IN THE HIGH COURT OF JUSTICE **Claim No.**

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

B E T W E E N:-

VICTOR MIKHAYLOVICH PINCHUK

Claimant

- and -

(1) GENNADIY BORISOVICH BOGOLYUBOV
(2) IGOR VALERYEVICH KOLOMOISKY

Defendants

PARTICULARS OF CLAIM

Jurisdiction

1. The First Defendant is domiciled in England for the purposes of Article 2 of Council Regulation 44/2001.

2. The Second Defendant is domiciled in Switzerland. The claims against him and the First Defendant are so closely connected that it is expedient to hear them together. Accordingly, the Court has jurisdiction to entertain the claims against the Second Defendant under Article 6(1) of the Lugano Convention.

Parties

3. The Claimant and the Defendants are billionaire Ukrainian businessmen.

4. In 1990 the Claimant founded a business which has become the leading producer of steel pipes and railway wheels in Eastern and Central Europe, known as "Interpipe", now operating under the umbrella of a holding company "Interpipe Limited". In 2007,

the Claimant founded EastOne Group ("**EastOne**"), an international investment advisory group.

5. Prior to the creation of the Ferroalloy Holding (described at paragraphs 27 to 35 below), the Claimant was the beneficial owner of approximately 73% of the issued shares in the open joint stock company OAO Nikopol Ferroalloys Plant ("**Nikopol**"), the largest ferroalloys producer in Europe.

6. The Defendants have been business partners since the late 1980s.

7. In or around 1992, the Defendants established PrivatBank, which is the core of the so-called Privat Group. Privat Group is a collection of assets and companies jointly owned by the Defendants.

8. Each of the Defendants has a direct or indirect interest in each of the companies and assets forming part of the Privat Group.

9. In particular (but without limitation) assets which are (or used to be) part of the Privat Group, and in which the Defendants have or have had an interest include:

    (1) Open joint stock company OAO PrivatBank ("**PrivatBank**"), the largest commercial bank in Ukraine;

    (2) Closed joint stock company ZAO Privat Intertrading ("**Privat Intertrading**");

    (3) All companies and/or minority shareholdings owned and/or controlled directly or indirectly by PrivatBank or Privat Intertrading;

    (4) Prior to the creation of the Ferroalloy Holding, the following ferroalloys assets:

        (a) A minority shareholding in Nikopol;

(b) Athina Investments Limited (Belize) ("**Athina**"), Varkedge Limited (Cyprus) ("**Varkedge**") and Wisewood Holdings Limited (Cyprus) ("**Wisewood**"), each of which was an immediate shareholder in Nikopol;

(c) A substantial shareholding in the open joint stock company OAO Zaporozhye Ferroalloys Plant ("**Zaporozhye**");

(d) A controlling shareholding in the open joint stock company OAO Stakhanov Ferroalloys Plant ("**Stakhanov**");

(e) A controlling shareholding in the open joint stock company OAO Ordzhonikidze Ore-Enrichment Combine ("**Ordzhonikidze**");

(f) A controlling shareholding in the open joint stock company OAO Marganetskiy Ore-Enrichment Combine ("**Marganetskiy**");

(5) From its creation on or about 7 November 2006, an interest in the Ferroalloy Holding;

(6) Prior to its sale to the Russian Evraz Group in or around late 2007, a controlling shareholding in the Sukhaya Balka iron ore mining plant ("**Sukhaya Balka**");

(7) Between at least about July 2004 and March 2005, a controlling shareholding in the limited liability company OOO Solaim ("**Solaim**");

(8) A substantial shareholding in the Ukrainian oil and gas company, open joint stock company OAO Ukrnafta ("**Ukrnafta**");

(9) The oil trading company, Sentosa ("**Sentosa**");

(10) Since about late 2007 / early 2008, a group of companies known as Consolidated Minerals (or "**ConsMin**") which holds manganese ore assets in Australia and Ghana;

(11) A controlling shareholding in the Ukrainian airline, closed joint stock company ZAO Aerosvit ("**Aerosvit**"); and

(12) Subject to the Claimant's rights and interests as set out in these Particulars of Claim, a shareholding in the Ukrainian iron ore mining company, open joint stock company OAO Krivorozhskiy Zhelezorudnyy Kombinat ("**KZhRK**").

