



Neutral Citation Number: [2026] EWHC 456 (Comm)

Case No: CL-2015-000396

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, WC4A 1NL

Date: 2 March 2026

Before :

MR JUSTICE BRIGHT

Between :

- (1) Hulley Enterprises Limited**
(2) Yukos Universal Limited
(3) Veteran Petroleum Limited

Claimants

- and -

The Russian Federation

Defendant

Jonathan Crow CVO KC, David Peters KC, Guy Olliff-Cooper, Naomi Hart (instructed by
Stephenson Harwood LLP) for the Claimants
Vernon Flynn KC, Mark Wassouf, Cameron Miles, Maud Mullan (instructed by Pinna Goldberg
Ltd) for the Defendant

Hearing dates: 21, 22, 26, 27, 28, 29 January 2026

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This judgment was handed down remotely at 9.30am on 2 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Bright:

I: Introduction and parties

1. This judgment concerns the trial of preliminary issues. The preliminary issues arise in the context of proceedings brought by the three Claimants (collectively, “HVY”; individually, “Hulley”, “YUL” and “Veteran”) for the enforcement of three New York Convention arbitration awards (“the Final Awards”), pursuant to ss. 101 and 103 of the Arbitration Act 1996.
2. HVY are three companies originally incorporated in (respectively) Cyprus, the Isle of Man and Cyprus, and now all incorporated in the Isle of Man. Their beneficial owners have, over time, included various Russian individuals who have sometimes been referred to as oligarchs (“the Russian Individuals”). The most prominent among them, in the pleaded allegations I have had to consider, is Mr Mikhail Khodorkovsky. Mr Platon Lebedev is also alleged to have had a significant role.
3. The Defendant is the Russian Federation. It was held to be amenable to the jurisdiction of this court, and not immune from such jurisdiction under the State Immunity Act 1978, by the judgment of Cockerill J [2023] EWHC 2704 (Comm) and the subsequent judgment of the Court of Appeal [2025] EWCA Civ 108 (which upheld the judgment of Cockerill J).
4. HVY were formerly the majority shareholders in OAO Yukos Oil Company (“Yukos”). The underlying dispute relates to Yukos, its oil assets in Russia and HVY’s case that the Russian Federation unlawfully expropriated those assets.
5. HVY’s position is that this was a breach by the Russian Federation of its obligations to them under the Energy Charter Treaty (“ECT”). They brought claims in arbitration for damages under the ECT.
6. These claims ultimately led to the Final Awards that are the focus of these enforcement proceedings. The total value of the three Final Awards is over US\$50 billion, plus interest and costs.
7. Given the sums at stake, it is no surprise that both sides fielded extremely large teams. The arguments for HVY were presented by Jonathan Crow CVO KC and David Peters KC, assisted by Guy Olliff-Cooper and Naomi Hart and instructed by Stephenson Harwood LLP (“Stephenson Harwood”). The arguments for the Russian Federation were presented by Vernon Flynn KC, assisted by Mark Wassouf, Cameron Miles and Maud Mullan and instructed by Pinna Goldberg Ltd (“Pinna Goldberg”). I am extremely grateful to them all for their very considerable assistance.

II: Outline chronology of Yukos

8. Until the mid-1990s, Yukos was state-owned. It was privatised, in particular by two auctions held in December 1995 (“the 1995 Auction”) and December 1996 (“the 1996 Auction”). The Russian Individuals were involved in the auctions, via a bank founded by Mr Khodorkovsky (“Bank Menatep”). The successful bidders at both auctions were companies owned and controlled by the Russian Individuals. By the end of 1996, via

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those companies and/or their transferees, the Russian Individuals indirectly owned and controlled shareholdings which (taken together) comprised a majority of the shares in Yukos.

9. During 1999 to 2001, the relevant shareholdings were transferred to HVY.
 - (1) Hulley was incorporated in Cyprus on 17 September 1997. It acquired its shares in 1999-2000 and ultimately held 48.72%.
 - (2) YUL was incorporated in the Isle of Man on 24 September 1997. It acquired its shares in 1999-2000. Some of them were then transferred to Veteran in April 2001. It ultimately held 2.25%.
 - (3) Veteran was incorporated in Cyprus on 7 February 2001. It acquired its shares in April 2001 from YUL, via a Jersey trust, and held 10%.
10. Until 2003, Hulley and YUL were both indirectly owned and controlled by the Russian Individuals via shareholdings in intermediary companies; and YUL was the 100% owner of Veteran, via the Jersey trust (from April 2001).
11. In 2003, the shares in the company that was the immediate owner of Hulley and YUL (Group Menatep Limited – “GML”) were settled into a series of Guernsey trusts.
12. From July 2003, a series of criminal investigations were initiated by the Russian Federation against Yukos and its management, including the Russian Individuals. In particular, Mr Lebedev was arrested in July 2003 on charges including of embezzlement, fraud and tax evasion, and Mr Khodorkovsky was arrested on similar charges in October 2003 (as was another of the Russian Individuals, Mr Vasily Shakhovskiy). They were convicted and in May 2005 Mr Khodorkovsky and Mr Lebedev were sentenced to nine years’ imprisonment. In February 2007, new charges of embezzlement and money laundering were brought against Mr Khodorkovsky and Mr Lebedev, leading to further convictions and lengthy sentences.
13. From December 2003 to 2006, the Russian Federation undertook a series of tax assessments in respect of Yukos, covering the tax years 2000 to 2004. These resulted in tax demands, totalling more than US\$24 billion. Yukos was unable to meet these demands.
14. Yukos’s core asset was its oil production company, Yuganskneftegaz (“YNG”). YNG was sold at auction on 19 December 2004 for US\$9.37 billion to a newly incorporated entity, Baikal Finance Group, which was in turn quickly bought by Rosneft, a state-owned Russian oil company.
15. On 4 August 2006 Yukos was declared bankrupt. Nearly all its remaining assets were acquired by Rosneft and another state-owned oil company, Gazprom. On 21 November 2007 Yukos was liquidated and struck off the register of legal entities.

III: Arbitration in the Netherlands

16. HVY’s position was that the tax assessments, the tax demands and the auction of YNG were part of a campaign conducted by the Russian Federation to destroy Yukos, appropriate its assets and eliminate the Russian Individuals (in particular, Mr

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Khodorkovsky) as political opponents. They said that the actions of the Russian Federation against Yukos constituted an unlawful expropriation, for which each of them could claim damages under the ECT.

17. These claims were referred to arbitral proceedings which took place in the Netherlands with their seat in The Hague, before a panel consisting of Mr L Yves Fortier CC QC, Dr Charles Poncet and Judge Stephen M Schwebel (“the Tribunal”). There were three separate references, commenced by Hulley, Veteran and YUL (respectively) but all heard together. In all three arbitrations, the Russian Federation challenged the jurisdiction of the Tribunal, and strenuously resisted the claims on the merits. It alleged that HVY’s stake in Yukos was the result of fraud on the part of the Russian Individuals, and that further frauds had thereafter been committed in the course of operating Yukos – notably, various fraudulent tax activities.
18. The Tribunal issued three materially identical Interim Awards (one for each Claimant) dated 30 November 2009, and three materially identical Final Awards dated 18 July 2014. Because the three Interim Awards and the three Final Awards were materially identical, in submissions before me the parties generally referred only to the Interim and Final Awards relating to Hulley. I adopt the same practice in this judgment.
19. The Interim Awards essentially dealt with jurisdiction and admissibility.
 - (1) The Tribunal dismissed all of the Russian Federation’s objections to jurisdiction and admissibility, in so far as they were addressed in the Interim Awards.
 - (2) However, a number of points were expressly deferred to the merits phase of the arbitrations. These include contentions that HVY had unclean hands because the Yukos shares had been acquired illegally, and that their corporate responsibility/identity must be disregarded because it was instrumental to a criminal enterprise.
20. The Final Awards dealt with the merits, as well as those preliminary objections which the Russian Federation had raised in the context of the Interim Awards but which had been deferred to the merits phase.
 - (1) The Tribunal dismissed the remaining preliminary objections (including the unclean hands point). It held that the dispute was admissible and within its jurisdiction. It found that the Russian Federation was in breach of its obligations under the ECT and should pay damages.
 - (2) The Russian Federation had partial success in respect of its case on contributory fault. The Tribunal rejected much of the Russian Federation’s case as to fraudulent tax activities, but accepted that Yukos had committed certain tax frauds, and that these had contributed to the losses claimed. This led to the damages awarded being reduced by 25%.
 - (3) The result was that the Russian Federation was ordered to pay US\$39,971,834,360 to Hulley, US\$1,846,000,687 to YUL and US\$8,203,032,751 to Veteran, plus interest and costs.

IV: Court proceedings in the Netherlands

21. Because the seat of the arbitration proceedings had been in The Hague, the courts of the Netherlands had supervisory jurisdiction over them. On 10 November 2014, the Russian Federation commenced proceedings in the Netherlands, in the District Court of The Hague, to have both the Interim Awards and the Final Awards quashed and set aside. The Russian Federation's primary ground was that there was no valid arbitration agreement, as a result of which the Tribunal lacked jurisdiction to hear and decide HVY's claims. The Russian Federation also relied on a series of other grounds, including the contention that the Awards were contrary to Dutch public policy and morality.
22. On 20 April 2016, the District Court of The Hague issued its judgment, setting aside the Awards on the basis that the Tribunal lacked jurisdiction in that there was no valid arbitration agreement.
23. HVY appealed to the Hague Court of Appeal. The Russian Federation responded taking a number of points, including the contention that the Awards had been obtained by fraud in the arbitration proceedings.
24. On 25 September 2018, the Hague Court of Appeal issued an interlocutory judgment by which it held that, for procedural reasons, it was not open to Russian Federation to contend that there had been fraud in the arbitrations. It upheld the Russian Federation's right to argue all the other points that it wished to raise in opposition to the appeal. These included arguments that HVY had unclean hands, and that various Yukos companies had been involved in significant fraudulent tax evasion schemes.
25. On 18 February 2020, the Hague Court of Appeal issued its final judgment on the appeal, upholding HVY's appeal, annulling the judgment of the District Court and rejecting the Russian Federation's claims to have the Interim Awards and Final Awards quashed and set aside. The Hague Court of Appeal disagreed with the District Court on jurisdiction and rejected all the Russian Federation's other arguments, including the unclean hands argument and a complaint in relation to the case on fraudulent tax evasion. The Hague Court of Appeal did not rule on the arguments regarding fraud in the arbitrations, which had been excluded by its earlier interlocutory judgment.
26. The Russian Federation appealed against the Hague Court of Appeal's judgments of 25 September 2018 and 18 February 2020, by an appeal in cassation to the Dutch Supreme Court. Its first ground of cassation was a challenge to the interlocutory judgment of the Hague Court of Appeal, i.e., the decision that fraud in the arbitrations could not be raised by the Russian Federation in the appeal. Its other grounds included, once again, its case that the Tribunal had lacked jurisdiction and its points on unclean hands and on fraudulent tax evasion.
27. The Dutch Supreme Court issued its judgment on that appeal in cassation on 5 November 2021. It rejected all the grounds of cassation, save one: it held that the Hague Court of Appeal had been wrong to rule that the Russian Federation could not raise fraud in the arbitrations. The case therefore was remitted to the Amsterdam Court of Appeal, for that point to be considered.

