-Airport was transferred to the City of St. Petersburg, by Presidential Decree signed by President Putin on 25 September 2007.2

Respondent 4, OJSC Aviation Company "Rossiya" and Respondent 5 OSO Airport Pulkovo are legal successors to State Enterprise "Pulkovo" which had been a party to the Founders’ Agreement, and had been described as being the owner of the assets at Pulkovo Airport. State Enterprise Pulkovo was privatized by a decree of the Government of the Russian Federation of 9 June 2006.

Respondents 3 to 5 did not file substantive submissions in these proceedings; they cooperated in so far as the nomination of Respondents’ arbitrator is concerned, and Respondent 5 filed a letter dated 29 September 2009 in which it declared to be in agreement with the Statement of Defense filed by Respondents 1 and 2. However, at all times Respondents 3 to 5 have been kept abreast of the proceedings, were always served with the documents on file and the Tribunal's Orders, and were repeatedly specially invited and encouraged by the Tribunal to actively participate in the proceedings or, at least, to delegate a representative or management member to the hearings.

In addition to the regular communications to all Respondents emanating from the Tribunal and from Claimant, Claimant
filed special Notice Letters to Respondents 4 and 5 (CM-83) notifying them of the Stockholm Liability Hearing taking place during the four days from 18 to 21 October 2011 at the Strandvägen 7A Conference Center.

Page: 12

B. Claimant's Summarized Chronology of the Circumstances Underlying the Present Dispute

This Arbitration involves certain claims by Claimant Mr Sax (as assignee and successor-in-interest of PSP and SPH, according to a Purchase Agreement dated 17 December 2002,CX-66, and a Bill of Sale CX-59), against the Respondents, for breach of various agreements relating to the development of a New International Passenger Terminal ("NIPT") at the St. Petersburg's "Pulkovo" International Airport.

The following paragraphs summarize the history largely on the basis of Claimant's Submissions and from Claimant's point of view. Several elements of Claimant's chronology and characterizations - as hereinafter reflected - have been disputed by Respondents and, to the extent necessary for the Tribunal's decisions, are discussed in further parts of this Award. Moreover, the following account only references some - but by no means all - of the steps, letters, contracts, meetings, or other milestones in the history of the relationship between Parties.

As will be further noted within the chronology of the proceedings, Claimant - at the Stockholm Liability Hearing 18 to 21 October 2011 - submitted two graphic time-line charts reflecting the steps which Claimant referred to in numerous written submissions filed in this arbitration; these two charts provide a good overview of Claimant's case and, therefore, are incorporated in this Award as a part of the chronological development of the Investment Project, without such incorporation amounting to an acceptance, by the Tribunal, of the allegations made by Claimant in connection with the steps reflected in the time-line of the charts. See the following two pages.

Page: 13
Page: 14
Page: 15

In December 1991, Claimant Mr Carl A. Sax, as he explained, travelled to St. Petersburg in order to discuss the lease of aircraft. In the discussions with representatives of the Office of the Mayor and the St. Petersburg City Council, Claimant, as he explained, was asked to form and invite a consortium of Western companies for exploring the redevelopment of Pulkovo Airport and, in particular, for the development of a New International Passenger Terminal which later became known as Pulkovo-3.

Mr Sax states that, in January 1992, he had received a "mandate letter" from the City of St. Petersburg authorizing him to form and invite a consortium of Western companies for the purpose of exploring the development of an international passenger terminal for the Pulkovo airport. The mandate letter was not filed; upon inquiry of the Tribunal, Claimant replied at the Stockholm Hearings that he had been unable to trace that letter.3

Based on such mandate, Mr Sax, in 1992/1993, stated to have met with representatives of the City of St. Petersburg and representatives of several Western companies, including American International Group, Aéroports de Paris, STV Group, Inc., Butler Aviation, Morgan Grenfell & Co., Ltd. in several cities including St. Petersburg, Paris, London, Washington and New York, for the purpose of discussing the development of Pulkovo-3.
During those meetings (which took place with, among others, Vladimir V. Putin, who at the time was the Vice Mayor of the City of St. Petersburg, and the acting Mayor Anatoly A. Sobchak), the request earlier addressed to Mr Sax to form a consortium of Western companies was renewed on behalf of the City of St. Petersburg.

On 16 March 1994, Strategic Partners, Inc., USA, ("SP") represented by Mr Sax as its Senior Vice President, SPBD, Inc. represented by it President Mark A. Zilberquitt, the Office of the Mayor of St. Petersburg (represented by Vice Mayor and Chairman of the External Affairs Committee, Vladimir V. Putin), the Department of Aviation of the Ministry of Transportation of the Russian Federation, jointly represented by Yuri I. Baranov (Chief of Infrastructure Development Division of the Department of Aviation, Moscow) and by Yuri A. Balakin (General Director of Northwestern Directorate of Civil Aviation, St. Petersburg), and the Air Enterprise Pulkovo (represented by Boris G. Demchenko, General Director), entered into an Agreement (the "Protocol of Agreement", CX-2) under which the Parties agreed to jointly redevelop the St. Petersburg's Pulkovo International Airport, by developing Pulkovo-3. - To the extent necessary, further details regarding this Protocol of Agreement shall be referred to in a further Chapter of this Award.

On 19 March 1995, (i) the City of St. Petersburg (represented by the Property Management Committee, the latter represented by M.B. Manevitch, Committee Chairman and A.V. Vorontsov, Chief of Agency), (ii) the State Enterprise Pulkovo (represented by B.G. Demchenko, Director General, and G.S. Naprienko Deputy Director General) and (iii) PSP (represented by Mr Sax, Executive Vice President), entered into a Founders' Agreement (CX-6) for the purpose creating a special purpose company - IAT Pulkovo - for jointly developing the New International Passenger Terminal ("NIPT"), and by signing the Charter of IAT Pulkovo (CX-5).

On 1 May 1996, IAT Pulkovo (represented by Boris G. Demchenko, Mr Sax (of PSP) and the City of St. Petersburg (represented by the Property Management Committee, the latter represented by V.M. Urkovits, the head of the Real Estate Transaction Execution Department) entered into the Ground Lease, thereby leasing the land plot on which the New International Passenger Terminal was to be developed (CX-17). The Ground lease provided, in part, for a term of 45 years and an option to renew the Lease for an additional 45 years.

From 1995 through 1997, Claimant, through the offices of STV Group, Inc., in conjunction with other providers, prepared studies for the conceptual design drawings for New International Passenger Terminal.

Moreover, during that period, Claimant retained various consultants including The MDA Group (U.K), Alan Stratford & Associates Air Transport Planning Consultants Ltd., Techecon Ltd. and Sir William Hacrow & Partners Ltd., for providing consulting services to review the design of the project structure, the project costs and the financing for the New International Passenger Terminal. These consultants were retained in order to obtain funding for the project which, initially, was sought from Overseas Private Investment Corporation (OPIC) and Deutsche Morgan Grenfell & Co. (DMG), and thereafter from the European Bank of Reconstruction and Development (EBRD).