10. In their business dealings with the Claimant since around 1999, the Defendants have at all times acted as each other's duly authorised agents, with full authority to bind each other and deal with the assets held by them (including in relation to all of the assets set out at paragraph 9 above).

11. Further or alternatively, the Defendants have at all times held each other out as having authority to bind each other in matters relating to assets held by them (including in relation to all of the assets set out in paragraph 9 above), and at all material times the Claimant dealt with the Defendants on the faith of their express and implied representations that each had authority to bind the other. In the premises the Defendants are estopped from denying their authority to bind each other in matters relating to their assets (including in relation to all of the assets set out in paragraph 9 above).

Background to the Constitution: acquisition of KZhRK and the Alcross transaction

12. Prior to 2004, KZhRK formed part of the large Ukrainian state owned mining group, Ukrrudprom.

13. On 9 April 2004 the Ukrainian Parliament passed a law concerning the privatisation of Ukrrudprom by the separate sale of the mining enterprises which Ukrrudprom owned, including a 93.07% shareholding in KZhRK (the "**KZhRK Stake**"). The law stipulated that persons or corporations which owned a stake of not less than 25% in any company within the Ukrrudprom group being privatised under that law would have priority to participate in the tenders for KZhRK and the other Ukrrudprom assets.

14. On or about 16 July 2004 the Ukrainian Ministry of Industrial Policy and Ukrainian Fund of State Property approved the restricted tender process and on 23 July 2004 the Ukrainian Fund of State Property invited tenders for the purchase of the KZhRK Stake.

15. In the course of a meeting in Yalta on or around 26 July 2004 attended by the Claimant and the Defendants, Mr Rinat Akhmetov, Mr Igor Surkis and Mr Grigoriy Surkis it was orally agreed between the Claimant and the Defendants in relation to the privatisation of Ukrrudprom (the "**Yalta Agreement**") that:

    (1) The Claimant would provide the funding for the acquisition by the Defendants of the KZhRK Stake;

    (2) The Defendants would use their best endeavours to acquire the KZhRK Stake for the Claimant through a qualifying entity under their control;

    (3) Once acquired and until the transfer of the KZhRK Stake to the Claimant, the Defendants would manage the KZhRK Stake on the instructions of the Claimant and/or procure the appointment of the Claimant's representatives to KZhRK's management bodies; and

    (4) Upon the Claimant's request, the Defendants would transfer the KZhRK Stake into the Claimant's ownership.

16. Pursuant to the Yalta Agreement:

    (1) The Defendants procured that on or about 4 August 2004 a qualifying entity under their control, namely Solaim, entered into an agreement with the Ukrainian State Property Fund to acquire the KZhRK Stake for 689,419,880 Ukrainian Hyrvnias ("**UAH**") (then approximately equivalent to US$130 million);

    (2) On or about 17 August 2004 the Claimant procured that a limited liability company OOO Pridneprovye deposited the sum of UAH 689,420,000 with PrivatBank at a very low (non-commercial) rate of interest of 0.2% per annum to fund the acquisition of KZhRK Stake;

(3) At an extraordinary general meeting of KZhRK held on 15 November 2004, representatives of the Claimant were formally appointed to the management bodies of KZhRK, having assumed *de facto* control over the management of the company in or around September 2004;

(4) On several occasions between August and November 2004, the Claimant requested the Defendants to transfer the KZhRK Stake into his ownership, and in or around November 2004 it was agreed in principle between the Claimant and the Defendants that the transfer would be effected by means of a purchase by the Claimant of a company which directly or indirectly owned Solaim, the qualifying entity through which the Defendants had acquired the KZhRK Stake for the Claimant;

(5) Between about 16 November 2004 and March 2005, employees or agents of the Defendants submitted to the Claimant draft documentation for the transfer of the KZhRK Stake into the ownership of the Claimant; and

(6) In or around February 2005 the Claimant reiterated his request to the Defendants to transfer the KZhRK Stake into his ownership. In the course of a meeting between the Claimant and the First Defendant held at the Claimant's offices in Kiev in late February 2005, at the First Defendant's request it was orally agreed that the Defendants would effect the transfer if, in addition to making an outright payment to the Defendants of US$130 million[1] in respect of the purchase price of the KZhRK Stake, the Claimant paid to the Defendants a 10% commission.