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28. The Amsterdam Court of Appeal issued its judgment on 20 February 2024. It was concerned solely with the Russian Federation's case of fraud in the arbitrations, which was said to comprise three elements: (i) making false statements, (ii) withholding documents and (iii) making secret payments to a witness.
29. The Amsterdam Court of Appeal held that the Russian Federation could and should have raised its case of fraud in the arbitrations before the District Court of The Hague, because the Russian Federation knew of at least the first element in 2015 and/or 2016, during the proceedings before the District Court of The Hague. The case therefore was raised out of time and should be disregarded.
30. In its judgment, the Amsterdam Court of Appeal then went on to consider the merits of each of the three elements of the "fraud in the arbitration" case, and concluded that they all failed; but it did so expressly on the basis that this part of its reasoning was provided "superfluously".
31. The Russian Federation appealed against the judgment of the Amsterdam Court of Appeal, by an appeal in cassation to the Dutch Supreme Court. The Dutch Supreme Court issued its judgment on 17 October 2025, dismissing the appeal.

V: Preliminary issues on English jurisdiction

32. On 30 January 2015, HVY commenced the proceedings before me, seeking the enforcement of the Final Awards. The Russian Federation challenged the jurisdiction of the English court, on the basis that it could rely on its immunity as a sovereign state, pursuant to s. 1(1) of the State Immunity Act 1978. HVY responded that the Russian Federation had waived its right to rely on sovereign state immunity, having submitted to the arbitration proceedings.
33. By an order made by Leggatt J (as he then was) of 8 June 2016, the proceedings were stayed in light of the proceedings in the Netherlands.
34. The stay was lifted by the order of Butcher J of 26 October 2022, for the limited purpose of resolving preliminary issues that would determine the Russian Federation's challenge on jurisdiction. This followed the judgment of the Hague Court of Appeal of 18 February 2020, and the subsequent decision of the Dutch Supreme Court of 5 November 2021, both of which had rejected the Russian Federation's case that the Tribunal had lacked jurisdiction. The preliminary issues that were ordered by Butcher J essentially asked whether the Russian Federation was precluded by those two Dutch judgments from re-arguing whether it had agreed in writing to submit to arbitration.
35. It was clear from the outset that HVY's case on these preliminary issues would be that the judgment of the Hague Court of Appeal of 18 February 2020 and the judgment of the Dutch Supreme Court of 5 November 2021 created an issue estoppel on this point. The preliminary issues were argued out on this basis before Cockerill J (as she then was), who gave judgment in HVY's favour on 1 November 2023: [2023] EWHC 2704 (Comm). She concluded that the Hague Court of Appeal and the Dutch Supreme Court had decided that the Russian Federation had submitted in writing to arbitration, that these decisions were final and binding, and that this could not be re-argued in England. It followed that the challenge to jurisdiction on the basis of state immunity must be dismissed.

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36. The Russian Federation appealed to the Court of Appeal. The appeal was dismissed, and Cockerill J's decision upheld, by the Court of Appeal's order of 12 February 2025 and the associated judgment: [2025] EWCA Civ 108.

VI: Orders of 14 & 28 June 2024

37. Following Cockerill J's decision on jurisdiction, the Russian Federation served its Defence on 31 January 2024. The points taken were, in essence, as follows, and fell into two distinct categories.
38. First, there was a series of allegations about the acquisition and operation of Yukos, which broadly repeated much of the case that had been run before the Tribunal in the arbitration proceedings:
- (1) It was alleged that the Yukos shareholdings were initially acquired by illegal conduct on the part of the Russian Individuals (specifically, bribery and corruption), in the course of the privatisation in 1995 to 1996 (the "Initial Acquisition" case).
 - (2) It was alleged that the process by which the Yukos shareholdings were acquired by HVY was illegal, i.e., in 1999 to 2000; and that the Russian Individuals retained control of the Yukos shareholdings, notwithstanding the Guernsey trust structures put in place from 2003 (the "HVY Acquisition" case).
 - (3) It was alleged that, following privatisation, Yukos was operated illegally through fraudulent tax evasion schemes, i.e., from the initial privatisation until the tax investigations in 2003 onwards (the "Tax Fraud" case).
39. The allegations in this first category in respect of the Initial Acquisition and the HVY Acquisition overlapped with the arguments raised in the arbitration proceedings in relation to unclean hands. The allegations in relation to the Tax Fraud case overlapped with the arguments that, in the Final Awards, were dealt with in the context of contributory fault.
40. The second category comprised allegations about fraud in the arbitrations:
- (1) It was alleged that HVY had intentionally concealed documents from the Russian Federation and from the Tribunal (the "Concealed Documents" case).
 - (2) It was alleged that HVY made improper payments to a witness, Dr Ilarionov (the "Dr Ilarionov" case), and had failed to disclose such payments.
41. The allegations in this second category did not correspond with any issues raised in the arbitration proceedings. However, they did correspond with two of the three points that the Russian Federation had run in the Dutch proceedings in respect of fraud in the arbitrations – i.e., as addressed, ultimately, by the Amsterdam Court of Appeal and then by the Dutch Supreme Court in its judgment of 17 October 2025.
42. On 14 June 2024, Dias J ordered a trial of preliminary issues. The precise formulation of the preliminary issues was determined by Dias J in a further order of 28 June 2024. The preliminary issues were set out in a schedule to that order.

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43. There was no order regarding assumed facts. However, the evidence to be admitted at the trial of the preliminary issues was limited to the following:
- (1) Evidence putting before the court documents referred to in the Defence.
 - (2) Evidence putting before the court documents of public record concerning the privatisation of Yukos.
 - (3) Expert evidence on Dutch law in relation to Preliminary Issue 9 – i.e., regarding the Russian Federation’s allegation that the payments to Dr Ilarionov, and/or the failure to disclose such payments to the Tribunal, would have been wrongful under Dutch law.
44. The Preliminary Issues as ordered related to the Defence served on 31 January 2024. After the hearings before Dias J in June 2024, the Defence was substantially amended and then re-amended. The Re-Amended Defence was served on 29 September 2025.
45. A letter from Stephenson Harwood dated 19 September 2025 indicated that HVY would consent to the amendments, subject to conditions including the following:
- i. Our clients retain the right to argue at the preliminary issues trial listed for 19 to 29 January 2026... that the points addressed in your client's amendments to its Amended Defence, including the amendments which are being made now, are irrelevant, unintelligible and/or not supported by documents, and that our clients' concession of accepting the amendments is not and cannot be construed as an acceptance that any of the amendments are arguable or viable in any way; and
 - ii. The allegations contained in the amendments are strenuously denied by our clients and on a full trial (if the PI Trial does not resolve these Proceedings) would be contested in their entirety. Our clients reserve all their rights in this regard, including but not limited to the right to challenge the authenticity of the underlying documents.”
46. The Russian Federation responded by a letter from Pinna Goldberg dated 25 September 2025, enclosing a signed consent order and stating:
- “As regards reservations made in your Letter, our client does not accept that it is open to your clients to argue *“that the points addressed in your client's amendments to its Amended Defence, including the amendments which are being made now, are irrelevant, unintelligible and/or not supported by documents”* during the PI Trial insofar as such arguments are intended to invite the Court to second guess the accuracy or veracity of the facts as presented by our client in the Defence. The formulation of preliminary issues presupposes the assumed facts nature of the PI Trial and does not leave any room for advancing arguments about the facts.

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Without prejudice to those comments, if it is your clients' intention to challenge some or all of the facts on which our client relies at the PI Trial, please provide details of the challenge(s) your clients intend to advance and to which particular facts they relate, so that we may consider their implications for the draft Chronology and preparations for the PI Trial more broadly."

47. Stephenson Harwood did not reply to the second paragraph of this letter. However, they counter-signed the draft consent order, with the result that the court made an order permitting the re-amendments on 29 September 2025. That order referred in its recitals to Stephenson Harwood's letter of 19 September 2025.

VII: Observations on the Preliminary Issues

48. The Preliminary Issues were formulated and ordered in June 2024, which was before the conclusion of the court proceedings in the Netherlands and also before the amendments and re-amendments to the Defence. They now have to be considered in the light of these important developments. Before considering them in any detail, some preliminary observations are appropriate.
49. First, by the end of the hearing before me, it was common ground that Preliminary Issues 1, 2 and 12 no longer arose.
50. Second, the remaining Preliminary Issues have a general subject-matter that is apparent from their respective headings and from the paragraphs of the Defence to which they refer. However, they have to be read carefully, and interpreted somewhat purposively, in light of the widespread alterations that now appear in the Re-Amended Defence.
51. This is particularly so in relation to Preliminary Issues 8, 9, 10 and 11, which appear under the heading "Alleged Procedural Fraud". It was common ground before me that these Preliminary Issues are intended to capture the pleaded allegations of fraud in the arbitrations, in so far as they are maintained in the Re-Amended Defence – i.e., Preliminary Issue 8 relates to the Concealed Documents case; Preliminary Issues 9 and 10 relate to the case on Dr Ilarionov.
52. Third, in the light of the exchanges of 19 and 25 September 2025, I understood it to be accepted by both sides that HVY were entitled to argue that points in the Re-Amended Defence were irrelevant, unintelligible and/or not supported by documents, as long as such arguments did not challenge the accuracy or veracity of the facts alleged in the Re-Amended Defence.
53. Thus, in effect, the factual allegations in the Re-Amended Defence are assumed to be true (subject to the disputed points of Dutch law and subject to any inconsistency with court documents of public record). The corollary is that the Russian Federation's case must be restricted to factual allegations that are indeed advanced in the Re-Amended Defence. It is also necessary to distinguish allegations that can properly be characterised as allegations of fact, which cannot be challenged by HVY, from allegations that are really matters of submission, which it may in principle be open to HVY to criticise or dispute.

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54. Fourth, it is clear as a matter of law that it is not generally open to the Russian Federation to advance factual allegations that are inconsistent with findings made by the Tribunal. I discuss this in more detail in Section IX below.
55. Fifth, in the course of the submissions before Dias J that led to the Orders of 14 and 28 June 2024, HVY made it clear that they would not rely on any arguments of issue estoppel. Before me, Mr Crow KC carefully confirmed that, with one arguable exception (which I discuss where it arises below, and which did not cause any difficulty between the parties), HVY indeed did not rely on issue estoppel.
56. This is worth highlighting because it is a major distinction from the way that the preliminary issues on jurisdiction and sovereign immunity were argued before and decided by Cockerill J and the Court of Appeal. There, the decisions of the Hague Court of Appeal and first decision of the Dutch Supreme Court were (in the event) effectively treated as conclusive. Before me, no-one argued that they were conclusive. I was taken to them on the basis that they were, or at least might be, informative. I have read them carefully and with interest on account of the natural respect I have for my counterparts in the Netherlands, whose wisdom and acumen I admire and whose clearly expressed reasoning I found of great interest. They have stimulated my thinking. Furthermore, I must regard them as practically definitive in relation to Dutch law and Dutch public policy. Beyond that, however, I am not bound by them. I discuss this in more detail in Section XV below.
57. This has an important bearing on my approach to Preliminary Issue 3.2, which specifically asks about the significance of the findings of the Dutch courts. For the reasons set out above, the findings of the Dutch courts have limited significance; at any rate, they do not bind me, save to the modest extent identified above.
58. This point is also important for the proper understanding of Preliminary Issues 4 and 6, which ask if it is “open” to the Russian Federation to raise particular allegations.
- (1) In context, these Preliminary Issues do not ask whether such allegations are precluded by issue estoppel or any similar doctrine arising from the Dutch courts. Mr Crow KC’s explanation of HVY’s position means that HVY do not contend that the decisions of the Dutch courts have a strictly preclusive effect.
 - (2) Rather, Preliminary Issues 4 and 6 are asking whether the parties are bound, in this regard, by the findings made by the Tribunal, in the Interim and Final Awards; and, if so, whether those findings preclude the Russian Federation from making the contentious allegations.
 - (3) If not, the associated Preliminary Issues 5 and 7 then ask whether the relevant paragraphs in the Re-Amended Defence contain the necessary factual allegations.
59. Finally, I must emphasise that, in so far as I assume any of the Russian Federation’s factual allegations to be true, I do so solely for the purposes of the Preliminary Issues. HVY have reserved the right to dispute and challenge all these factual allegations at trial, if necessary.