It is Claimant's case in these proceedings that all of these steps, including the mandating of numerous third party providers, were undertaken for and on behalf of IAT Pulkovo.

Moreover, according to Claimant, the working on the Pulkovo project included the approval, in May 1995, of the design and the financing structure for the New International Passenger Terminal by Alan Stratford & Associates Air Transport Planning Consultants Ltd., followed, in August 1995, by letters of the Lenaeroprojekt Institute regarding required governmental consents (CX-10), and a letter by Oleg Kharchenko (Chief Architect of the City of St. Petersburg)
consenting to the location and design of the New International Passenger Terminal (CX-9).

Furthermore, Claimant explains that 25 agencies of the City of St. Petersburg also approved the location and design of the New International Passenger Terminal (CX-20, 21 and 22).

On 13 December 1995, Avia Invest, on behalf of the Department of Aviation of the Ministry of Transportation of the Russian Federation, also delivered a letter to IAT Pulkovo, preliminarily approving the design of the New International Passenger Terminal (CX-8).

On 13 February 1996, Aéroports de Paris, at the request of the EBRD, approved the design (CX-11).

On 1 March 1996, IAT Pulkovo requested that the International Air Transport Association (IATA) approve the design, rates and charges of the New International Passenger Terminal. The 1996 IAT Pulkovo presentation to IATA included a reference to the development fee as an expense factor of the project costs (CX-18).

On 10 April 1996, Coopers & Lybrand prepared a Valuation Analysis for the EBRD and DMG (CX-12).

On 2 May 1996, according to Claimant, EBRD delivered its financing letter to IAT Pulkovo regarding the provision of senior debt financing required for the development of the New International Passenger Terminal.5

On 8 May 1996, DMG delivered its financing letter to IAT Pulkovo, agreeing to underwrite that portion of the senior debt financing which was not provided by EBRD (CX-19).

On 11 June 1996, DMG delivered its financing letter to IAT Pulkovo, agreeing to underwrite the subordinated financing.5

On 26 June 1996, Strategic Partners advised the State Enterprise Pulkovo that IATA had agreed to the Rates and Charges for the New International Passenger Terminal (CX-13).

On 3 July and 26 August 1996, OPIC delivered its financing letters to IAT Pulkovo regarding its participation with the EBRD for the purpose of providing a senior debt financing for the development of the New International Passenger Terminal.6

In September 1996, IAT Pulkovo delivered to its participants and lenders the final revised conceptual plans for the New International Passenger Terminal (CX-16).

On 27 September 1996, the Federal Aviation Service of the Russian Federation advised the EBRD that State Enterprise Pulkovo would be able to comply with certain of its obligations to permit the development of the New International Passenger Terminal.7 A similar letter was addressed on 4 October 1996 by JSC “Pulkovo Aerodromstro”.

On 10 October 1996, the State Enterprise Pulkovo advised EBRD that it would be able to comply with certain of its
obligations to permit the development of the New International Passenger Terminal.8

On 15 October 1996, according to Claimant, the Board of Directors of IAT Pulkovo approved, in principle, the EBRD, OPIC and DMG financing offers, and - in Claimant's words - authorized and empowered Claimant Mr Carl Sax to negotiate, in the name of IAT Pulkovo9, definitive documents with the EBRD, OPIC, DMG and other parties, and to execute and deliver these documents together with Boris G. Demchenko (Chairman of IAT Pulkovo), (CX-14).10

In 1997, EBRD delivered its International Airport Terminal Pulkovo Operations Committee Final Review. CX-23. As stated by Claimant, this Review inter alia referenced a development fee as well pre-closing services as a shareholder contribution to capital. Furthermore, it referenced the Pre-Development Advance, a portion of which was to be rolled-over into a US$ 5 million PSP Standby Loan. The 1997 EBRD Review also referenced the agreements of the City of St. Petersburg to complete the access road and utilities (CX-23).

On 14 January 1997, Claimant advised Respondents that the EBRD will submit the financing proposal to its Credit Committee. Furthermore, Claimant advised Respondents that he had fulfilled the financing requirement under the Charter and the Founders’ Agreement, that all outstanding issues would be resolved by Claimant and Respondents as to expedite the financial closing (CX-31).

On 14 March 1997, Strategic Partners advised Respondents by letter that six items critical for the successful completion had not been timely completed by Respondents (CX-32).

On 18 March 1997, the Russian Security Committee approved the design of Pulkovo-3 (CX-30, document in the Russian language only).

On 16 April 1997, STV International, at Claimant's request, provided a document package relating to the project (CX-26).

In May 1997, the City of St. Petersburg and State Enterprise Pulkovo were advised in a fax memorandum of SP that IAT Pulkovo was positioned to obtain final EBRD Credit Committee approval upon resolution of three issues:

- First, evidence of the financial ability of the City of St. Petersburg to comply with its agreement to finance US$ 16+ million to construct access roadways and utilities for servicing the New International Passenger Terminal, and the proposed guarantee of the City of St. Petersburg's obligation by the Ministry of Finance of the Russian Federation.
- Second, the financial ability of State Enterprise Pulkovo and the Federal Aviation Service of the Ministry of Finance of the Russian Federation to finance US$ 10+ million to construct the apron to service the New International Passenger Terminal, and the proposed guarantee of State Enterprise Pulkovo's obligation by the Ministry of Finance of the Russian Federation.
- The third issue related to customs duties and VAT deferrals for the construction period and its inclusion within any Ministry of Finance Guarantee (CX-25).

On 7 May 1997, Claimant advised Alexei L. Kudrin (Vice Minister, Ministry of Finance) by letter that there were three issues to be addressed for completing the financing (CX-33). Mr Kudrin was further updated by a letter dated 29 May 1997 (CX-34).
Complying with the requirement for the financing to be provided by EBRD and DMG, the City of St. Petersburg agreed to finance the construction of access roadways and utilities, and State Enterprise Pulkovo agreed to finance the construction of an apron.

In June 1997, the MDA Group performed a satisfactory risk assessment for the construction of the New International Passenger Terminal (CX-35).

On 25 July 1997, EBRD advised Mr Sax that the EBRD's Operation Committee had given its approval, and that the EBRD believed that financial closing could take place by year-end (CX-28).

On the same day, 25 July 1997, the President of EBRD advised Governor Yakovlev that the EBRD's Operation Committee had given its approval (CX-29).

On 28 August 1997, EBRD, in a letter addressed to Claimant, informed him that the Bank's Board of Directors had approved the Project on 27 August 1997, indicating further that "the parties to the Project must now finalize the negotiations, placement of debt and the Project Documentation, following which it will be possible to sign the loan." A time-limit as such was not given; the letter said that the Bank hopes "to complete this work by year end". Claimant was further advised that all aspects of the Project "must remain substantially in line with what has been presented to the Bank's Board of Directors" (CX-27).


On 20 February 1998, SP delivered its IAT Pulkovo Business Plan to the participants and lenders of IAT Pulkovo (CX-41).