17. At a meeting between the Claimant and the Second Defendant held at the offices of the Defendants' company Sentosa in Dnepropetrovsk on 5 March 2005, the Second Defendant represented to the Claimant that the indirect owner of the KZhRK Stake was a British Virgin Islands company called Alcross Commercial Limited ("**Alcross**"), which in turn was owned by Ralkon Commercial Limited ("**Ralkon**"). The Second

[1] Replacing the Claimant's deposit at PrivatBank, which could be withdrawn at any time on the Claimant's demand.

Defendant represented to the Claimant that, if he bought Alcross from Ralkon, he would acquire control of the KZhRK Stake.

18. In reliance on those representations and induced thereby, on 6 March 2005 the Claimant procured the execution of five written agreements for the sale and purchase of 100% of the shares of Alcross for an aggregate purchase price of US$143 million (the "**Alcross Agreements**"). The purchasers (each of whom acquired 20% of the issued share capital of Alcross for US$28.6 million) were five British Virgin Island companies, namely Chenan Holdings Limited, Bingley Investments Limited, Bovington Investment Limited, Glengate Enterprises Limited and Rotherham Services Limited (the "**Alcross Buyers**").

19. In the course of a conversation between the Claimant and the First Defendant, witnessed by Rabbi Shmuel Kaminetskiy, in Jerusalem on 15 March 2005 the First Defendant assured the Claimant that if he procured the payment of the purchase price under the Alcross Agreements "*they*" (that is, the Defendants) would ensure that the Claimant received the KZhRK Stake.

20. Thereupon the Claimant confirmed to Ms Yulia Chebotaryova that the agreed price for the KZhRK Stake should be paid, and on or around 15-16 March 2005 the Alcross Buyers and companies ultimately beneficially owned and/or controlled by the Claimant transferred to Ralkon the sum of US$130 million, with a further US$13 million following on or around 5-7 April 2005. The payments in question were made to Ralkon's account with PrivatBank Cyprus.

21. Between 17 and 22 March 2005, OOO Pridneprovye withdrew from PrivatBank the deposit referred to at paragraph 16(2) above.

22. Ralkon duly transferred the entire issued share capital of Alcross to the Alcross Buyers. However, contrary to the Defendants' representations, Alcross did not directly or indirectly own the KZhRK Stake or any shares in KZhRK: Alcross was a worthless shell company.

23. Further, also in March 2005, individuals believed to have been acting on the instructions of the Defendants forcibly entered the premises of KZhRK and took control of the plant. Since that time, the Defendants have exercised management control over KZhRK to the exclusion of the Claimant.

Negotiation of the Constitution

24. In the course of meetings and conversations between about August 2005 and April 2006:

    (1) The Defendants informed the Claimant on a number of occasions (a) that they wished to merge their ferroalloy assets (as identified at paragraph 9(4) above) with the Claimant's interest in Nikopol, and (b) that they considered that there were outstanding dividends due to them in respect of their minority interest in Nikopol.

    (2) The Claimant informed the Defendants on a number of occasions that he required them (among other things) to transfer to him all shares in KZhRK held by them (the "**KZhRK Shares**"), and to pay over to him the profits accruing in respect of those shares during the period for which they had been held by the Defendants.

25. Those meetings and conversations were conducted with (a) the Defendants together, (b) the First Defendant alone, and (c) the Second Defendant alone. During these conversations, the Defendants made it clear to the Claimant that:

    (1) They (the Defendants) were partners in relation to their ferroalloys assets;

    (2) They were jointly holding the KZhRK Shares on the Claimant's behalf;

    (3) They were both to be party to any agreement in respect of a merger of their ferroalloys assets with those of the Claimant and the transfer of the KZhRK Shares to the Claimant; and

(4) Each of them had authority to conduct negotiations with the Claimant on behalf of both Defendants and to conclude an agreement binding on both Defendants in relation to the KZhRK Shares and the anticipated merger of their ferroalloys assets.