VIII: General legal principles re s. 103(3)

60. The provisions of s. 103(1) and (3) of the Arbitration Act 1996 are as follows:
- “103 Refusal of recognition or enforcement.**
- (1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.
- ...
- (3) Recognition or enforcement of the award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to recognise or enforce the award.”
61. In addition to the public policy ground in s. 103(3), there are a number of other specific grounds on which recognition or enforcement can be refused, in s. 103(2). Mere error is not one of them. The New York Convention and s. 103 do not permit the court to refuse to enforce an award on the basis that the tribunal has made an error of law or fact: *Cukurova Holding AS v Sonera Holding BV* [2014] UKPC 15, at [4], [64].
62. Most of the relevant legal principles applicable to the public policy ground in s. 103(3) were common ground. In considering them, it is important to note that the Russian Federation’s challenge to enforcement raises two different kinds of public policy objection.
- (1) The first relates to objections founded on historic conduct and events, relating to the subject-matter of the arbitrations – i.e., the Russian Federation’s allegations concerning the acquisition and operation of Yukos captured by Preliminary Issues 3 to 7.
- (2) The second relates to objections founded on conduct and events that occurred in the course of the arbitration proceedings – i.e., the allegations concerning fraud in the arbitrations, captured by Preliminary Issues 8 to 11.
63. The purpose of the New York Convention is to facilitate the enforcement of arbitration awards. The enactment of ss. 101 to 103 of the Arbitration Act 1996 endorses that purpose and adopts it as a matter of English law and public policy. In principle, therefore, English law and public policy favour enforcing New York Convention awards, and the threshold for a public policy objection is high: *Mustill & Boyd: Commercial and Investor State Arbitration* (3rd ed.), §17.1, §17.195; *RBRG Trading (UK) Ltd v. Sinocore International Co Ltd* [2018] EWCA Civ 838, at [25(1)] and [26(4)].
64. Against this background, and because s. 103(1) of the Arbitration Act 1996 provides that enforcement “shall not be refused except in the following cases”, the grounds for refusing enforcement are to be construed narrowly, and the burden is on the party resisting enforcement to establish that one of the exceptions applies: *Dallah Real Estate and Tourism Holding Co. v Ministry of Religious Affairs* [2010] UKSC 46, at [101]; *Diag Human SE v Czech Republic* [2014] EWHC 1639 (Comm), at [12]-[13]; *Carpatsky Petroleum Corporation v PJSC Ukrnafta (No 2)* [2020] EWHC 769 (Comm), at [40].

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65. In short, the Russian Federation must establish that enforcement of the Final Awards would be contrary to public policy. If not, this court has no discretion and must enforce the Final Awards. If the Russian Federation does make out its public policy objection, this court has a discretion: it may refuse enforcement, or it may nevertheless exercise its discretion in favour of enforcement.
66. The relevant public policy is that of England and Wales: *Mustill & Boyd*, §17.194; *Yukos Capital Sàrl v OJSC Rosneft Oil Co (No 2)* [2012] EWCA Civ 855, at [151].

IX: Public policy objection re historic conduct/events

67. Where the public policy objection is founded on historic conduct and events, relating to the subject-matter of the arbitration, the critical question is whether the enforcement of the award would be contrary to English public policy; it is not whether the underlying subject-matter is in some way contrary to English public policy:
- (1) *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [2000] QB 288, at 305C (per Waller LJ, whom the others agreed with on this point):
- “...the English court is considering the enforcement of an award, and not the underlying contract. The English court takes cognisance of the fact that the underlying contract, on the facts as they appear from the award and its reasons, does not infringe one of those rules of public policy where the English court would not enforce it whatever its proper law or place of performance. It is entitled to take the view that such domestic public policy considerations as there may be, have been considered by the arbitral tribunal. It is legitimate to conclude that there is nothing which offends English public policy if an arbitral tribunal enforces a contract which does not offend the domestic public policy under either the proper law of the contract or its curial law, even if English domestic public policy might have taken a different view.”
- (2) This passage was quoted with approval by Hamblen LJ in *RBRG Trading (UK) Ltd v. Sinocore International Co Ltd* [2018] EWCA Civ 838, at [26(3)], with the comment:
- “(3) There are sound justifications for taking a different approach to substantive claims and enforcement claims, reflecting the different role performed by the court in each circumstance.”
68. In most of the cases that address this, the relevant subject-matter is a contract. The judgments therefore state the law in terms that are appropriate in that context. Care must be taken applying them in other contexts such as investment treaty arbitration awards, as I discuss below.
69. A further nuance is that the cases concerned with the enforcement of an award on a contract draw on and frequently cite cases that did not arise in the arbitration context and had nothing to do with s. 103(3), but were concerned with the enforcement of the

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contract itself – not with the enforcement of an award. Dicta with this background need to be treated carefully, when it is sought to apply them in relation to the enforcement of a New York Convention arbitration award, under ss. 101 and 103.

70. With those cautions in mind, in the context of the enforcement of an award on a contract, there is a distinction between English domestic and international public policy. Where the arbitration tribunal has found the contract legal under its proper law (and it is also legal, or at least of unchallenged legality, under the curial law of the supervisory state), but it would be affected by illegality under English law, enforcement of an award on the contract can only be refused if the English illegality reflects international public policy rather than purely domestic public policy: *Mustill & Boyd*, §17.208; *Lemenda Trading Co Ltd v African Middle East Petroleum Co Ltd* [1988] QB 448, at 459-461; *Westacre* [2000] 1 QB 288, at p. 305B-D; *RBRG* [2018] EWCA Civ 838, at [25(3)]:

“(3) Where, on the facts found, there is no illegality under the governing law but there is illegality under English law, public policy will only be engaged where the illegality reflects considerations of international public policy rather than purely domestic public policy. This is in accordance with the rules at common law and under the Rome 1 Regulation (art 21) in relation to the refusal of the application of the governing law on public policy grounds—see generally *Dicey, Morris & Collins* Rule 229 at 32R–181. In *Lemenda Trading Co Ltd v African Middle East Petroleum Co Ltd* [1988] 1 All ER 513 at 521, [1988] QB 448 at 459 Phillips J referred to the heads of public policy which would be engaged as being those ‘based on universal principles of morality’. In *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [1999] 1 All ER (Comm) 865 at 877, [2000] QB 288 at 304 the court stated that what the *Lemenda* case decided was that; ‘there are some rules of public policy which if infringed will lead to non-enforcement by the English court whatever their proper law and wherever their place of performance but others are based on considerations which are purely domestic’.”

71. One consequence of this is that, if the contract is legal under its proper law, it does not matter that performance might be illegal or contrary to public policy in the place of performance, if this does not arise from a rule of international public policy; which is why, in *Westacre*, the defendants were not permitted to adduce evidence that a contract to influence would be contrary to public policy in the place of performance (Kuwait).¹

¹ In *Alexander Brothers*, Cockerill J twice summarised the law on the basis that enforcement would be refused if the award were on a contract whose performance was illegal under the law of the place of performance, without adding the caveat that there must also be an infringement of international public policy: [2020] EWHC 1584 (Comm), (i) at [92], summarising *Soleimany v Soleimany* [1999] QB 785, and (ii) at [156], suggesting that a contract to break the law in the place of performance is by definition contrary to international public policy. I respectfully suggest (i) that the examples given by the Court of Appeal in *Soleimany* at 799H-800A were ones where universal morality was engaged and (ii) that this is difficult to reconcile with the analysis of Phillips J in *Lemenda*, as drawn on by Waller LJ in *Westacre*; it is also difficult to reconcile with the fact that, in *Westacre*, it was said (and the Court of Appeal proceeded on the basis) that, even if the contract was contrary to the public policy of Kuwait, it would not be regarded as contrary to public policy in Switzerland, under Swiss law: [2000] QB 288, at 302B.

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This is essentially because of the distinction noted in paragraph [67] above. The court is not being asked to uphold or require performance of the contract. It is being asked to enforce the award, and to do so under the pro-enforcement regime of the New York Convention as enacted in s. 103 of the Arbitration Act 1996. Enforcement of the award in England will not involve any illegality in the place of contractual performance.

72. Phillips J in *Lemenda* and Hamblen LJ in *RBRG* described the rules of international public policy as based on “universal principles of morality”; and see Cockerill J’s discussion of this phrase in *Alexander Brothers Ltd v Alstom Transport SA* [2020] EWHC 1584 (Comm), at [157]-[158]:

“157. ... In *RBRG* Hamblen LJ referred to where the illegality reflects considerations of international public policy and cited Phillips J in *Lemenda* referring to “universal principles of morality”. Plainly that is right. It may even slightly understate the case, since it is highly dubious that this court would enforce awards upholding some types of contracts, even if another court might, and so the rule of public policy could not be said to be (quite) universal.

158. So if the parties had agreed to an arbitration pursuant to the law of the country of Erewhon, and Erewhon was a place where contract killing, or slavery, or terrorism were perfectly legal, it could not be said that the international position was universal, but this Court would doubtless still refuse to enforce an award which upheld a contract in any of those trades.”

73. The distinction between the rules of international public policy and English domestic public policy was discussed in general terms in *Westacre*, both at first instance and in the Court of Appeal, where Waller LJ referred to Colman J’s view on this point at [2000] 1 QB 288, 303G, and then approved it at 305D. At first instance in *Westacre*, Colman J said ([1999] QB 470, at 775C):

“Outside the field of such universally-condemned international activities as terrorism, drug-trafficking, prostitution and paedophilia, it is difficult to see why anything short of corruption or fraud in international commerce should invite the attention of English public policy in relation to contracts which are not performed within the jurisdiction of the English courts.”

74. No doubt, Colman J’s list cannot be treated as exhaustive², but in practice it is allegations of fraud and/or corruption that arise most frequently. Importantly, even if

I suspect that Cockerill J was making a gallant effort to reconcile *Soleimany* with the other authorities on the enforcement of awards. I am not sure that this can be done, or is necessary: see the next footnote.

² It does not include theft or some of the related offences proscribed under the Theft Act 1968, which certainly occur from time to time in international commerce.

Colman J’s list also does not include non-drug-related smuggling: cf. *Soleimany v Soleimany* [1999] QB 785; and see *RBRG* [2018] EWCA Civ 838, at [25(4)], where *Soleimany* is treated as a case involving international public policy. I am not convinced that the smuggling of innocuous goods such as carpets (or tea) is or has ever been universally regarded as immoral. See *Holman v Johnson* (1775) 1 Cowp 341 (which involved the smuggling of tea), at 343 per Lord Mansfield: “An immoral contract it certainly is not; for the revenue laws themselves, as well

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such an allegation can be made out, it does not provide an automatic or unqualified bar against enforcement of the award. The court will only consider enforcement to be contrary to public policy if the degree of connection between the fraud/corruption and the award is sufficiently great to justify this.