On 8 June 1998, the EBRD established an internal Memorandum which indicates that the Board basically approved the BOT-Project with project costs of US$ 187 million and an EBRD loan of US$ 120 million, indicating further that negotiations of the technical agreements with the Western parties are substantially complete, but that progress towards a closing of the operation is hampered by a number of elements, one being the sporadic presence of SP in Russia, another being the slow review process of the documentation by the City of St. Petersburg and the Airport, and the third being the fact that the Ministry of Finance had indicated that the Project Company would have to apply for the Specified Events Guarantee through the channels that are used for full sovereign guarantees, a process which might take 6 months+ (CX-36).

On 8 July 1998, SP submitted a draft Independent Accountants’ Report (CX-44) to Mr Sax.

On 15 July 1998, Strategic Partners advised the Governor Vladimir A. Yakovlev that EBRD had approved the financing already on 25 August 1997, that since then various parties had been working towards financial closing, that basically a new version of the Charter had been drafted, subject to the final agreement of the City of St. Petersburg, and that various participants, including the EBRD and DMG, had become concerned that the City of St. Petersburg had not taken all steps required to close the financing on an expedited basis, and that in fact the City of St. Petersburg was delaying the closing as a result of certain unspecified considerations (CX-43).

On 16 July 1998, on proposal of Mr Sax, a seminar preceding the shareholders meeting took place at which the EBRD proposal was discussed, RX-54.11

On 17 July 1998, SP commented on a Report regarding the separation of Pulkovo-3 as an independent enterprise
(CX-38). In its Memorandum, SP suggested a revision of the Report in several respects.

In August 1998, according to Claimant, the financing proposal required to permit the construction of the New International Passenger Terminal failed to close "as a result of the delay of the City of St. Petersburg and State Enterprise Pulkovo in approving and executing the required documentation before the August 1998 Financial Crisis" (CM-2, para. 63). In this context, Claimant repeated earlier allegations that the City of St. Petersburg and State Enterprise Pulkovo were unable to pay for the construction of the access roadways, the utilities and the apron.\footnote{12}

According to Claimant, on 17 February 1999, the Board of Directors of IAT Pulkovo approved the creation of a Working Commission to address the matters required to recommence the stalled development of the New International Passenger Terminal (CX-46).

In July 1999, the Working Commission agreed to finalize negotiations for the development of the New International Terminal (CX-47).

In the further course of 1999, SP, PSP and \textit{inter alia}, Skanska BOT AB entered into a Development Agreement for the purpose of restructuring certain financial and technical aspects (CX-48).

On 13 October 1999, Claimant informed the IATA of the intention to reanimate the Pulkovo-3 Project, raising questions to the level of charges for international passengers. His query was answered by a fax of IATA dated 14 October 1999 (CX-45).

On 16 February 2000, the recently formed Consortium with Skanska BOT et al wrote a letter to Mr Sax withdrawing from the Consortium and Develop-

\begin{table}[ht]
\centering
\begin{tabular}{|c|c|}
\hline
Page: 24 & \\
\hline
\end{tabular}
\caption{Table 1}
\end{table}

ment Agreement, since it had not been possible \textit{"to produce a bankable Development Plan for the Project"} (CX-51, without signatures).

On 29 February 2000, Claimant advised State Enterprise Pulkovo that the proposed gallery extension to Pulkovo-2 (i.e., the then existing international passenger Terminal) might be adverse to the interests of IAT Pulkovo and its shareholders, but that he might be inclined to favourably consider entering into a sub-lease for the requested land at an acceptable rental rate, and if the construction of the proposed gallery was structured as the initial phase of Pulkovo-3 (CX-49).

On 15 November 2000, SP addressed a letter to Mr Anatoly A. Aleksashin, Vice Governor of the City of St. Petersburg, describing the services which Strategic Partners performed in respect of the Pulkovo-3 Project, stating therein that \textit{"unfortunately, final negotiations to permit approval of financing for Pulkovo-3 by IAT Pulkovo were interrupted by the August 1998 Russia Federation Financial Crisis"}. The letter further expressed the firm belief in the viability of Pulkovo-3 and, in order to reactivate the Project, Strategic Partners submitted a draft Protocol of Agreement regarding the development, financing and operating of Pulkovo-3 and the acquisition, financing and operation of Pulkovo-2, with the hope that the City of St. Petersburg and the Russian Federation would confirm their interest in concluding the negotiations regarding Pulkovo-2 and Pulkovo-3 (CX-54, with Protocol of Agreement CX-55 and Protocol Agreement among Shareholders, CX-56).

On 6 December 2000, the letter was acknowledged by Mr A.A. Mercianov, Vice Chairman of the Committee for Economic and Industrial Policy of the City of St. Petersburg, apologizing for the problems in realizing the previously achieved agreements and understandings which were caused by the Financial Crisis of 1998, and requesting Claimant to provide a working proposal for realizing the Project considering the new financial, economic and political situation in the Russian Federation (CX-53).\footnote{13}
The letter was followed up by a further letter addressed to Mr Sax dated 28 December 2000, acknowledging receipt of the letter of 15 November 2000 and the draft Memorandum and Agreement, and the readiness was expressed to recommend to the other shareholders to sign the Memorandum, and proposing to hold a meeting "in the second half of the year of 2001" (CX-52).

On 21 June 2001, Mr N. Karpov on behalf of Pulkovo Aviation Enterprise addressed a letter to Mr Sax enclosing a copy of the letter from Mr Trubin (Chief of the Department of the Investment Projects of KUGI) which indicated that IAT Pulkovo "lost the right for this (sic!) long ago". Mr Karpov requested an answer to the question whether Mr Sax agreed to discontinue the activity of the Stock Company IAT "Pulkovo" "on the voluntary basis as it is determined in Article 17.1a of the Charter of the Closed Stock Company "IAT Pulkovo" dated 29.05.1995" (CX-58).

On 26 June 2001, Claimant Mr Sax replied: "Contrary to your assertion, IAT Pulkovo has not lost the right for this lease long ago. In fact, we will be wire-transferring the required lease payment later this week. Accordingly, we do not agree to discontinue the activity of IAT Pulkovo on a voluntary basis. In addition, we will strenuously contest any effort to either discontinue the activities of IAT Pulkovo or terminate the Lease Agreement for the land under Pulkovo-3." (CX-57).

In a "To Whom It May Concern" dated 27 June 2002, SP state that it had recently come to its attention that the State Unitary Enterprise Pulkovo and perhaps the City of St. Petersburg had undertaken the expansion of the existing international terminal (Pulkovo-2) in contravention of the current Lease Agreement for Pulkovo-3 and without regard to our many years of effort and multi-million Dollar investment, suggesting that a meeting should take place to discuss possible remedies. It is unclear to whom this document was in fact sent (CX-64).

On 21 August 2002, Mr Michael Karpov addressed a fax to SP with a letter from Mr Romanenko of KUGI, alleging overdue payments and fines in an amount of 483'592.92 Rubles. The letter was answered by SP on 2 September 2002 (CX-65).