26. In particular, during the period August 2005 to April 2006:

(1) In or around August 2005, the Claimant met with the Defendants in Sardinia to discuss disputes which had arisen between them in relation, *inter alia*, to Nikopol and KZhRK. This meeting was also attended by Alexander Babakov and his partner Mikhail Voevodin, whom the Claimant had asked to act as mediator between him and the Defendants. During that meeting:

(a) The Second Defendant stated that the Defendants were holding the KZhRK Shares for the Claimant, but that they would continue discussions regarding transfer of the KZhRK Shares to the Claimant alongside discussions of the Defendants' claim to dividends in respect of their minority stake in Nikopol.

(b) The Claimant and the Defendants agreed that they would seek to agree a comprehensive settlement of the disputes between them, including in relation to KZhRK and Nikopol.

(c) The Defendants agreed to Mr Voevodin and his partners (Mr Mikhail Spektor and Mr Babakov) (together the "**Third Party**") acting as a mediator for those negotiations.

(2) During the course of these discussions, in or around December 2005 – January 2006, the Defendants proposed to the Claimant that they should merge their respective ferroalloys assets.

(3) Up to March 2006, the parties had not reached any final agreement, and the Claimant was unwilling to enter into a merger of his ferroalloys assets with those of the Defendants on the terms offered by the Defendants.

(4) The Defendants sought to impose pressure on the Claimant to agree to their proposals by procuring the institution on 30 March 2006 of proceedings by certain of their companies (namely Athina, Varkedge and Wisewood) against the Claimant in Massachusetts, USA, in which spurious allegations and claims were advanced under the Racketeer Influenced and Corrupt Organisations Act (the "**RICO Claim**").

27. On or about 13 and 14 April 2006, the Claimant attended a further meeting with the Second Defendant and Mr Voevodin at the Second Defendant's offices in Geneva. In the course of that meeting:

(1) It was agreed in principle between the Claimant, the Second Defendant (acting as principal and on behalf of the First Defendant) and Mr Voevodin (acting as principal and on behalf of Mr Spektor and Mr Babakov) that the Claimant and the Defendants would create a joint holding in respect of their ferroalloys assets (the "**Ferroalloy Holding**"), and that Mr Voevodin and his partners would take a stake in that holding. The introduction of the Third Party was a condition of the Claimant's consent to enter into the Ferroalloy Holding with the Defendants.

(2) The Second Defendant reiterated that the Defendants were holding the KZhRK Shares for the Claimant and confirmed that they would transfer them to the Claimant in due course. The Defendants' undertaking to transfer the KZhRK Shares to the Claimant was also a condition of the Claimant's consent to enter into the Ferroalloy Holding with the Defendants.

(3) The Claimant, the Second Defendant and Mr Voevodin agreed that the terms of their agreement on the creation of the Ferroalloy Holding and the transfer of the KZhRK Shares to the Claimant would be agreed between them thereafter.

28. On or about 14 April 2006, employees or agents of the Defendants forcibly entered the Nikopol plant and replaced the director appointed by the Claimant and his agents, requiring the management of Nikopol to accept orders and instructions from the

Defendants. Thereafter, the Defendants exercised management control over Nikopol, and refused to return management control of Nikopol to the Claimant.

29. On or around 16 April 2006, representatives of the Claimant produced a draft of the terms on which the parties would agree to the creation of the Ferroalloy Holding and the transfer to the Claimant of the KZhRK Shares (as revised from time to time: the "**Draft Partnership Terms**").

30. Between April 2006 and September 2006 there were discussions as to those terms between the Claimant, the Defendants, Mr Voevodin and Mr Spektor. The Draft Partnership Terms were revised periodically as these negotiations progressed.

The Constitution

31. On 4 September 2006 a meeting took place at the Second Defendant's offices in Geneva, attended by the Claimant, Ms Yulia Chebotaryova, the Second Defendant, Mr Voevodin and Mr Spektor. At that meeting:

    (1) The Claimant, the Defendants (through the Second Defendant) and the Third Party (through Messrs Voevodin and Spektor) entered into an oral agreement regarding (*inter alia*) the creation of and their participation in the Ferroalloy Holding, and the transfer to the Claimant of the KZhRK Shares (the "**Constitution**").