75. The leading case here is *RBRG* [2018] EWCA Civ 838. The critical passage is [25(4)], where the Court of Appeal (i) emphasized the need for the court to consider the degree of connection, (ii) noted that *Soleimany v Soleimany* [1999] QB 785 appeared to be the only case where enforcement had been refused on this basis, and (iii) referred with approval to the judgment of Burton J in *National Iranian Oil Co. v Crescent Petroleum Co. International Ltd* [2016] EWHC 510 (Comm), at [49(2)-(3)]:

“(4) In considering whether and, if so, to what extent public policy is engaged the degree of connection between the claim sought to be enforced and the relevant illegality will be important. The main example of the court refusing to enforce an award on the grounds of illegality is *Soleimany* in which, on the facts found by the arbitral tribunal, the contract was illegal as a matter of English law reflecting international public policy grounds (a contract to smuggle goods out of Iran). By contrast, whilst recognising that an award enforcing a contract to bribe would not be enforced, the courts have enforced awards where it has been alleged that the underlying contract has been procured by bribery—see *Wilson v Hurstanger Ltd* [2007] EWCA Civ 299, [2007] 4 All ER 1118, [2007] 1 WLR 2351 and the *National Iranian Oil* case. As Burton J stated in the *National Iranian Oil* case ([2016] EWHC 510 (Comm) at [49]:

“(2) There is no English public policy requiring a court to refuse to enforce a contract procured by bribery. A court might decide to enforce the contract at the instance of one of the parties. It is not that the contract is unenforceable by reason of public policy, but that the public policy impact would not relate to the contract but to the conduct of one party or the other.”

76. The Court of Appeal then reviewed the facts (at [29]-[38]), before concluding that the alleged misconduct was “essentially collateral” (at [39], [41]).

as the offences against them, are all *positivi juris*” – which I understand to mean that such laws are not founded on any principle of morality and so have no moral status, only legal status by virtue of their enactment.

I recognise that the outcome in *Soleimany* may be thought difficult to justify, unless the smuggling of carpets is treated as contrary to international public policy. I think it has to be acknowledged that *Soleimany* is a difficult case. On any view, it must be treated with some care, not merely because some of the obiter reasoning has been criticised in subsequent cases (notably by the majority in *Westacre*), but also because it was not a case involving enforcement under the New York Convention or s. 103 of the Arbitration Act 1996 (or any statutory predecessor), but under s. 26 of the Arbitration Act 1950 (the predecessor of s. 66 of the Arbitration Act 1996). The pro-enforcement approach that is mandatory in the New York Convention context therefore was not applicable; cf. Section VIII above. This may explain the outcome in *Soleimany*.

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77. As reflected by the extract from *RBRG* that I have set out above, one area where the distinction between the two categories of public policy rules has been relatively frequently considered is in relation to the relationship between a contract and bribery – which, in principle falls within the *Westacre* list (“corruption... in international commerce”).
- (1) A contract to bribe foreign public officials is contrary to international public policy. Enforcement of the award on such a contract can be refused under s. 103(3) (at least if the bribery is more than merely incidental): *National Iranian Oil* [2016] EWHC 510 (Comm), at [49(1)]; *Alexander Brothers* [2020] EWHC 1584 (Comm), at [159], suggesting that this principle may extend to a contract to bribe individuals who are not public officials.
 - (2) A contract that is not to bribe public officials, but merely to influence them, and which is not illegal under its proper law or the curial law of the arbitration, is not contrary to international public policy. Even if the contract is illegal in the place of performance, and thus contrary to domestic public policy, the award on such a contract will be enforced: *Westacre* [2000] 1 QB 288, at 304-305.
 - (3) A contract that has been obtained by bribes paid to public officials, but which is not unlawful in itself, is not sufficiently closely connected to the bribery that international public policy is engaged. The award on such a contract will be enforced:
 - a) *Honeywell International Middle East Ltd v Meydan Group LLC* [2014] EWHC 1344 (TCC), per Ramsay J at [183]-[185] (explaining *Wilson v Hurstanger Ltd* [2007] EWCA Civ 299, at [39³]):

“183. As summarised in *Wilson v Hurstanger* at para 39 by Tuckey LJ, with whom the other members of the Court of Appeal agreed, where there is bribery by way of a secret commission to an agent, as alleged in this case, then:

“The principal has alternative remedies against both the briber and the agent for money had and received where he can recover the amount of the bribe or for damages for fraud where he can recover the amount of any actual loss sustained by entering into the transaction in respect of which the bribe was given (*Mahesan v Malaysia Government Officers’ Housing Co-operative Society Ltd* [1979] AC 374). Furthermore the transaction is voidable at the election of the principal who can rescind it provided counter-restitution can be made (*Panama & South Pacific Telegraph Co v India Rubber, Gutta Percha and Telegraph Co* (1875) LR 10 Ch App 515, 527, 532–533).”

184. This shows that where a contract has been induced by bribery it is not contrary to English public policy for the contract to be enforced but it gives the innocent party the opportunity to

³ N.B., *Wilson v Hurstanger* was not a case on the enforcement of an award.

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avoid the contract, at its election, provided counter-restitution can be made.

185. It follows that whilst bribery is clearly contrary to English public policy and contracts to bribe are unenforceable, as a matter of English public policy, contracts which have been procured by bribes are not unenforceable. It follows that I do not consider that Meydan has real prospects of successfully contending that recognition or enforcement of the Award should be refused on the basis that it would be contrary to public policy, if contrary to my previous conclusion, the Contract had been procured by a bribe.”

- b) *National Iranian Oil* [2016] EWHC 510 (Comm), per Burton J at [43] and [48] agreeing with Ramsay J in *Honeywell*, and concluding at [49(2)] that there is no English public policy requiring a court to refuse to enforce a contract procured by bribery. This is the passage quoted with approval by Hamblen LJ in *RBRG*.
- c) *RBRG* [2018] EWCA Civ 838, at [25(4)]. I have set this out in paragraph [75] above.

- (4) A contract which does not require bribes to be paid, but which is in fact performed by bribery in circumstances where the bribery is merely incidental to the contract (rather than necessary or integral), does not engage international public policy: *Alexander Brothers* [2020] EWHC 1584 (Comm), at [159], [164].

- 78. The Russian Federation suggested in supplementary written submissions, provided after the conclusion of the hearing, that the English court has a discretion whether or not to enforce a contract obtained by bribery, or the award on such a contract, referring to *RBRG* at [25(4)]. I consider this a mis-reading of *RBRG* and of the earlier cases, and of s. 103(3). It is entirely clear from the passages cited above in *Honeywell* and in *National Iranian Oil* that the enforcement of a contract obtained by bribery is not contrary to English public policy, and that the enforcement of an award on such a contract is, a fortiori, not contrary to English public policy. Those cases (specifically *National Iranian Oil*, which refers back to *Honeywell*) were approved by the Court of Appeal in *RBRG*. There is, therefore, no discretion under s. 103(3) not to enforce. Rather, if it were contrary to English public policy (which it is not), there still would be a discretion to enforce the award. I suspect this misunderstanding has crept it from a failure to note that, in *National Iranian Oil* at [49(2)], Burton J was considering enforcement of a contract obtained by bribery – not enforcement of the award on such a contract. In the context of enforcement of an award under s. 103(3), the discretionary boot is on the other foot.
- 79. In this regard, it is of great practical significance that, in the context of s. 103(3), the English court is bound by the findings of fact and law that were made by the Tribunal: see paragraph [61] above. Accordingly, where a defendant asserts that enforcing an award would be contrary to public policy because of a particular fact, or a particular proposition of law, but the arbitration tribunal has already held that the facts were not as alleged or has rejected that proposition of law, the court will (in the absence of fraud or other vitiating factors) take the tribunal’s decision as final and binding and consider

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whether enforcement would be contrary to public policy on that basis: *Westacre* [2000] 1 QB 288, at 316F per Mantell LJ, 317D per Sir David Hirst; *RBRG* [2018] EWCA Civ 838, at [25(2)]; *Alexander Brothers* [2020] EWHC 1584 (Comm), at [105]; *Betamax Ltd v. State Trading Corp* [2021] UKPC 14, at [47]-[49], [52].

80. If the arbitration tribunal has not ruled on the allegations because the defendant did not raise them before it, but the defendant could and should have raised the allegations before the arbitration tribunal (or at least before the supervisory court), this may well preclude the defendant from raising the allegations in the context of enforcement proceedings, on the *Henderson v Henderson* principle, re-stated in *Johnson v Gore Wood & Co.* [2002] 2 AC 1, at 30-31 per Lord Bingham: *Carpatsky (No. 2)* [2020] EWHC 769 (Comm), at [123]; *Alexander Brothers* [2020] EWHC 1584 (Comm), at [134]-[142].
81. The court would have to conclude that the relevant point could and should have been raised at the relevant earlier stage, and that there were no special circumstances which made the application of the principle inappropriate: *Carpatsky (No. 2)*; *Alexander Brothers* [2020] EWHC 1584 (Comm), at [145]-[146]. However, the burden here is on the defendant, not the claimant: *Alexander Brothers* [2020] EWHC 1584 (Comm), at [147].
82. Thus, where (as here) the defendant objects to enforcement on the basis of public policy arguments founded on underlying allegations relating to historic conduct and events, in respect of the subject-matter of the arbitration proceedings:
- (1) If those underlying allegations were raised before the arbitration tribunal and rejected by it, they cannot be re-opened – save possibly in exceptional circumstances: *RBRG* [2018] EWCA Civ 838, at [25(2)]; *Alexander Brothers* [2020] EWHC 1584 (Comm), at [105(1)]. These authorities do not consider what kind of exceptional circumstances might qualify, but an obvious example is where the arbitration tribunal’s findings were procured by fraud in the arbitration.
 - (2) If the underlying allegations were not raised before the arbitration tribunal, the defendant may be precluded from raising them before the English court in the context of enforcement proceedings, under the *Henderson v Henderson* principle. It may also be relevant to consider whether they were or should have been raised before the court of the supervisory state.
 - (3) If they were raised before the arbitration tribunal and accepted by it, but the arbitration tribunal nevertheless made an award in favour of the party said to be involved in the illegal or immoral conduct, the tribunal’s findings in respect of the illegality/immorality can be relied on. This is what happened in *Soleimany*.

X: Public policy objection founded on fraud in the arbitration

83. Where the public policy objection is founded on fraud in the arbitration, the position is, in some respects, simpler.
84. It is well recognised that, where an award has been obtained by fraud or other means contrary to public policy, this is a basis for invoking s. 103(3): *Mustill & Boyd*, §17.221.

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The conduct in question must be conduct that the court would be comfortable in describing as fraud, conduct dishonestly intended to mislead: *Gater Assets v Nak Naftogaz Ukrainiy (No. 2)* [2008] EWHC 237 (Comm), per Tomlinson J at [41]:

“41. The public policy referred to in section 103 of the Act is of course the same as that referred to in section 68, and it is never wise to attempt an exhaustive definition of its content. For present purposes however I am satisfied that nothing short of reprehensible or unconscionable conduct will suffice to invest the court with a discretion to consider denying to the award recognition or enforcement. That means conduct which we would be comfortable in describing as fraud, conduct dishonestly intended to mislead.”