On 17 December 2002, Mr Sax became the successor-in-interest to Strategic Partners and PSP's 29.7% stock-interest in IAT Pulkovo, the Pre-Development Advance and, as a developer of the New International Passenger Terminal, the Development Fee, by execution of a Purchase Agreement and delivery of a Bill of Sale (CX-66 and CX-59).

On 4 February 2003, the Arbitrazh Court of the City of St. Petersburg declined the Property Management Committee's claim for the dissolution of the Ground Lease. CX-72.

On 8 March 2003, a proposal for the development of Pulkovo-3 was put together (CX-74). It is not apparent from this document to whom this presentation was made. Claimant explained, however, that the presentation was made to the Presidential Administration of the City of St. Petersburg.

On 16 April 2003, State Enterprise Pulkovo, by letter of Mr M Karpov, confirmed that the Arbitrazh Court of St. Petersburg declined the Property Management Committee's claim for dissolution of the Ground Lease Agreement, "and implicitly requested that SP agree to a voluntary dissolution of IAT Pulkovo". Mr Sax was also informed by Mr Karpov that it was
necessary to come to a final decision regarding the further operation of IAT Pulkovo, indicating further that three shareholders ("FSUAE Pulkovo, KUGI and Grassi") agreed to discontinue the activity of the Stock IAT "Pulkovo" on a voluntary basis (CX-69).

In May 2003, SP addressed a letter to Michael Karpov, advising inter alia that the shareholders of IAT Pulkovo must vote for voluntary termination and that State Enterprise Pulkovo, as a result of the expansion of Pulkovo-2, was in breach of the Founders’ Agreement, the Charter and the Ground Lease (CX-71).

On 21 November 2003, the State Enterprise Pulkovo advised Claimant of KUGI's request (addressed to Mr Sax and Mr Demchenko) that payment must be made in respect of the Ground Lease, failing which KUGI would initiate court proceedings for collecting the payment and would initiate "the dissolution procedure of the Lease Agreement to the court". (CX-70).

On 8 June 2004, the Federal Court dismissed the appeal of the Property Management Committee (Respondent 2), and refused to terminate the Ground Lease (CX-76).

On 30 September 2005, Pulkovo Airport and Pulkovo Airlines were divided into two separate entities (CX-83).

On 9 October 2006, the Federal State Unitary Enterprise State Transport Company Russia was registered in St. Petersburg, as the successor of Pulkovo Airlines, and on 29 October 2006, the latter and STC Russia started to fly under a common flag under the name of the merged entity, i.e. The State Transportation Airline "Rossiya" (Respondent 4). CM-2 para. 108.  

On 1 March 2007, Pulkovo Airport was converted into a joint-stock company named OJSC Airport Pulkovo, and the Russian Federation became the owner of Pulkovo Airport.

On 14 September 2007, Grimshaw & Partners, Ltd. won the New International Passenger Terminal design competition (CX-98).

On 25 September 2007, President V.V. Putin, by Presidential Decree, authorized the transfer of Pulkovo Airport to the City of St. Petersburg as the sole shareholder of Airport Pulkovo, OJSC, effective 29 December 2007 (CX-83).

Two days later, on 27 September 2007, a Presidential decree authorized the transfer of Pulkovo Airport to the City of St. Petersburg, which became the sole shareholder of Airport Pulkovo, effective 29 December 2007.

On 2 October 2007, Respondents, through Governor Matvienko and Dr Zilberquit advised Claimant Mr Sax that the City of St. Petersburg intended to develop the New International Passenger Terminal without Claimant's participation (CM-2, para. 113).

On 3 October 2007, Respondent 1 - by Governmental Decree No. 1265 - authorized a strategic investment project for developing the Pulkovo Airport and an action plan for the construction of an alternative international passenger terminal. CX-151.
On 16 October 2007, the shares of Airport Pulkovo OJSC were transferred to the City of St. Petersburg, by Governmental Decree No. 1432-IR.

On 14 January 2008, Paul A. Curran of Kaye Scholer LLP addressed a letter to Open Stock Company Airport "Pulkovo", attn Director General advising that Claimant Mr Sax is the owner of a 29.7% interest in International Airport Terminal "Pulkovo" (a Russian joint stock company) and moreover that Mr Sax "is also the holder of a 1998 US$ 20 million receivable incurred in connection with the development of a new international airport terminal in St. Petersburg's Pulkovo International Airport, known as Pulkovo-3, valued in excess, of US$ 50 million, and demanding on behalf of Mr Sax the reinstatement of his 29.7% interest, or the anticipated value, upon completion of Pulkovo-3, of a 29.7% in that entity, and the reimbursement of the US$ 20 million resp. US$ 50 million pre-development expenses incurred by Mr Sax." CX-84.

The letter closed with a paragraph inviting open bona fide negotiations, and mentioning the intention to bring arbitration proceedings under the terms of the Founder's Agreement and the Charter, both dated 19 May 1996 (CX-84).

On 24 January 2008, Claimant filed the Request for Arbitration, initiating the present arbitral proceedings.

On 21 April 2008, about three months after the present proceedings were initiated, Respondents published a Tender Notice for a USD 1.5 billion tender for a 30-year concession to rebuild, expand and operate Pulkovo Airport, which included the instruction of the Alternative International Passenger Terminal. CM-49, para. 76, CX-81, 95, 100, 101.

Around the same time, IAT Pulkovo, which was meant to be the investment vehicle under the Investment Contract, was liquidated. In Claimant's view

"Respondents maliciously liquidated the corporate vehicle for investment in order to: (a) assert a defense, (b) deprive Claimant of a corporate vehicle, in attempt to prevent reinstatement, and (c) deny claimant justice both within the Russian judicial system and within this Arbitral Proceeding." (CM-49, para. 102).

According to Claimant, the liquidation was done in an extraordinary summary procedure, without a judicial authorization as per Article 61 of the Russian Civil Code, adopting a procedure exclusively applicable to abandoned companies (CM-3 paras 79-109; CM-49, paras. 87-97), without proper notice to the public, and therefore without providing an opportunity to the public to assert claims (with reference to the 2008 Gazette of State Registration, CX-160). Moreover Claimant also refers to Section 17.1 and 18.1 of the 1995 Charter which, for a termination or liquidation, requires a unanimous vote at a Stockholders' Meeting, and a ruling to terminate the Company by a competent court. CM-49, para. 109.

The liquidation, in Claimant's view, therefore constitutes a violation of customary international law as well as a violation of Russian and St. Petersburg Investor Protection Laws (CM-49, paras. 111 - 130), entitling Claimant to damages (CM-49, paras. 131 - 159).

On 29 September 2008, Claimant filed a Request for Injunctive Relief with the St. Petersburg Arbitrazh Court, seeking injunctive relief to enjoin Respondents from continuing with the Tender for the reconstruction of Pulkovo Airport, or any actions designed to advance the Tender, until Claimant's contractual right to participate in the development of the New International Passenger Terminal is adjudicated through the arbitral proceedings (CX-91).
On 3 October 2008, the St. Petersburg Arbitrazh Court denied Claimant's request for injunctive relief for procedural reasons, explaining that an application for injunctive relief must be filed together with the claim, or during the proceedings. However, as at that moment, as the Court stated, no arbitral proceedings were in place, Claimant's application was dismissed.