    (2) The Constitution is in part evidenced in writing, as follows.

    (3) Each of the individuals present at the meeting reviewed Draft Partnership Terms and agreed orally to supplement and/or vary those written terms in certain respects.

    (4) Having agreed orally to supplement and vary the Draft Partnership Terms in certain respects, each of the individuals present confirmed their consent to the Draft Partnership Terms, as supplemented and varied.

(5) Following a suggestion by the Claimant, the parties orally agreed that any disputes regarding the Constitution would be dealt with by the English Courts applying English law.

(6) In the premises, it was an express term of the Constitution that the Constitution would be governed by English law.

(7) In turn, each of the Claimant, the Second Defendant (acting as principal and on behalf of the First Defendant), Mr Voevodin and Mr Spektor (acting as principals and on behalf of Mr Babakov) confirmed their agreement to the Constitution by stating in turn "*we have agreed*" and they shook hands signalling their agreement to be bound by the terms of the Constitution.

(8) On being asked a question regarding detailed terms of the Constitution by Ms Chebotaryova, the Second Defendant cut her off by saying "*we have signed*".

(9) Following the parties' meeting, Ms Chebotaryova prepared a final form of the partnership terms incorporating certain supplemental provisions and variations agreed in the course of the meeting: the "**Partnership Terms**". The Claimant will refer to the Partnership Terms at the trial of this action for their full terms and effect as evidence of terms of the Constitution.

(10) Copies of the Partnership Terms were handed to each of the Defendants and to Mr Voevodin by the Claimant at subsequent meetings between them. A copy of the Partnership Terms was e-mailed to Mr Spektor by Ms Chebotaryova.

32. The Constitution (as evidenced in part by the Partnership Terms) included the following express terms:

(1) The Constitution would take effect from 4 September 2006.

(2) The Defendants (referred to as "the first partner" or "Partner 1") and the Claimant (referred to as "the second partner" or "Partner 2") agreed to transfer certain of their ferroalloy assets to the Ferroalloy Holding. In particular:

(a) The Defendants agreed to contribute (a) a 25.6% stake in Nikopol (referred to as "N"), (b) their stakes in Stakhanov (referred to as "S"), Ordzhonikidze (referred to as "O") and Marganetskiy (referred to as "M"), and (c) an 86% shareholding in Zaporozhye.

(b) The Claimant agreed to contribute (a) a 22.9% stake in Nikopol, and (b) 100% of PFK Pridneprovye, which company owned a 50% + 1 share stake in Nikopol (referred to as "the disputed stake" or "the Stake").

(3) The Ferroalloy Holding would be owned (a) as to 50% by the Defendants, (b) as to 30% by the Claimant, and (c) as to 20% by the Third Party.

(4) The Claimant would pay the Defendants US$90 million, and the Defendants would simultaneously transfer ownership to the Claimant of 8.182% of the shares in the holding companies which were to hold interests in the assets contributed to the Ferroalloy Holding (the "**First Tranche**"). Thereafter, the Claimant would pay the Defendants a further US$90 million, and the Defendants would transfer ownership to the Claimant of a further 8.1825% of the shares in the holding companies which were to hold interests in the assets contributed to the Ferroalloy Holding (the "**Second Tranche**").

(5) The Defendants would settle the RICO Claim and cease all lawsuits which had been initiated or procured by them with respect to the Claimant's bank Ukrsotsbank (referred to as "Bank U") and Nikopol.

(6) Before the creation of the Ferroalloy Holding, each of the parties to the Constitution would enter into a Shareholders' Agreement which would define the terms of their joint participation in the Ferroalloy Holding, including the order and conditions of managing the Ferroalloy Holding and its assets, the order of distributing and paying out dividends, and the order and conditions of terminating the partnership in the Ferroalloy Holding.

33. As to KZhRK, the Constitution provided as follows (as evidenced by Clauses 3.1, 3.2, 3.3 and 3.4 of the Partnership Terms):

(1) *"100% of the shares in [KZhRK, referred to as "K"] belong to the second partner [i.e. the Claimant] and are temporarily on the books of the first partner [i.e. the Defendants]*."