85. I was also referred to *Stati v Republic of Kazakhstan* [2017] EWHC 1348 (Comm), at 11(3), where Robin Knowles J adopted the approach of the authorities on s. 68(2)(g) of the Arbitration Act 1996, several of which also refer to “some form of reprehensible or unconscionable conduct”⁴, but without Tomlinson J’s explanation of what this means; and to *Carpatsky Petroleum Corporation v PJSC Ukrnafta (No 2)* [2018] EWHC 2516 (Comm), at [42], to similar effect. I confess that I find the phrase “reprehensible or unconscionable conduct” unhelpfully broad, and am concerned that it is capable of including conduct that does not naturally fall within the conception of international public policy, i.e., (near) universal morality. I am conscious that (as was agreed before me) considerations of public policy must be approached with extreme caution, in the context of s. 103(3): *IPCO (Nigeria) v Nigerian National Petroleum Corp* [2005] EWHC 726 (Comm), at [13]; especially where no established principle of public policy applies: *Honeywell* [2014] EWHC 1344 (TCC), at [182]. I also have in mind the more general statements, noted in paragraph [64] above, to the effect that the grounds for refusing enforcement under s. 103 are to be construed narrowly: e.g., *Carpatsky (No. 2)* [2020] EWHC 769 (Comm), at [40]. Finally, I have in mind that, in the context of s. 68(2)(g), Aikens J has suggested that the phrase ‘[an] award . . . procured . . . contrary to public policy’ goes no wider than the phrase ‘[an] award . . . obtained by fraud’: *Elektrim SA v Vivendi Universal SA* [2007] EWHC 11 (Comm), at [67].
86. It may be that there is ultimately no substantive difference between the formulation of Tomlinson J in *Gater Assets* and the phrase “reprehensible or unconscionable conduct”. Nevertheless, I find Tomlinson J’s formulation easier to apply with certainty. I also note that *Gater Assets* was a case decided on s. 103(3), whereas the authorities that Knowles J drew on in *Stati* were not. I therefore would prefer the view that the conduct in question must be fraud, in the sense of dishonest conduct that was intended to mislead. However, this undoubtedly can include dishonest omissions – in particular, the dishonest concealment of documents that should have been disclosed: *Gater Assets* [2008] EWHC 237 (Comm), at [40]; *Stati* [2017] EWHC 1348 (Comm), at [11(4)].
87. Fraud in the course of legal proceedings is unquestionably contrary to international public policy (despite not being expressly mentioned in Colman J’s list in *Westacre*): *Mustill & Boyd*, §17.222. It follows that the distinction between rules of international

⁴ Knowles J referred to *Double K Oil Products 1996 Ltd v Neste Oil OYJ* [2009] EWHC 3380 (Comm), at [33]; see also *Profilati Italia Srl v PaineWebber Inc* [2001] 1 Lloyd’s Rep. 715, at [17].

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public policy and purely domestic public policy does not arise in this context. In every case where fraud in the arbitration is made out, the rules of international public policy are engaged.

88. The nature of the complaint is that the findings of the arbitration tribunal cannot be relied on. This means that, if the objection is accepted, those findings cannot necessarily be treated as conclusive. In such a case, the authorities cited in paragraph [79] above have to be applied with care. Some findings may still be binding and conclusive, if the court considers that they were not affected by the relevant conduct; others may not.
89. For obvious reasons, the alleged fraud often will not come to light until after the arbitration proceedings have concluded, so in many cases the objection could not have been raised before the arbitration tribunal.
90. If it could and should have been raised before the arbitration tribunal, the *Henderson v Henderson* principle is relevant and will normally apply: *Westacre* [2000] 1 QB 288, at 309F per Waller LJ⁵; *Alexander Brothers* [2020] EWHC 1584 (Comm), at 74(2). The qualification “normally” is taken from the *Westacre* judgment; its practical meaning must reflect the *Henderson v Henderson* principle and the observations on its application in this context per Butcher J in *Carpatsky (No. 2)* and Cockerill J in *Alexander Brothers*, cited in paragraphs [80]-[81] above – including, that the burden is on the defendant to show that the objection could not or should not have been raised before the arbitration tribunal.
91. Consideration should also be given to whether the objection could and should have been raised before the supervisory court, this being the obvious forum for a challenge to the award on this basis; cf. the position with arbitrations seated in England, where the English courts have the necessary supervisory jurisdiction under s. 68(2)(g) of the Arbitration Act 1996.
92. *Mustill & Boyd*, §17-222, suggests that the court’s approach to fraud in the arbitration in the context of s. 103(3) should be similar to its approach in the context of s. 68(2)(g). I agree that it is sensible to consider the authorities on s. 68(2)(g) where there is no convenient authority under s. 103(3). On this basis, I accept the following suggestions from Mr Flynn KC:
- (1) The conduct in question must be that of a party to the arbitration or its privies: *Elektrim SA v Vivendi Universal SA* [2007] EWHC 11 (Comm), at [80].
 - (2) The conduct must be distinctly pleaded and proved, to the heightened standard of proof that applies to fraud, on the basis of cogent evidence: *Federal Republic of Nigeria v Process & Industrial Developments Ltd* [2023] EWHC 2638 (Comm), at [477].
 - (3) The standard of proof is not greater than the balance of probabilities but merely reflects human experience that an event is usually more readily explained by

⁵ Waller LJ did not refer to *Henderson v Henderson*, but he did refer [2000] QB 288, at 306G to “the test in the abuse of process context” – which is what *Henderson v Henderson* represents, especially as re-formulated in *Johnson v Gore Wood & Co.* [2002] 2 AC 1, at 30-31. Waller LJ seems to have preferred the abuse of process analysis to the test in *Ladd v Marshall*: [2000] QB 288, at 306E and again at 306C.

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error than dishonesty: *Celtic Bioenergy Limited v Knowles Limited* [2017] EWHC 472 (TCC), at [69]; a passage that echoes Lord Nicholls’ well-known observations in *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, at 586.

93. One of very few legal debates between Mr Crow KC and Mr Flynn KC concerned the standard that must be met as regards the materiality of the fraud (or equivalent conduct) and its effect on the arbitration proceedings.
94. Mr Crow KC argued for a relatively high causative test:
- (1) The court must be persuaded (with the burden on the defendant) that evidence of the fraud “would probably have affected the result” of the arbitration; and that, where the fraudulent conduct consists of perjury, the evidence must reasonably be expected to be decisive and if unanswered must have that result: *Westacre* [2000] 1 QB 288, at p. 306D, 309G; *Alexander Brothers* [2020] EWHC 1584 (Comm), at [74(1)].
 - (2) The defendant must show that the fraud had “an important influence on or would probably have affected the result”: *Stati v Republic of Kazakhstan* [2017] 2 Lloyd’s Rep 201, at [11(4)].
 - (3) The defendant must show that the claimant’s fraud “has contributed in a substantial way to obtaining an award in his favour”: *Gater Assets* [2008] EWHC 237 (Comm), at [40].
95. Mr Flynn KC argued for a somewhat lower causative test:
- (1) He, too, referred to *Stati* [2017] 2 Lloyd’s Rep 201, at [11(4)].
 - (2) He said that it is sufficient if, had the true position been disclosed, “the outcome of the arbitration might well have been different”: *RAV Bahamas Ltd v Therapy Beach Club Inc* [2021] UKPC 8, at [34] (a Privy Council decision on the Bahamian equivalent of s. 68(2)(g)); applied under s. 68(2)(g) in *Federal Republic of Nigeria* [2023] EWHC 2638 (Comm), at [500]-[504].
 - (3) He said that it is sufficient that the fraud “has contributed in a substantial way to obtaining the award”: *Profilati Italia Srl v PaineWebber Inc* [2001] 1 Lloyd’s Rep. 715, at [17].
96. I suspect that the difference between the parties’ positions is more apparent than real. At the very least, it narrows very considerably when it is borne in mind that a difference in “the outcome” or “the result” does not mean, exclusively, reversing who won and who lost. As Knowles J rightly explored in *Federal Republic of Nigeria* [2023] EWHC 2638 (Comm), at [504]-[508], what a difference in the outcome means will vary from case to case, depending on the circumstances of the case and the nature of the fraud alleged.
97. Furthermore, it is of interest that several of the important authorities here (including *RAV Bahamas* and *Federal Republic of Nigeria*) relate to challenges under s. 68 (or its equivalent), so that they focus on whether the fraudulent conduct has caused

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“substantial injustice to the applicant”. While the same words do not appear in s. 103, it seems right to me both (i) that there should be a requirement that substantial injustice has been caused, in order for public policy concerns to be engaged in respect of fraud in the arbitration, and (ii) that, where substantial injustice has been caused by fraud in the arbitration, there is likely to be a strong public policy interest against enforcement. Such substantial injustice is not restricted to the difference between winning and losing, as explained by Akenhead J in *Secretary of State for the Home Department v Raytheon Systems Ltd* [2014] EWHC 4375 (TCC) at [33(i)], cited in *Rav Bahamas* [2021] UKPC 8, at [34]:

“For the purposes of meeting the substantial injustice test, an applicant need not show that it would have succeeded on the issue with which the tribunal failed to deal or that the tribunal would have reached a conclusion favourable to him; it [is] necessary only for him to show that (i) his position was reasonably arguable, and (ii) had the tribunal found in his favour, the tribunal might well have reached a different conclusion in its award.”

98. This seems congruent with the requirement in *RBRG* that the alleged misconduct must have a sufficiently close “degree of connection” with the award, rather than being “essentially collateral”: [2018] EWCA Civ 838, at [25(4)]. Those comments were made in the context of fraud related to the contract which was the subject-matter of the award, rather than fraud that occurred in the course of the arbitration proceedings themselves. However, fraud in the arbitration which did not cause any substantial injustice is, in general, likely to be regarded as essentially collateral to the award.
99. All of that having been said, the difference between “would probably have” and “might well have” is not a point I need to decide. Few cases turn on such fine gradations of the evidential requirements. This is not one of them.

XI: Identifying the subject-matter

100. I noted in paragraphs [68]-[69] above that care must be taken when applying, in a non-contractual context, the principles set out in cases where the subject-matter of the arbitration was contractual.
101. The difficulties that arise here are highlighted by the distinctions drawn, in the contractual context, between (on the one hand) a contract for bribery and (on the other) a contract that is merely procured by bribery, or which incidentally comes to involve bribery when it is performed. When the subject-matter of the arbitration is a contract, it is relatively easy to separate the contract itself (i) from the background circumstances from which it arose and (ii) from the manner of its performance. When the subject-matter is an investment under an investment treaty, the exercise is much harder. This is because (as Mr Flynn KC submitted) such an investment is often a very complex economic operation that cannot readily be separated into its constituent elements. I was referred to Dolzer, ‘Principles of Investment Law’ (3rd ed.), at 99:

“Many investments are complex operations. They may consist of preparatory studies, licenses, government permits, financing arrangements, real estate transactions, various contractual

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arrangements, and a variety of other legal dispositions. Each of these elements has its own legal existence, but in economic terms they are united to serve a common purpose. Typically, investment tribunals have treated the various assets that make up an investment as a unity. In most cases, they have not dissected investments into their individual legal components but treated them as an integral whole. In doing so, they have given precedence to economic realism over legal formalism.”