On 31 October 2008, Claimant appealed the decision (CX-78).

On 10 December 2008, the Appellate Court issued an interim order (CX-88).

On 10 February 2009, the Appellate Court denied Claimant's request for injunctive relief (CX-93).

C. The Arbitration Clause and Choice of Law Agreements

Section 12.1 of the Founders' Agreement refers to the disputes resolution mechanism of the Charter. It reads as follows:

ARTICLE XII - DISPUTE RESOLUTION

Section 12.1: Dispute Resolution. Generally all disputes and conflicts that may arise out of or in connection with this Agreement and the Charter shall be amicably settled by the Founders. In the event that any dispute, controversy or claim arising out of or relating to this Agreement or the Charter, or the breach, termination or invalidity thereof cannot be settled amicably, they shall be settled by arbitration in accordance with the provisions set forth in the Charter.

The Charter, in Chapter 20, sets forth the method and procedures for such arbitration as follows:

Chapter 20: DISPUTE RESOLUTION

20.1 Generally, all disputes and conflicts that may arise out of or in connection with this Charter and the Founder's Agreement shall be amicably settled by the Parties.

20.2 In the event that any dispute, controversy or claim arising out of or relating to this Charter or the Founders' Agreement, or the breach, termination or invalidity thereof cannot be settled amicably, they shall be settled by arbitration. The Award of the Arbitrators shall be final and binding upon the Parties.

20.3 The arbitration shall be in accordance with the UNCITRAL Arbitration Rules as in effect on the date of the arbitration, except that in the event of any conflict between those Rules and arbitration provisions of this Charter,
the provisions of this Charter shall govern. The Russian material law of shall govern in the trial and award making process.

20.4 The Stockholm Chamber of Commerce shall be the appointing authority, except for the specific provisions in points 19.6 (i) and (ii).

20.5 The number of Arbitrators shall be three.

20.6 Each party shall appoint one Arbitrator. If within thirty days after receipt of the Claimant's notification of the appointment of an arbitrator the Respondent has not, by telegram, telex, telefax or other means of communication in writing, notified the Claimant of the name of the Arbitrator he appoints, the second Arbitrator shall be appointed in accordance with the following procedures:

(i) If the Respondent is a natural or legal person of the Russian Federation, the second Arbitrator shall be appointed by the Chamber of Commerce and Industry of the Russian Federation;

(ii) If the Respondent is a legal or natural person of any other country, the second Arbitrator shall be appointed by the American Arbitration Association; and

(iii) If within thirty days after the receipt of the request from the Claimant, the Chamber of Commerce and Industry of the Russian Federation or the American Arbitration Association, as the case may be, has not, by telegram, telex, telefax or other means of communication in writing, notified the Claimant of the name of the second Arbitrator, the second Arbitrator shall be appointed by the Stockholm Chamber of Commerce.

20.7 The two Arbitrators thus appointed shall choose the third Arbitrator who will act as the Presiding Arbitrator of the Tribunal. If within thirty days after the appointment of the second Arbitrator, the two Arbitrators have nor agreed upon the choice of the Presiding Arbitrator, then at the request of either Party the Presiding Arbitrator shall be appointed by the Stockholm Chamber of Commerce in accordance with the following procedure:

(i) The Stockholm Chamber of Commerce shall submit to both Parties an identical list consisting of the names of all of the persons listed on the

Page: 33

then existing joint panel of presiding arbitrators established by the Chamber of Commerce and Industry of the Russian Federation and the American Arbitration Association;

(ii) Within fifteen days after receipt of the list, each Party may return the list to the Stockholm Chamber of Commerce after having numbered any remaining names on the list in order of his preference;

(iii) After the expiration of the above period of time, the Stockholm Chamber of Commerce shall appoint the presiding Arbitrator from among the names not deleted on the lists returned to it and in accordance with the order of preference indicated by the Parties; and

(iv) Should no joint panel then be available, or if for any other reason the appointment cannot be made according to this procedure, the Stockholm Chamber of Commerce shall appoint as Presiding Arbitrator a person not on the joint panel who shall be of a nationality other than that of Russia or the USA or France.

20.8 The arbitration, including the making of the Award, shall take place in Stockholm, Sweden.

20.9 The Founders agree that English shall be the language used for the arbitration proceedings.
20.10 The Company shall bear all expense of an arbitration brought in accordance with this Chapter 19, unless there shall be a determination by the panel that, in connection with the matter that is subject to arbitration, a party has acted in bad faith or committed gross negligence or willful misconduct. The arbitration panel shall make such a determination upon the request of the Company or any party to the arbitration.

The last provision in the above dispute resolution section, Chapter 20.10, deals with the allocation of costs for disputes arising under Chapter 19. Chapter 19 provides for an indemnification as follows:

Chapter 19: INDEMNIFICATION

19.1 The Company shall indemnify any Director and officer (including the Chairman, Vice-Chairman and Co-President) against all suits, claims and actions, brought against such Stockholder, Director or officer, that may arise out of or in connection with the activities of the above Company, except for knowingly committed violations of law by such Stockholder, Director or officer.

19.2 The State Enterprise shall indemnify the Company against any liability or damages which may arise from environmental conditions. The Company shall comply with published, readily accessible environmental regulations and shall adopt operating methods which comply with environmental and safety standards.

Regarding the applicable law, Chapter 21.1 of the Charter provides as follows:

"This Charter shall be governed by appropriate Russian law, treaties and international law."

The Founders' Agreement does not contain a choice of law clause.

Claimant argues that, due to the connexity, the choice of law provision of Chapter 21.1. of the Charter should also be deemed applicable for the Founders' Agreement.

*****

D. The Parties Requests, Prayers for Relief

I. Claimant's Requests

Claimant, in his Request for Arbitration dated 24 January 2008 (CM-1), stated his claim as follows:

"Claimant has been damaged in an amount to be proved at the Hearing of this matter but believed to be in excess of USD 50 million. In addition, in the event that Claimant's 29.7% interest in IAT "Pulkovo" is not reinstated in the entity which will develop "Pulkovo"-3, Claimant is entitled to recover, and seeks an award of, the anticipated value, upon completion of "Pulkovo"-3, of a 29.7% interest in that entity. Finally, Claimant respectfully requests that the Arbitrators award to him his attorneys' fees, costs and expenses ... ."
Claimant, in his Statement of Dispute and Claims filed on 22 June 2009, CM-2, para. 162, enlarged his claim to reach a monetary value of US$ 212'500'000, plus a claim for reinstatement as the project developer for the Alternative/New International Passenger Terminal at Pukovo Airport.