(2) Within 10 days of the Claimant's payment to the Defendants of US$90 million and their transfer to the Claimant of the First Tranche, the Claimant and the Defendants would commence a reckoning of certain mutual debts, including:

(a) The Claimant's obligation regarding dividends for the Defendants' 25.6% stake in Nikopol for the period from January 2003 to April 2006;

(b) The Defendants' obligations to the Claimant regarding:

(i) Dividends from Nikopol's activities for the period from 15 April 2006 until the commencement of dividend distribution from the Ferroalloy Holding's activities;

(ii) Revenue from KZhRK for the period from the passing of control of KZhRK to the Defendants until the transfer of control to the Claimant pursuant to the terms of the Constitution; and

(iii) Compensation for assets belonging to the Claimant situated at Nikopol as at the transfer of control from the Claimant to the Defendants.

(3) Any balance found to be due on the taking of the account would be paid over within 10 days of the conclusion of the reckoning.

(4) If the reckoning disclosed that the Claimant was not indebted to the Defendants, or if any outstanding balance was settled by the Claimant, then within 15 days of completion of the reckoning or settlement of the balance (the "**Condition**

Precedent"), the Defendants would transfer to the Claimant legal title to 100% of the shares of KZhRK which they held.

34. There were implied terms of the Constitution (such terms to be implied by law so as to give business efficacy to the bargain and give effect to the intentions of the parties), that:

    (1) The Claimant and the Defendants would co-operate in conducting the reckoning required by Clause 3.2 of the Partnership Terms and do all things necessary to see to it that the reckoning was completed and agreed within a reasonable time;

    (2) The Claimant and the Defendants would not by their acts and omissions prevent the satisfaction of the Condition Precedent or performance of the Constitution generally.

Acts of Performance

35. The Constitution has been partially performed through (amongst other things) the following steps:

    (1) Pursuant to the terms identified in paragraph 32(2) above, by 7 November 2006, the Defendants and the Claimant caused the ferroalloys assets (save for part of the identified interest in Zaporozhye) to be transferred to Cypriot holding companies created for that purpose. On 7 November 2006, the parties took interests in those holding companies, as contemplated by the Constitution.

    (2) Pursuant to the term identified in paragraph 32(4) above, in early December 2006 the Claimant paid US$90 million to the Defendants for the First Tranche and 8.18% of the shares in the holding companies were transferred from the Defendants to the Claimant.

(3) Pursuant to the term identified in paragraph 32(5) above, on or about 22 November 2006 the Defendants caused Athina, Varkedge and Wisewood to abandon their claims in the RICO Action.

(4) Pursuant to the term identified in paragraph 32(6) above, on 7 November 2006, the parties entered into a subsidiary agreement (the "**Beneficiaries Agreement**") which defined more specifically the terms of their joint participation in the Ferroalloy Holding.

36. Since 7 November 2006, the Defendants have acted in breach of the Claimant's rights under the Constitution and the Beneficiaries Agreement in relation to the Ferroalloy Holding. Those breaches are not the subject of the present action, which is brought only in respect of the Claimant's rights relating to KZhRK. The Claimant's rights under the Beneficiaries Agreement are the subject of an agreement to arbitrate in accordance with the rules of the London Court of International Arbitration.

Attempted reckoning

37. Pursuant to the term identified in paragraph 33(2) above, in or around early December 2006 the Claimant (through his agents within Interpipe) revisited calculations of sums due to the Defendants in respect of their interest in dividends payable on the Defendants' 25.6% stake in Nikopol for the period from January 2003 to 15 April 2006.

38. From about December 2006 to June 2007:

(1) The Claimant and his representatives (in particular Mr Andriy Dudnyk and his then subordinate Mr Andrey Kapuka) sought to agree the sums outstanding from the Claimant to the Defendants with employees or agents of the Defendants (including, in particular, Mr Sergey Maksimenko, Ms Lyubov Chmona, Ms Svetlana Melnikova, Ms Vladislava Lunchenko and Ms N.A. Kuvshinova) and with the Second Defendant directly.

(2) In seeking to agree the reckoning with the Defendants, the Claimant's representatives supplied information to the Defendants as appropriate and

accommodated the Defendants' reasonable requests in relation to underlying information for verification of the reckoning.