102. I agree with this, in principle. However, it does not mean that every conceivable aspect of the investment transaction, perhaps over a very long period of time, must be treated as constituting “the investment”. Rather, it means that, in the investment treaty context, answering the questions that arise, when addressing public policy points of the kind raised here, will depend on the particular facts.
103. Moreover, because the exercise is fact-specific:
- (1) The pleaded allegations are critical: see paragraph [92(2)] above.
 - (2) The factual findings of the arbitration tribunal are likely to be highly influential: see paragraphs [61], [79]-[82] above, and cases such as *Cukurova Holding AS v Sonera Holding BV* [2014] UKPC 15 and *Betamax Ltd v. State Trading Corp* [2021] UKPC 14.
104. The Russian Federation also submitted that, in the context of investment treaty arbitrations, when an arbitral award is made by an investment treaty tribunal, it reflects the crystallization of all rights inherent in the original investment. The purpose of this submission was to suggest that any illegality inherent in the original investment therefore crystallizes in the award, and so affects the enforceability of the award. If this were right, it would mean that the distinction between enforcing the contract and enforcing the award that is so important in the contractual context does not apply in the context of investment treaty arbitrations; cf. paragraph [67] above.
105. In support of this submission, Mr Flynn KC cited the UNCITRAL Final Award of 30 November 2011 in *White Industries Australia Limited v Republic of India*, at [7.6.8].⁶ However, although the dictum he cited was made in an investment treaty arbitration, it was not about an investment treaty arbitration award: it related to an underlying award in separate commercial arbitration proceedings, which did not involve identical parties. In addition, it was not concerned with the enforceability of the award under the New York Convention. It has no real bearing on the issues before me.
106. Mr Flynn KC also cited the award in *Churchill Mining & Planet Mining Pty Ltd v Republic of Indonesia*, ICIS Case Nos. ARB/12/40 & 12/14, Award 6 December 2016, at [507]-[508], where the arbitration tribunal found that a fraudulent scheme permeated the Claimants’ investments, because a forged document was essential to them. He used this to suggest that, where an investment has been procured through serious illegality

⁶ “...awards made by tribunals arising out of disputes concerning ‘investments’ made by ‘investors’ under BITs represent a continuation or transformation of the original investment.”

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under the law of the host state or has been operated in a seriously illegal manner, and that illegality is central to the arbitration, the award is unenforceable.

107. One problem with these points is that, on the facts of the present case, as found by the Tribunal, the contracts (if any) that were obtained by illegality (i.e., by the (assumed) corruption discussed in Section XVI(a) below) were the contracts by which the companies that took part in the 1995 and 1996 Auctions purchased the Yukos shares – i.e., the Initial Acquisition. It was only later that the shares came into the ownership of HVY. If an award relating to a contract obtained by bribery is enforceable even though (i) that contract is the award’s direct subject-matter and (ii) the party seeking its enforcement was party to the contract, it would seem anomalous that an award under an investment treaty should not be enforceable, even though (i) it is only indirectly related to the contract obtained by bribery, and (ii) the party seeking enforcement was not involved in that contract (indeed, this party did not exist at the relevant time).
108. A second problem is that Mr Flynn KC’s submissions ignored the significance of the fact that, in an enforcement claim under s. 103, the English court is not determining the facts for itself, in a vacuum. Save in exceptional cases (e.g., where the award has been procured by fraud in the arbitration), the English court proceeds on the basis of the facts found by the arbitrators. This is a fundamental distinction between the role of the court in this case from that of the arbitration tribunals in *White Industries Australia* and *Churchill Mining & Planet Mining*.
109. If the English court were asked to enforce an award which contains findings by the arbitration tribunal that the investment was affected by illegality, and if that illegality was central to the investment rather than collateral, there might well be a sound argument that enforcement would be contrary to public policy. However, there cannot be many cases where the arbitration tribunal makes such a damning finding, but nevertheless makes an award in favour of the investor, who then asks the court to enforce the award. Of all the cases cited to me, *Soleimany* is the only example that came close (but in the context of an award on a contract). The Russian Federation needs to persuade me that this case is a similar outlier.

XII: Findings in the Interim Awards

110. Both the Interim Awards and the Final Awards were lengthy and detailed and, overall, addressed and made findings in respect of a prodigious number of issues. Not all those issues or findings are relevant to the points that arose before me, but it will be helpful to set out the overall structure of the Interim Awards and of the Final Awards, before then summarising the most relevant findings.
111. As regards the Interim Awards, Parts I to VI dealt with various background matters and identified the evidence received. Part VII contained a summary of the issues to be determined. Those issues were then addressed in Part VIII. The decision that resulted from the determination of those issues was set out in Part IX.
112. The jurisdictional objections raised by the Russian Federation for the purposes of the Interim Awards included issues as to whether any of HVY was an “investor” for the purposes of Article 1(7) of the ECT, and whether the claims were barred by Article 17 of the ECT because HVY were owned or controlled by nationals of a third state. In the context of both points, the Russian Federation raised arguments that HVY’s

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investments (i.e., the shareholdings in Yukos) were affected by illegality and that HVY were controlled by the Russian Individuals. These arguments were related, in that the Russian Federation not only relied on illegality as meaning that HVY held the investments with unclean hands, but also for its case that HVY's corporate personality should be disregarded because of the overall criminal enterprise (said to be masterminded by the Russian Individuals, whose control over HVY therefore was crucial).

113. The question whether HVY were investors for the purposes of Article 1(7) of the ECT was dealt with in Section VIII.B. One of the objections made by the Russian Federation was that HVY only paid for their shares only after acquiring them (by promissory notes). The Russian Federation argued that this meant that HVY should not be treated as having invested in Yukos. The Tribunal rejected this argument as follows:

“The record establishes that the shares were legally acquired in 1999 and 2000 and paid for from 2000 to 2003.”

Hulley Interim Award, [430]

114. The Tribunal decided that it did not need to go any further than this, in order to determine whether HVY were investors. In this context it therefore was not necessary to decide the unclean hands point or the corporate personality point, which were both reserved to the merits phase of the arbitrations: Hulley Interim Award, [435].
115. The question whether the claims were barred by Article 17 was dealt with in Section VIII.C. The Tribunal held that Article 17 could not be invoked by the Russian Federation for technical reasons, so that issues regarding its substantive conditions did not need to be addressed: Hulley Interim Award, [460]. The Tribunal nevertheless went on to address them, out of deference to the extensive evidence and submissions received, but still did not decide whether the Russian Individuals had retained real control over the shareholdings.
116. It was not in dispute that the Russian Individuals had such control at least until the Guernsey trust structures were put in place in 2003: Hulley Interim Award, [492]. The only thing in doubt was how much control they exercised after those trust structures had been put in place – i.e., whether, in practice, they exercised complete dominion over HVY, notwithstanding the trust structures. However, for the purposes of Article 17, it was sufficient that the Guernsey trusts were legally effective in principle: Hulley Interim Award, [534].
117. In reaching this conclusion the Tribunal did not have to consider whether HVY's corporate personality should be disregarded. Therefore, in Section VIII.C just as in Section VIII.B, the unclean hands point and the corporate personality point were left to the merits phase: Hulley Interim Award, [508].

XIII: Findings in the Final Awards

118. As regards the Final Awards, Parts I to VI dealt with various background matters and identified the evidence received. Part VII contained a summary of the issues to be determined. The merits issues were addressed in Part VIII. The remaining preliminary objections were addressed in Part IX. Liability, including the Russian Federation's case of contributory fault, was addressed in Part X. Interest, quantification of damages and

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costs were addressed in Parts XI, XII and XIII. The decision that resulted was set out in Part XIV.

XIII(a): Findings in relation to unclean hands

119. The Russian Federation’s unclean hands arguments were addressed in Section IX.B of the Final Awards. In Section IX.B.2, the Tribunal noted that there were numerous instances of illegality and bad faith conduct alleged by the Russian Federation against HVY, involving a variety of actors and spanning over 10 years, from the mid-1990s onwards.
- (1) Some of them related to the original acquisition of Yukos in 1995-1996 and to the subsequent transfers to HVY in 1999-2001. These concerned alleged misconduct related to the acquisition of Yukos by Bank Menatep and the Russian Individuals and their subsequent consolidation of control and ownership over Yukos. These allegations correspond to the Initial Acquisition case and the HVY Acquisition case, in the current proceedings.
 - (2) Some of them related to Yukos’s tax arrangements, including the use of tax optimisation schemes available in certain Russian low-tax regions (“LTR”) and the use of a Cyprus-Russia Double Taxation Agreement (“DTA”). These allegations correspond to the Tax Fraud case, in the current proceedings.
120. The Tribunal summarised the parties’ arguments, in Section IX.B.3. First, it referred to the Russian Federation’s argument that any claimant guilty of such conduct was deprived of the right to complain of corresponding illegalities by the state, because of a requirement of clean hands which was said to be a general principle of law. The Russian Federation also argued that the corporate veil between the Russian Individuals and HVY should be lifted, relying on a well-known ICJ decision, generally referred to as *Barcelona Traction*⁷, and that it made no difference if illegality pre-dated HVY’s involvement⁸: Hulley Final Award, at [1315], [1318]-[1319].
121. The Tribunal then referred to HVY’s case, which included arguments that, even if the facts alleged in relation to unclean hands were proven, this could not affect their claims because there was no relevant legal principle requiring clean hands, but also because

⁷ *Barcelona Traction, Light & Power Co (Belgium v Spain)* [1970] ICJ Rep 3 at [56]: “... the Court must here refer to municipal law. Forms of incorporation and their legal personality have sometimes not been employed for the sole purposes they were originally intended to serve; sometimes the corporate entity has been unable to protect the rights of those who entrusted their financial resources to it; thus inevitably there have arisen dangers of abuse, as in the course of many other institutions of law. Here, then, as elsewhere, the law, confronted with economic realities, has had to provide protective measures and remedies in the interests of those within the corporate entity as well as of those outside who have dealings with it: the law has recognised that the independent existence of the legal entity cannot be treated as an absolute. It is in this context that the process of “lifting the corporate veil” or “disregarding the legal entity” has been found justified and equitable in certain circumstances or for certain purposes. The wealth of practice already accumulated on the subject in municipal law indicates that the veil is lifted, for instance, to prevent the misuse of the privileges of legal personality, as in certain cases of fraud or malfeasance, to protect third persons such as a creditor or purchaser, or to prevent the evasion of legal requirements or of obligations.”

⁸ Relying on a further arbitration decision, *Anderson v Costa Rica*, ICSID Case No. ARB/07/24, Award 18 June 2010

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the matters alleged by the Russian Federation were “collateral illegalities”: Hulley Final Award, at [1326].

122. The Tribunal addressed these arguments in Section IX.B.4. First, in Section IX.B.4.(a) and (b), it considered whether a principle of clean hands or legality could be read into the ECT, or existed as a general principle of law. It rejected the Russian Federation’s arguments: Hulley Final Award, at [1354]-[1356] and [1363].
123. The Final Awards then continued in Section IX.B.4(c), under the heading, “Would any Instances of Claimants’ Alleged “Bad Faith and Illegal” Conduct be Caught by a Legality Requirement Read into the ECT?” In other words, the Tribunal here made findings on the assumption that (contrary to its conclusion in Section IX.B.4(a) and (b)) there was an applicable requirement of clean hands.
124. In relation to the Initial Acquisition and the HVY Acquisition, the Tribunal’s reasons proceeded as follows:

“1366. This leaves for the Tribunal’s consideration Respondent’s allegations of bad faith and illegal conduct in the acquisition of Yukos and the subsequent consolidation of control and ownership over Yukos and its subsidiaries, set out in Subsection IX.B.2(a) above.

1367. It is common ground between the Parties that these actions were taken before Claimants became shareholders of Yukos in 1999, 2000 and 2001 and, consequently, were not taken by Claimants themselves, but by other actors, such as Bank Menatep and the Oligarchs. Claimants submit that these actions are thus irrelevant to these arbitrations, as the conduct complained of was not that of Claimants’ themselves and, in any event, pre-dates Claimants’ investment.