In CM-49, filed by Claimant on 15 October 2010, the prayers for relief were further restated and expanded as follows:

"Claimant, as successor-in-interest to Strategic Partners and PSP, demands payment, by Respondents, jointly and severally, of US$ 212,500,000, as follows:

(a) The Pre-Development Advance Claim:

The US$ 19,772,277 Pre-Development Advance, which, as of April 30, 2009, together with interest at LIBOR +2%, aggregates US$ 36,715,527, which will, on the anticipated date of the arbitral award, towards the end of 2010 (the "Anticipated Date of the Arbitral Award"), be no less than US$ 37,500,000.

(b) The 29.7% Interest Claim:

The anticipated value, upon completion, of a 29.7% interest in the Alternative International Passenger Terminal, which will, on the Anticipated Date of the Arbitral Award, in Claimant's opinion, based on the 6.5% capitalized value of the second year's cash flow from operations (before debt service) of the Alternative International Passenger Terminal (to be determined with specificity during the Arbitral Proceeding), be no less than US$ 150,000,000.

(c) The Development Fee Claim:

The 4.5% Development Fee due Claimant, which, according to Respondents' estimate of the 2006 development cost for the Alternative International Passenger Terminal, is US$ 21,832,681, which will, on the Anticipated Date of the Arbitral Award, in Claimant's opinion, based on the 2010 estimated aggregate development cost of the Alternative International Passenger Terminal (to be determined with specificity during the Arbitral Proceeding), be no less than US$ 25,000,000.

(d) Expenses (including Legal Fees) of the Arbitral Proceeding:

Expenses (including legal fees) of the Arbitral Proceeding should be awarded/allocated amongst Claimant and Respondents, 29.7% and 70.3% respectively, according to their interests in IAT Pulkovo, as more particularly discussed below.

(e) Non-Waiver of Claim for Reinstatement; Claim for Specific Performance:

i. Claimant, by monetizing the 29.7% Interest Claim as one for not less than US$ 150,000,000, does not waive his claim, as set forth in the Request for Arbitration, for reinstatement (the "Claim for Reinstatement") of his 29.7% interest (on a fully diluted basis), as project developer, in the entity which will develop either the New International Passenger Terminal or that portion of the alternative terminal (the "AT") proposed in the Public Private Partnership ("PPP") entered into by some or all of Respondents with Northern Capital Gateway Consortium designed to service international flights, as defined in Section 8.5 of the Founders Agreement ("International Flights"). However, Claimant conditions his Claim for Reinstatement on the Arbitration Tribunal's imposition on Respondents of conditions precedent and subsequent, acceptable to Claimant, to avoid an illusory award of reinstatement.

ii. Claimant is entitled to an award of reinstatement requiring Respondents to restructure the PPP to grant
Claimant the benefit of the terms of the agreements between Claimant and Respondents, as follows:

a. partition the physical facilities in the AT used to service International Flights from the physical facilities in the AT used to service all other flights;

b. segregate all passengers arriving and/or departing on International Flights from all other arriving and/or departing passengers;

c. segregate all accounting mechanisms for the AT related to that part of the AT used to service International Flights, including expenses for development and construction and revenues and expenses for operation of International Flights;

d. retain Claimant as the developer of that portion of the AT used to service International Flights; and

e. restructure the PPP for that portion of the AT used to service International Flights to:

1) eliminate the revenue charge of Respondents,

2) grant Claimant a 29.7% interest in that portion of the AT used to service International Flights,

3) extend the lease for the AT to two terms of 49 years each, and impose controls to protect Claimant's rights as a minority shareholder."

In his Memorial CM-66, para. 120, Claimant increased the value of his monetary claim (total of principal amount claimed) to an amount between US$ 350'485'672 and US$ 459'653'668, plus interest and legal expenses, arbitration costs; literally (in CM-66, para. 120), Claimant claims:

"the pre-development advance claim which is calculated to range between US$ 37'185'672 and US$ 146'353'668, plus the development fee of US$ 18,800,000, plus the value of Claimant's 29.7% interest in IAT Pulkovo which has been calculated at US$ 294'500'000, plus interest to be calculated, plus all legal expenses and other expenses related to this Arbitration."

On 22 April 2011, in CM-68, para. 2, Claimant further amended his claims as follows:

- Total claim **US$ 459'700'000**: 

  - a) Pre-development Advance Claim, with interest at the contractual rate of 15.5%: US$ 146'400'000 as of 31 December 2011

  - b) The 29.7% Interest Claim upon completion of the Alternative International Passenger Terminal: US$ 294'500'000

  - c) The 4.5% Development Fee Claim (based on the cost of the Alternative International Passenger Terminal: US$ 18'800'000

  - d) Expenses (including legal fees) of the Arbitral Tribunal, to be awarded/allocated amongst Claimant and
Respondents in the ratio 29.7% and 70.3%, and

e) Reinstatement of Claimant of his 29.7% interest as project developer, in the entity which will develop the NIPT or the Alternative International Passenger Terminal, conditioned on the Tribunal's imposition on Respondents of conditions precedent and subsequent, acceptable to Claimant, to avoid an illusory award of reinstatement.

In Claimant's Post-Hearing Brief filed on 20 January 2012, Claimant stated that he no longer seeks specific performance of PSP's right to be the developer of the alternative international passenger terminal (AIPT), but maintains the claim for his entitlement to be paid a developer fee, which claim had been transferred to Claimant on the basis of the Purchase Agreement and Bill of Sale.

In a further paragraph, Claimant stated that he seeks specific performance only insofar as to grant him an equity position in the AIPT that is financially equivalent to PSP's 29.7% interest in IAT Pulkovo; alternatively, he seeks the monetized value in damages of that interest.\(^\text{16}\)

The Tribunal notes that CM-85 does not contain any further discussion on the development expenses and some further aspects which were extensively reviewed during the Hearings. The Tribunal, however, understood from the opening paragraphs of the PH-Brief that all earlier factual and legal arguments are to be considered incorporated by reference into the PH-Brief, and that the silence to discuss some further aspects cannot be taken as a waiver on an admission.

II. The Tribunal's Classification of Claimant's Claims

The several claims, as had been submitted by Claimant in these proceedings, in particular in CM-68 and CM-85, may be classified as follows:

- The claim under (a) basically stands for the Pre-development Costs incurred by the Foreign Parties, essentially in the 1990s;

the claims under (b), (c) and (e) are claims connected to the frustrated participation as investor and developer in the new project vehicle for constructing and developing the Alternative International Passenger Terminal, whereby the reinstatement claim is a claim which first was submitted as a claim for specific performance, and was then re-phrased as a claim alternatively for specific performance or for a the monetized value respectively a damage claim;

- claim (d) deals with the allocation of arbitration costs.

For the purpose of the further review discussion in the present Award, the Tribunal distinguishes four categories of claims:

- First, Claimant's monetary claim as a creditor for reimbursement of pre-development expenditures incurred
(essentially in the 1990s), plus the related interest claim;

- **Second**, Claimant's monetary **claim for a 4.5% developer fee**;

- **Third**, Claimant's **investor-claim** for the (new) Alternative International Passenger Terminal, or the monetary value ascribed thereto;

- **Fourth**, Claimant's claim for recovering **arbitration costs**.