(3) Further, at meetings between the Claimant and the Second Defendant, the Claimant offered that in respect of figures for profits of Nikopol for which underlying data was unavailable, the Defendants could apply the highest publicly available prices.

(4) The Defendants did not offer calculations in respect of or seek agreement from the Claimant in respect of the sums due from the Defendants to the Claimant (as detailed at paragraph 33(2)(b)(i) and (ii) above). The Claimant was willing to make payment in respect of any sums properly outstanding to the Defendants prior to agreement of the sums due to him and without set-off of such sums at that time, in order to secure the transfer to him of the KZhRK Shares.

39. However, without giving reasons therefor the Defendants:

(1) Failed and/or refused to agree the reckoning, whether within a reasonable time or at all; and

(2) Failed and/or refused to provide substantiated rival calculations for sums said to be due to them.

40. Accordingly, the Condition Precedent for the transfer of the KZhRK Shares to the Claimant pursuant to the Constitution has not been satisfied.

41. Further, notwithstanding requests from the Claimant and the Third Party, since 4 September 2006 the Defendants have not provided the Claimant with calculations of the revenues due to him in respect of KZhRK for the period during which they have controlled KZhRK. Nor have the Defendants paid over to the Claimant the said revenues.

42. In the premises the Claimant is entitled to and seeks a declaration as to the state of the account between the parties in respect of the obligations referred to at paragraph 33(2) above.

Developments since 2007

43. On or about 25 May 2007 the Defendants, acting through PrivatBank, acquired the balance of the shares in KZhRK from the Ukrainian State Property Fund for UAH 98.9 million (then approximately equivalent to US$19.6 million). The Claimant reserves the right to allege hereafter that this shareholding was acquired and held by the Defendants subject to a trust for the Claimant.

44. In or around July 2007, without informing the Claimant or seeking authorisation from him, the Defendants sold (directly or indirectly) 50% (or approximately 50%) of the shares in KZhRK to Mr Rinat Akhmetov.

45. Notwithstanding requests from the Claimant, between July 2007 and March 2011 the Defendants did not transfer to him the KZhRK shares which they retained, or any of the profits of KZhRK. Nor did the Defendants transfer to the Claimant the proceeds of the sale of shares in KZhRK to Mr Akhmetov, or any part thereof.

46. In or around March 2011, the Claimant commenced an LCIA arbitration seeking rescission of the Alcross Agreements and damages for deceit and breach of collateral warranty in relation to the ownership of the KZhRK Stake by Alcross. Simultaneously the Claimant issued proceedings in the Commercial Court (Claim No 2011 Folio 375) seeking the same relief from the Second Defendant and Ralkon.

47. Upon (*inter alia*) the Second Defendant assuring the Claimant in the presence of Mr Voevodin at a meeting in Geneva that the issue of the transfer of the KZhRK Shares to the Claimant could be resolved amicably, on 8 April 2011 the Claimant withdrew the reference to arbitration and allowed the Claim Form in the Commercial Court proceedings to expire un-served.

48. The Claimant has at all material times been and is now ready and willing to settle any balance properly due to the Defendants under the reckoning referred to in paragraph 33(2) above.

Breach of contract

49. The Constitution is governed by English law, being the parties' express choice of law within Article 3(1) of the Rome Convention.

50. The Claimant repeats paragraphs 37 to 40 above.

51. In the premises:

    (1) In breach of the express term of the Constitution referred to in paragraph 33(2)(b)(ii) above, the Defendants have failed to quantify or pay over to the Claimant (whether in whole or in part) the revenues due to him in respect of KZhRK for the period during which they have controlled KZhRK;

    (2) In breach of the implied terms of the Constitution referred to in paragraph 34 above, the Defendants have:

        (a) Failed to co-operate in conducting the reckoning required by the Constitution;

        (b) Failed to do all things necessary to see to it that the reckoning was completed and agreed within a reasonable time;

        (c) By their acts and omissions prevented the satisfaction of the Condition Precedent; and

        (d) By their sale of 50% (or approximately 50%) of KZhRK to Mr Akhmetov, disabled themselves from transferring to the Claimant legal title to 100% of the interest in KZhRK which they held as at 4 September 2006.