1368. Respondent replies that, on the contrary, the process of the acquisition of the Yukos shares by Claimants should not be seen in isolation but as an integral part of the “making of the investment” by Claimants. Respondent’s argument was most convincingly put by Dr. Claudia Annacker during the Hearing. Dr. Annacker argued as follows:

Contrary to Claimants’ position, the serious illegalities that infect the entire process of the acquisition of the Yukos shares by Claimants cannot simply be ignored because the transfer of the shares to the Claimants . . . viewed in isolation, is asserted to be legal. These illegalities cannot somehow be cured through multiple transfers within this network of the oligarchs’ offshore companies from one shell company to another.

Indeed, the making of an investment is often a process rather than an instantaneous act, and often comprises a number of diverse transactions. These transactions must be treated as an integrated whole. The transactions may have a separate legal existence, but they have a common economic aim . . .

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Indeed, it would be incompatible with economic reality and undermine the integrity of the legal process if serious irregularities – illegalities – infecting the process of the making of the investment would not affect the availability of investment treaty protection, whether or not a specific transaction, part of the process, if viewed in isolation, might be legal.

Now, this conclusion applies a fortiori where a claimant is not unrelated to the persons or entities that committed these illegalities, but is an investment vehicle owned and controlled by the same persons who committed the illegalities... Otherwise, investment treaty protection could be achieved simply by shifting investments through layers of ownership and control to launder illegal investments...

While Claimants' acquisition of their shares may be a separate legal transaction, there is a common economic aim pursued by the same oligarchs...

1369. The Tribunal agrees with Respondent that an examination of the legality of an investment should not be limited to verifying whether the last in a series of transactions leading up to the investment was in conformity with the law. The making of the investment will often consist of several consecutive acts and all of these must be legal and *bona fide*.

1370. In the present case, however, Respondent has failed to demonstrate that the alleged illegalities to which it refers are sufficiently connected with the final transaction by which the investment was made by Claimants. The transactions by which each Claimant acquired its investment were their purchases of Yukos shares. As established in the Interim Award, these purchases were legal and occurred starting in 1999.¹⁷⁸² On the other hand, the alleged illegalities connected to the acquisition of Yukos through the loans-for-shares program occurred in 1995 and 1996, at the time of Yukos' privatization. They involved Bank Menatep and the Oligarchs, an entity and persons separate from Claimants, one of which—Veteran—had not even come into existence. With respect to Respondent's other allegations, regarding profit skimming and the oppression of minority shareholders, it is also clear to the Tribunal that they are not part of the transaction or transactions by which each Claimant acquired their interest in Yukos.

¹⁷⁸² Interim Awards ¶¶ 431 (YUL); 430 (Hulley); 474 (VPL)

1371. Respondent relies on *Anderson* for the proposition that “illegalities infecting an investment that pre-date a claimant's acquisition of the investment are not irrelevant or outside the tribunal's jurisdiction *ratione temporis*.” However, the tribunal in that case examined and found to be illegal the very transaction through which the claimants obtained their investment, not any prior transactions made by other persons.

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1372. While it is true that the claimants in *Anderson* were not blamed for the illegality that tainted their investment, nevertheless it is the very transaction by which their respective investments were obtained that was considered illegal by the tribunal, and led it to decline jurisdiction.

(d) Conclusion

1373. The Tribunal concludes that Respondent's "unclean hands" argument fails as a preliminary objection. It does not operate to deprive the Tribunal of its jurisdiction in this arbitration, render inadmissible any of the Claimants' claims or otherwise bar Claimants from invoking the substantive protections of the ECT."

125. The Tribunal therefore rejected the Russian Federation's unclean hands arguments.
126. In relation to the HVY Acquisition, it is notable that the Final Awards specifically repeated the finding in each of the Interim Awards that HVY's own acquisitions were all legal: Hulley Final Award, at [1370] and footnote 1782.

XIII(b): Effect of Final Award [1370]

127. The true effect of the Tribunal's findings and reasoning was the subject of some debate; in particular, the true effect of [1370]. It was common ground that the Tribunal did not determine whether or not the Russian Federation's allegations regarding the Initial Acquisition were made out, because those allegations were held to be irrelevant. However, the parties did not agree as to the basis on which the Tribunal considered those allegations to be irrelevant.
128. Mr Flynn KC submitted that the Tribunal accepted in [1368] that the Russian Federation's arguments of principle as to lifting the corporate veil (based on *Barcelona Traction* and *Anderson*) had been "convincingly put", and agreed in [1370] that the examination was not limited to verifying the legality of only the last transaction in a series leading up to the investment. However, the Tribunal's finding that the alleged illegality was not "sufficiently connected with the final transaction by which the investment was made by [HVY]" was (Mr Flynn KC submitted) a finding that the Russian Individuals did not have the necessary control over HVY. This finding therefore was referred to throughout the Russian Federation's submissions as "the Control Finding".
129. Mr Peters KC (who dealt with this part of the argument on behalf of HVY) submitted that the Tribunal set out the arguments made to them by Dr Annacker in order to show that, even if the factual elements asserted were correct, it still rejected the Russian Federation's case. He therefore argued that the reasoning at [1370] was not a finding that the Russian Individuals did not have sufficient control over HVY for their misconduct to be attributable to HVY. On the contrary, it was assumed (per the penultimate paragraph quoted from Dr Annacker's arguments) that HVY were "owned and controlled by the same persons who committed the illegalities".

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130. The key to understanding this part of the Final Awards is to recall that, in the Interim Awards, (i) it had been common ground that the Russian Individuals had controlled HVY until the Guernsey trust structures were put in place in 2003, (ii) it had been determined that those structure were legally effective in principle, but (iii) the question whether the Russian Individuals exercised dominion over HVY in practice, such that they should be regarded as having continued to control them from 2003 onwards, was left over to the merits phase. That question was to be considered in connection with the Russian Federation’s unclean hands case – i.e., the case that was decided in the Final Awards in Section IX.B.4, including [1370].
131. In the Final Awards, the Tribunal summarised the Russian Federation’s case that the corporate veil should be lifted, based on *Barcelona Traction* and *Anderson*, in Section IX.B.3. In Section IX.B.4, it set out the arguments presented by Dr Annacker because they were the most convincing formulation of the Russian Federation’s case on this point. However, it is self-evident that the Tribunal did not entirely accept her arguments.
132. The Tribunal’s reasons for not accepting these arguments, as explained in [1370], were based on its observation that each of HVY acquired its investment by its own purchases of Yukos shares and these purchases “were legal and occurred starting in 1999”. In fact, they started in 1999 and were completed in 2001. This was the period before the Guernsey trust structures were put in place and it had always been common ground that the Russian Individuals controlled HVY at this time.
133. Accordingly, the Russian Federation is wrong to say that the Hulley Final Award, at [1370], contains a finding as to the control the Russian Individuals exercised over HVY, from 2003 onwards. It contains no finding at all on control from 2003 onwards. After all, the HVY Acquisition occurred in 1999 to 2001, when control was not in doubt. I therefore accept the submissions made by Mr Peters KC to the effect that the findings at [1370] are not findings about control.
134. The Tribunal did not reject Dr Annacker’s arguments because it was not satisfied that the Russian Individuals controlled HVY, either before or after 2003, or because the nature or degree of this control was not such as to justify lifting or piercing the corporate veil. Her arguments were rejected, rather, because the illegalities alleged in relation to the Initial Acquisition occurred in 1995-1996 and simply did not involve HVY at all; indeed, none of HVY even existed;⁹ and because the Tribunal had already found the HVY Acquisition to be entirely legal. This was the factual basis on which those alleged illegalities were said not to be “sufficiently connected” to the HVY Acquisition.

XIII(c): Findings in relation to fraudulent tax evasion

135. The issues in relation to fraudulent tax evasion were addressed in Section VIII.A and VIII.B (where the Tribunal set out and assessed the evidence in relation to Yukos’s tax affairs) and in Section X.E (in the context of contributory fault).

⁹ The Tribunal only referred here to Veteran not yet having come into existence, but this is in fact the case for all of HVY. The dates of incorporation given above at [9] are taken from the Hulley Interim Award, at [42]-[44].

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136. The consideration of these matters in Section VIII was important to HVY's case that, from 2003 to 2007, the Russian Federation used allegations of fraudulent tax evasion as part of a campaign against Yukos.
137. As regards the allegedly fraudulent use of tax optimisation schemes in LTRs, the Tribunal accepted that there had been illegal tax evasion in some LTRs – Lesnoy and Trekhgornyy. However, it rejected the Russian Federation's case that there had been more substantial and widespread illegal tax evasion in other LTRs – notably Mordovia, which was where Yukos made the most significant use of such tax optimisation schemes: Hulley Final Award, at [639]-[648].
138. The Tribunal re-iterated these findings in Section X.E.3(a), concluding that there had been fraudulent tax evasion in relation to at least some LTRs, notably Lesnoy and Trekhgornyy, and there was a sufficient causal link to Yukos's demise to trigger a finding of contributory fault: Hulley Final Award, at [1614]-[1615].
139. As regards the alleged fraudulent tax evasion via the Cyprus-Russia DTA, this was never relied on by the Russian Federation in the course of the tax investigations and tax demands imposed on Yukos. However, the Tribunal accepted that Yukos appeared to have avoided paying very significant amounts in tax, by false declarations on Cypriot withholding tax forms, and this too amounted to contributory fault: Hulley Final Award, at [1620]-[1621].
140. The Tribunal's conclusion in Section X.E.3 was that HVY's contribution to their own loss was 25%: Hulley Final Award, at [1637]. Damages having been assessed by the Tribunal in Section XIII, the total loss was therefore reduced accordingly: Hulley Final Award, at [1827].

XIV: The Dutch judgments

141. The Dutch judgments of particular interest are the judgment of the Hague Court of Appeal, the judgment of the Amsterdam Court of Appeal and two Dutch Supreme Court judgments that resulted from them. Many of the issues considered no longer arise, because they concerned matters of jurisdiction (which are no longer in play following the judgments of Cockerill J and of the Court of Appeal of 12 February 2025) or other points that are no longer pursued. The aspects of the Dutch judgments that remain relevant are those relating to unclean hands and public policy, fraudulent tax evasion in additional LTRs and fraud in the arbitrations.

XIV(a): Unclean hands and public policy

142. The illegal activities that had been alleged by the Russian Federation in the arbitration proceedings were relied on again before the Dutch courts, both for jurisdictional arguments similar to those run before the Tribunal (notably, once again, that HVY therefore should not be treated as investors under Article 1(7) of the ECT) and also to support arguments that such "fraudulent, corrupt and illegal activities" meant that enforcement of the Final Awards would be contrary to public policy.
143. In the judgment of the Hague Court of Appeal, these points were first addressed in section 5.1.11, in the context of the jurisdictional arguments. The Hague Court of Appeal's primary reason for rejecting them, in this context, was its conclusion that the

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ECT did not contain a requirement of legality in relation to the investment. However, this part of the judgment then continued at [5.1.11.6], under the rubric “Superfluously...”, with a reference to the Hulley Final Award at [1370]. The Hague Court of Appeal said that the Tribunal had been correct to hold that the conduct complained of, i.e., the Initial Acquisition, was too far removed from the HVY Acquisition; that there was an insufficient connection between the alleged illegalities in 1995-1996 and HVY’s investments; that this conclusion was not affected even if the illegal conduct on the part of the Russian Individuals in relation to the Initial Acquisition included corrupt payments not actually made until later; and that all the possible illegal conduct by the Russian Individuals at the time of the privatisation of Yukos was too far removed from the investment by HVY: [5.1.11.7]-[5.1.11.9].