The Tribunal observes that the first three categories of claims above are derived from, and are based, on the ground of the Parties investment relationships and the bundle of obligations resulting therefrom. The overall legal relationships consists of multifold aspects grounding in norms of civil law, contract law, matters governing joint ventures, corporate governance, and security laws. All of them are closely interlinked and can hardly be separated one from the other without detriment to the essence of the relationships among the Parties and the their primary interest, which was the cooperation for mutual benefits in their investment activity. In this respect the Tribunal looked into the dispute from the investment law perspective.

**III. Respondents' Requests**

Respondents 1 and 2, in their Statement of Defense filed on 20 September 2009, deny all of the claims in full; literally on page 5:

"The Respondents deny, in full, all claims made by the Claimant (para. 162 ad of the Statement of Claims) and requests that the Tribunal shall reject those claims. The City requests that the Tribunal shall reject those claims, *inter alia* for the following reasons:

(i) Claims have not been proven, since the documents presented in confirmation of such claims cannot serve as acceptable evidence.

(ii) Claims are groundless and do not have clear subject, i.e. are objectless.

(iii) Claims are not based on provisions or law and are in contradiction with such provisions.

(iv) The Claimant has failed to prove succession of rights to the shares of IAT Pulkovo and therefore he is not in the position to file claims under the Statement of Claims.

(v) Claims should be addressed to IAT Pulkovo rather than the City and the City is undue respondent to such claims.

(vi) The statute of limitations applicable to the claims under the Statement of Claims has already expired.

(vii) As of today the project on development of the Terminal has already terminated.

(viii) Claims do not meet criteria of reasonableness, justifiability and commensurability.

(ix) Expenses of the Claimant have not been confirmed, and the calculations of the relief sought are wrong.

Above reasons and many other reasons for rejecting the claims of the Claimant are set out in more detail in this Statement of Defense."
In their Rejoinder, as well as in subsequent submissions and the PH-Brief filed on 20 January 2012 (1-RM-37/2-RM-43), Respondents 1 and 2 reiterated their requests.

Respondents 3, 4 and 5 did not present substantiated submissions or denials in respect of Claimant's substantive claims, it being however noted that there are a few letters/emails on file, essentially in regard to the nomination of Respondents' Arbitrator. The Tribunal has reasons to believe that none of the Respondents agrees with the claim; Respondents' silence - indeed in conformity with well established practice in international arbitration - cannot be taken as an admission of the facts and legal arguments presented by Claimant; all claims, therefore, must be considered in their entirety by all of the Respondents.

Respondents 3, 4 and 5 were, however, throughout the process kept informed on every step of the proceedings; several Orders of this Tribunal were delivered to them by international courier service; moreover, the Tribunal's numerous emails were properly received. Prior to the Hearings, the Tribunal particularly invited Respondents 3 to 5 to take part in the Hearings, be it only by delegating a "silent listener" for observing the regularity of the process.

*****

E. Summarized History of the Arbitral Proceedings

On 14 January 2008, Paul A. Curran of Kaye Scholer LLP, on behalf of Claimant Mr Carl A. Sax, addressed a Notice of Arbitration to Respondents.

On 24 January 2008, Claimant's Request for Arbitration was filed (CM-1).

On 5 August 2008, the Stockholm Chamber of Commerce appointed Dr Marc Blessing to serve as the Chairman.

On 28 August 2008, the Tribunal issued its 1st Order regarding the constitution of the Arbitral Tribunal, legal representation, submissions on file and organizing numerous procedural aspects for the upcoming proceedings. Furthermore, a deposit in the amount of EUR 400'000.- was requested, payable by each side in the sum of EUR 200'000.--.

On 3 October 2008, the Tribunal issued its 2nd Order dealing with Claimant's application for a suspension of the arbitral proceedings. In view of that application, the Tribunal lowered the requested deposit to EUR 100'000.--, payable by Claimant and suspended any payment from Respondents. The Order was delivered to all five Respondents by special courier service, and delivery documents are on file.

On 16 October 2008, Director General Murov of Respondent 5 sent a letter to the Tribunal, correcting the designation of the 5th Respondent.
On 13 November 2008, the Tribunal issued its 3rd Order concerning matters of suspension and reiterating the request for funding by Claimant.

On 15 December 2008, the Tribunal issued its 5th Order, dealing with Claimant's of further time-extension for paying the deposit. It indicated that the Arbitrators intend to charge for their services on a time-spent basis, at a rate of EUR 500 per hour.

On 30 January 2009, Mr Wallace on behalf of Claimant informed the Tribunal that Claimant Mr Sax wishes to voluntarily withdraw the Request for Arbitration on a without prejudice basis.

This request gave rise to several Submissions by the Respondents dated 5, 20 and 26 February 2009, and in a Submission of 11 March 2009 (RM-7) filed on behalf of Respondents 1 and 2 the Tribunal was requested not to terminate the proceedings but instead to rule on the claims as presented in the Request for Arbitration, and to reject those claims, making reference to Section 28 of the Swedish Arbitration Act and Article 34 of the UNCITRAL Arbitration Rules.

In a further Submission dated 13 March 2009, Respondent 5 also requested that the Arbitration should proceed. At the same time, Respondent 5 informed the Tribunal that Respondent 3 had subsequently been reorganized and had ceased to exist already in 2006, with Respondents 4 and 5 being the legal successors of Respondent 3.

On 19 March 2009, the Tribunal issued its 6th Order, noting the several submissions, and organizing a telephone conference to take place on 2 April 2009.

On 2 April 2009, a telephone conference took place, with the participation of Mr Carl A. Sax, counsel to Respondents 1 and 2 and a representative of Respondent 5. Respondents 3 and 4 did not participate, nor did Professor Valery A. Musin dial into the telephone conference. It was discussed that Mr Sax intended to withdraw his claims, however on a without prejudice basis; such withdrawal, however, was rejected by Respondents' counsel, requesting the Tribunal to render a declaratory award stating that Claimant's claims are invalid. Mr Sax replied that he will be unable to fund the costs of the proceedings. After further discussion, it was decided that the Tribunal will have to ask Respondents to fund the deposit, and the Arbitrators' remuneration on the basis of the hourly rate was mentioned and agreed by those participating in the telephone conference.

On 6 April 2009, the Tribunal issued its 1st Order, providing a detailed account of the telephone conference of 2nd April 2009. Inter alia, Claimant was specifically asked to properly document his *locus standi* under the relevant contracts or as a legal successor-in-interest to the initial parties. The Order also scheduled the next steps in the proceedings. A deposit in the amount of EUR 250'000 was requested, and the Arbitrators' rate was confirmed one again.

On 26 June 2009, Claimant filed a second challenge against Professor Valery A. Musin.


On 28 September 2009, the Tribunal issued its 8th Order, *inter alia* dealing with the impact of the challenge against Professor Musin, and granting a time-limit to Claimant for filing his Detailed Reply by 4 December 2009.
On 1 December 2009, Claimant filed a letter to the Tribunal indicating the appointment of the new legal counsel taking over his representation and asking for an extension of the time-limit for filing the detailed reply until 4 March 2010. On the same date, Claimant filed a further challenge against Professor Musin addressed to the Stockholm Chamber of Commerce.