Breach of Trust

52. By the Constitution (and in particular the term identified at paragraph 33(1) above) the Defendants declared themselves trustees for the Claimant of the shares held by them in KZhRK (the "**Trust Property**").

53. By reason of the agreement referred to at paragraph 31(5) and 31(6) above, the trust in question is governed by English law, being the parties' express choice of law within the meaning of the Hague Convention.

54. In breach of trust the Defendants have:

(1) Failed and refused to transfer the Trust Property or its fruits to the Claimant; and

(2) Transferred part of the Trust Property to Mr Akhmetov. The Claimant reserves the right to allege hereafter that part or all of the shareholding sold to Mr Akhmetov shall be deemed to have been shares in KZhRK acquired by the Defendants which are not held on trust for the Claimant, if there are found to be any such shares in KZhRK.

Loss and Damage

55. By reason of the matters aforesaid, the Claimant has suffered loss and damage, comprising:

PARTICULARS OF LOSS AND DAMAGE

(1) The value of the Trust Property.

(2) The profits of the Trust Property since about 3 March 2005.

Relief

56. In the premises, the Claimant is entitled to and claims (each further or in the alternative):

   (1) A declaration that the Trust Property is held on trust for the Claimant;

   (2) An order that the trusts affecting the Trust Property be executed with all necessary accounts and enquiries;

   (3) Without prejudice to the generality of paragraph 56(2) above, an order that the Defendants procure the transfer to the Claimant of all shares in KZhRK directly or indirectly owned or controlled by the Defendants;

   (4) An inquiry into what dealings have from time to time been effected by the Defendants in respect of the Trust Property and what assets representing the Trust Property are now retained by them;

   (5) An account of all and any profits received by the Defendants derived from the Trust Property;

   (6) Damages and/or compensation in equity for the losses suffered by the Claimant in consequence of the Defendants' dealings in the Trust Property;

   (7) A declaration as to what, if any, sums are payable between the Claimant and the Defendants pursuant to the obligations referred to at paragraph 33(2) above;

   (8) Specific performance of the Defendants' obligation to transfer the KZhRK Shares (or such of the KZhRK Shares as remain directly or indirectly owned or controlled by the Defendants) to the Claimant;

   (9) An injunction restraining the Defendants from parting or dealing with or disposing in any manner whatever of any of the KZhRK Shares other than to the Claimant;

(10) Damages for breach of the Constitution.

57. The Claimant is entitled to and claims interest pursuant to Section 35A of the Senior Courts Act 1981 on all sums found to be due to him at such rate and for such period as to the Court thinks fit, alternatively pursuant to the equitable jurisdiction of the Court.

AND THE CLAIMANT CLAIMS:

(1) A declaration that the Trust Property is held by the Defendants on trust for the Claimant;

(2) An order that the trusts affecting the Trust Property be executed with all necessary accounts and enquiries;

(3) An inquiry into what dealings have from time to time been effected by the Defendants in respect of the Trust Property and what assets representing the Trust Property are now retained by them;

(4) An account of all and any profits received by the Defendants derived from the Trust Property;

(5) Damages and/or compensation in equity for the losses suffered by the Claimant in consequence of the Defendants' dealings in the Trust Property;

(6) A declaration as to what, if any, sums are payable between the Claimant and the Defendants pursuant to the obligations referred to at paragraph 33(2) above;

(7) Specific performance of the Defendants' obligation to transfer the KZhRK Shares to the Claimant;

(8) An injunction restraining the parting or dealing with or disposing of any of the KZhRK Shares other than to the Claimant;

(9) Damages;

(10) Interest as aforesaid;

(11) Further or other relief.

ANTHONY GRABINER QC

CAMILLA BINGHAM

SEBASTIAN ISAAC

Claim No.
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

B E T W E E N:

VICTOR MIKHAYLOVICH PINCHUK

Claimant

- and -

(1) GENNADIY BORISOVICH BOGOLYUBOV
(2) IGOR VALERYEVICH KOLOMOISKY

Defendants

PARTICULARS OF CLAIM

White & Case LLP
5 Old Broad Street
London
EC2N 1DW

Tel: +44(0)20 7532 1000
Fax: +44(0)20 7532 1001

Solicitors for the Claimant