On 3 December 2009, the Tribunal issued its 9th Order noting the appointment of new counsel, requesting properly signed Powers-of-Attorney, directing that the arbitral proceedings should not be stayed during the pendency of the challenge against Professor Musin, and dealing with the request for extension. Moreover, the time-table of the proceedings so far and a detailed time-table for the further proceedings in 2010 was set out in the Order, as well as a request for Claimant to pay his share towards securing arbitration costs by effectuating a payment of EUR 250'000 to the Chairman's special account.


On 4 January 2010, Claimant filed a Request for Interim Measures.

On 5 January 2010, the Tribunal issued 10th Order.

On 12 January 2010, the Tribunal issued its 11th Order.

On 25 January 2010, Claimant filed further comments regarding interim relief, together with additional requests.

On 27 January 2010, the Tribunal issued its 12th Order.

On 26 February 2010, the Arbitration Institute of the Stockholm Chamber of Commerce decided to sustain Claimant's challenge of Professor Musin.

On 2 March 2010, the Tribunal issued its 13th Order regarding the way forward.

Subsequently, Respondents named Professor Alexei A. Kostin, Vice-President of the International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry as Arbitrator. However, Claimant Mr Sax objected to such nomination causing Professor Kostin to voluntarily resign from office on 16 April 2010. Subsequently, Respondents 1 and 2 nominated Professor Andrey Bushev to serve as Arbitrator. Professor Bushev his nomination.

On 30 April 2010, Claimant filed his second Request for Interim Relief.

On 17 May 2010, the Tribunal issued its 14th Order, taking note of the appointment of Professor Bushev by Respondents 1, 2 and 5, and requiring a further confirmation on behalf of Respondents 3 and 4. Furthermore, Respondents were given a time-limit to comment on Claimant's Second Request for Interim Relief until 31 May 2010 and, under the same date, to file the detailed Rejoinder. Finally, the Tribunal proposed either an organizational meeting in Moscow on 8 June 2010 (at the occasion of an international arbitration
conference in Moscow, which was attended by the two non Russian Arbitrators), or the holding of a telephone conference on one of several proposed dates in June 2010.

On 28 May 2010, the Tribunal issued its 15th Order.

On 17 June 2010, the Tribunal issued its 16th Order regarding further matters of the telephone conference and regarding the organization of a Hearing, upon request of Claimant, for dealing with his motions for interim relief.

On 26 July 2010, Claimant's counsel notified the Tribunal of a further challenge, addressed to the Arbitration Institute of the Stockholm Chamber of Commerce, concerning Professor Andrey Bushev.

On 5 August 2010, the Tribunal issued its 17th Order, once again containing a detailed procedural time-table.

On 19 August 2010, Respondents commented on the challenge, followed-up by further submissions on the Claimant on 29/30 August 2010.

On 16 September 2010, the Stockholm Chamber of Commerce issued its Decision rejecting Claimant's challenge of Professor Bushev.

On 17 September 2010, the Tribunal issued its 18th Order dealing with the proper constitution of the Tribunal, the mode of communications and notices emanating from the Tribunal and the further time-table and practical matters in view of a two-day Hearing to be held for dealing with Claimant's requests for interim measures as well as for dealing with several documentary requests.

On 22 September 2010, Claimant filed a consolidated Request for Interim Relief.

On 27 September 2010, Claimant filed a motion for an Order for Sanctions, absent proper appearances by Respondents.

On 29 September 2010, the Tribunal issued its 19th Order dealing with matters of valid representation and setting further time-limits.

On 19 October 2010, the Chairman invited Claimant's counsel to comply with the Tribunal's suggestions, contained in the 1st Order of 28 August 2008, regarding the consecutive numbering of Claimant's Memorials/Submissions/letters (to be marked as “CM-__”), and the consecutive numbering of Claimant's Exhibits with “CX-__” and Witness Statements/Expert Reports, to be numbered “CWS-__”.

On 5 November 2010, the Tribunal issued its 20th Order, addressing numerous submissions filed by the Parties in October 2010. It dealt with the proper standing of Respondents and their representation by counsel. Furthermore, the Tribunal rejected Claimant's request submitted by CM-48 (para. 28), wherein Claimant urged the Tribunal that it should deem "all of Claimant's allegations against Respondents 3, 4 and 5" as having been admitted, and precluding them from presenting any further evidence before this Tribunal. The Tribunal stated that such a deemed admission (i) disregards the deeply-rooted practice in international arbitration, (ii) is contrary to the Swedish Arbitration Act and some 60 or more arbitration acts following the UNCITAL Model Law, and (iii) not reflected in any of the arbitration rules of the major
arbitral institutions, nor (iv) compatible with the UNCITRAL Arbitration Rules governing the present proceedings.

Regarding the nomination of Professor Bushev, the Tribunal noted that he had been validly nominated by Respondents 1, 2, 4 and 5, concluding that, since Respondent 3 no longer appears to be a Party, any doubts as to the proper composition of the Tribunal appear to be removed. The Order further addressed the mode of communications from the Tribunal to the Parties and addressed numerous matters in preparation for the Hearing on interim measures, documentary matters and procedure, fixed to take place in Zürich on 16 and 17 December 2010.

On 19 November 2010, the Chairman issued an e-mail requesting clarification regarding Claimant's requests and prayers for relief. Moreover, in re-

spect of the Hearing on interim measures focusing on Claimant's reinstatement claim, the Chairman listed 23 discrete issues which, in his view, should be addressed at the Hearings in connection with Claimant's requests for interim relief.

On 24 November 2010, the Tribunal issued its 21st Order referring to Respondents' Submission of 8 November 2010, Claimant's Submission of 15 November 2010, further Submissions by Respondents dated 15 November 2010 and updated Schedules submitted on 18 November 2010. The Order invited counsel to take part in a further telephone conference and addressed several procedural matters. As an Annex to the Order, the Tribunal included the Chairman's e-mail of 19 November 2010.

On 29 November 2010, an organizational telephone conference took place.

On the same date, 29 November 2010, the Tribunal issued its 22nd Order which contained a detailed shortlist of topics for discussion, examinations and pleadings at the occasion of the Hearing on interim relief scheduled to take place on 16/17 December 2010.

The list contained the following 30 issues:

"Locus standi, Jurisdiction, Valid Representation"

1 Claimants locus standi as a shareholder of IAT Pulkovo (validity of CX-66 and CX-59)(considering Respondents comments regarding the non-issuance of the shares).

2 Claimants locus standi to make claims as an investor under the Investment Contract (as opposed to his locus standi as an assignee of claims for certain payments and for damages) - this question has to do with the issue whether - under the notion of intuitu personae - Strategic Partners as an investor could validly transfer the investor's position to Mr Sax; this latter question arises because, in the framework of interim measures, Mr Sax requests his reinstatement as an investor, and not solely as a creditor for monetary claims.

3 Referring Principles:

   VII.6 - Duty to pay interest