144. The Hague Court of Appeal then addressed the Russian Federation’s public policy argument in section 9.8 of its judgment. At [9.8.7] it expressly re-adopted all its findings at [5.1.11.7]-[5.1.11.9] (i.e., in this context they were not superfluous), and noted that the Tribunal had found that, even if the alleged illegalities took place, they were not relevant. The Hague Court of Appeal rejected the argument that the Tribunal’s decision was contrary to public policy. At [9.8.8] the Hague Court of Appeal rejected a complaint that the Tribunal had erred in deciding that HVY were separate from the Russian Investors and not controlled by them. The Hague Court of Appeal indicated that this was a mischaracterisation of the Tribunal’s findings.
145. The appeal in cassation from the Hague Court of Appeal to the Dutch Supreme Court challenged these conclusions. In particular, it included as ground 4 the question: “Do the alleged illegal acts of HVY and [the Russian Investors] have consequences for the annullability of the arbitral awards?”.
146. The Dutch Supreme Court first considered this in terms of the Russian Federation’s challenge to the Hague Court of Appeal’s finding that there was not a sufficient link between the alleged illegal acts and HVY’s investment. It noted at [5.4.3] and [5.4.4] that the Hague Court of Appeal had assumed that the Initial Acquisition was illegal and that the Russian Federation’s allegations were correct, and had then sufficiently explained its decision that the alleged illegal acts were insufficiently related to the HVY Acquisition, which the Dutch Supreme Court upheld: [5.4.5], [5.4.7].
147. In section 9.8, the Dutch Supreme Court then considered whether there were grounds for finding the Final Awards contrary to public policy, under the heading “Unclean hands”. The Dutch Supreme Court referred to the judgment of the Hague Court of Appeal at [9.8.7] and [9.8.8] (summarised above) and said that the findings in those paragraphs were not legally incorrect and were based on assessments and evaluations that were reserved to the Hague Court of Appeal as the tribunal of fact: [5.4.11].
148. The Dutch Supreme Court therefore rejected ground 4: [5.4.13].

XIV(b): Fraudulent tax evasion in additional LTRs

149. There was also a specific challenge in the Dutch courts to the Tribunal’s rejection of the Russian Federation’s case that there had been more substantial and widespread illegal and fraudulent tax evasion in LTRs other than Lesnoy and Trekhgorny – notably Mordovia.

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150. The Hague Court of Appeal considered that this challenge was based on a misunderstanding of the Final Awards: [8.4.13], [8.4.16]. The Tribunal's point was that there was a massive record of the tax proceedings in relation to Yukos, but no evidence in that record of fraudulent tax evasion in Mordovia or the other LTRs. The Russian Federation was wrong to criticise the Final Awards in this regard.
151. The appeal to the Dutch Supreme Court included this point as ground 7. This ground was rejected by the Dutch Supreme Court: [5.7.2].

XIV(c): Fraud in the arbitrations

152. I have already noted in Section IV above that the Russian Federation sought to raise allegations of fraud in the arbitrations, in the appeal to the Hague Court of Appeal. The effect of the judgment of the Dutch Supreme Court of 5 November 2021 was that the case was remitted to the Amsterdam Court of Appeal, for those allegations to be considered.
153. Before that court, the Russian Federation's case of fraud in the arbitrations had three aspects: submitting false statements, withholding relevant documents and making secret payments to a witness.
- (1) The false statements were said to be HVY's repeated assertions that the Russian Individuals were not the legal owners of HVY and did not control HVY. This is no part of the Russian Federation's case in this court, as set out in the Re-Amended Defence.
 - (2) The case as to withholding relevant documents corresponds to the case being run in this court as the Concealed Documents case.
 - (3) The case as to secret payments to a witness corresponds to the Dr Illarionov case.
154. The Amsterdam Court of Appeal dismissed the appeal on the basis that the Russian Federation knew enough about the alleged fraud in the arbitrations to have raised the point with the District Court, in the course of the first-instance proceedings. It held that it was contrary to due process not to do so until the Statement of Defence on Appeal, although it could have been done – and, as such, was required under Dutch procedural rules – during the first-instance proceedings: [6.9]-[6.10].
155. As noted above, the proceedings before the District Court commenced on 10 November 2014 and concluded with the District Court's judgment on 20 April 2016. The basis for the Amsterdam Court of Appeal's finding that the Russian Federation was aware of the alleged fraud in the arbitrations during the first-instance proceedings was that, at the oral hearing before the District Court on 9 February 2016, the Russian Federation referred to evidence in a report dated 20 October 2015 which related to the first aspect of the Russian Federation's case – i.e., the allegedly false statements: [6.7].
156. The judgment of the Amsterdam Court of Appeal then refers to further evidence that the Russian Federation discovered the alleged fraud in the arbitrations "in 2015 and/or 2016": [6.8]. This further evidence related not only to false statements, but also to withheld documents. However, it is not clear from the judgment of the Amsterdam

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Court of Appeal which if any elements of this additional information were acquired by the Russian Federation while the first-instance proceedings before the District Court were still current.

157. Nothing in the judgment of the Amsterdam Court of Appeal suggests that the Russian Federation knew of the payments to Dr Illarionov while the first-instance proceedings before the District Court were still current.
158. The Amsterdam Court of Appeal rejected the entire case of fraud in the arbitrations on the basis that it should have been raised before the District Court, even though it seems from the judgment that it could only categorically say that the first aspect – the allegedly false statements – was known to the Russian Federation in time. The court appears to have proceeded on the basis that, if part of the case of fraud in the arbitrations was known, the case in general ought to have been raised at that point.
159. Having decided to reject the case, the Amsterdam Court of Appeal then went on to address various additional reasons why it (or parts of it) should be rejected, all under the heading “Superfluously”.
160. At [6.12]-[6.14], the Amsterdam Court of Appeal noted that, pursuant to Article 1065(1) of the Dutch Code of Civil Procedure (“DCCP”), an arbitration award may be set aside on the basis that it violates public policy, but this must be applied with reticence, and only if the award “... violates mandatory rules of law of such a fundamental nature that compliance with such rules may not be prevented by limitations of a procedural nature”: [6.13]. If the award was rendered as a result of fraud or deceit by a party, this will be contrary to public policy. However, it must be considered “whether it is plausible that the arbitrators would have arrived at a different decision had they been aware of the true state of affairs. If this is not plausible, it cannot be said that the arbitral award is based on fraud”: [6.14].
161. The Amsterdam Court of Appeal then set out its (superfluous) reasons. First, it noted that the two principal documents said to have been withheld were (i) a Shareholders Agreement of 5 April 2000 between the Russian Individuals (“the Shareholders Agreement”) and (ii) a Deed of Accession of 3 April 2003. The Russian Federation first obtained these documents no later than 18 September 2018, but did not submit them until 17 May 2022. It could have submitted them in the course of the appeal to the Hague Court of Appeal, and should have done so. They were submitted too late: [6.17], [6.20].
162. Second, all the allegedly withheld documents were said to relate to the issue of control, but the control issue was not relevant to the Tribunal’s decision. It therefore was not plausible that the outcome would have been any different if the Tribunal had been aware of the allegedly withheld documents: [6.21], [6.29], [6.30].
163. Third, as regards the payments to Dr Illarionov, the Amsterdam Court of Appeal summarised and considered the references to his evidence in the Final Awards at [6.32]-[6.39], concluding at [6.40] that his evidence was “of such minor significance that it was not plausible that the outcome would have been different” without it. It also rejected the Russian Federation’s arguments that, if the Tribunal had known about the payments to Dr Illarionov, this would have led it to a different outcome: [6.40].

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164. The Amsterdam Court of Appeal therefore came to the overall conclusion that, even if the Russian Federation had relied on fraud in the arbitrations in good time, on the basis of violation of public policy, the Final Awards would not have been set aside: [6.41].
165. The Dutch Supreme Court dismissed the appeal in cassation from the Amsterdam Court of Appeal, on the basis that none of the points raised could lead to cassation. The reasons given by the Dutch Supreme Court in its judgment of 17 October 2025 shed no further light on the merits of any points.

XV: The significance of the earlier findings

166. Before going any further, it is salutary to consider the significance of findings in the Awards and in the Dutch judgments to the matters arising for determination in these proceedings.

XV(a): Findings made (or not made) by the Tribunal

167. I noted in paragraph [79]-[82] above that the Tribunal's findings on questions of fact or law are final and binding, save in so far as they were procured by fraud in the arbitrations. Relevant examples of such findings include the findings that HVY's shares were legally acquired, starting in 1999; and the findings in relation to fraudulent tax evasion, notably that such fraud had occurred in relation to Lesnoy and Trekhgorny and under the Cyprus-Russia DTA, but that no such fraud had been established in relation to any LTRs other than Lesnoy and Trekhgorny.
168. In the course of explaining the Tribunal's findings in Sections XII and XIII above, I have noted that a number of arguments raised before the Tribunal were not decided, because the Tribunal found it unnecessary to decide them. Relevant examples include the Russian Federation's allegations that the Initial Acquisition was affected by illegality, and the question whether the Russian Individuals exercised control over HVY from 2003 onwards. Furthermore, in circumstances where the Tribunal explained that it did not decide these points because it was unnecessary to do so, it would not have been appropriate for the Russian Federation to complain to the supervisory court about the Tribunal's failure to decide them. Before me, therefore, these are simply open questions.
169. However, the finding in the Hulley Final Award at [1370] that the alleged illegalities in relation to the Initial Acquisition were not "sufficiently connected" to the HVY Acquisition is one that needs to be treated with some care. A finding of this kind is a value judgment, of the kind that lawyers characterise as being "of mixed fact and law". In so far as it is based on findings of fact, those findings are final and binding, as already explained. In principle, any constituent findings of law are also final and binding. However, in this instance it is necessary to be particularly careful about what any such findings of law are, or may be.
170. This finding at [1370], using the language of "sufficient connection", has an obvious resonance with the approach in English law, under s. 103(3), where the court is required to consider the "degree of connection" between underlying fraud or corruption and the award: see paragraph [75] above, referring to *RBRG* [2018] EWCA Civ 838. However, while I have some feel for what phrases such as "degree of connection" mean, by reference to the English authorities that shed light on this, I do not really know what the

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Tribunal thought they meant, or why. To put this in more formal terms, in so far as a “sufficient connection” may be characterised as a legal concept, I do not know what system of law the Tribunal believed to govern this legal concept, or what sources it looked at from within that system, to explain the legal concept – i.e., to explain, as a matter of law, which connections should be treated as sufficient, and which should not.

171. Furthermore, the language of [1370] suggests that the connection that the Tribunal was assessing was the connection between (i) the alleged illegalities (in particular, in relation to the Initial Acquisition) and (ii) “the final transaction by which investment was made by [HVY]” – i.e., the HVY Acquisition. I have to consider something slightly different: the connection between the alleged illegalities and the Final Awards that the court is being asked to enforce. In saying this, I again have in mind the distinction emphasized in *Westacre* [2000] QB 288, at 305C and in *RBRG* [2018] EWCA Civ 838, at [26(3)]: see paragraph [67] above.
172. I therefore do not feel able to take it for granted that, when carrying out the exercise that it did at [1370], the Tribunal undertook it in precisely the same way that I am required to under s. 103(3), in the light of the English precedents that provide me with authoritative guidance.
173. I have previously mentioned the great respect I have for the Dutch courts. I have similar respect for very experienced and distinguished international arbitrators, such as graced the Tribunal in this case. The reasoning set out in the Hulley Final Award at [1370] is of great interest to me as an example of how a judge or arbitrator might go about assessing the connection between underlying illegality and an asset said to have resulted from it. I am very glad to have been able to consider it, and grateful for the assistance it has provided. However, my view is that, if my own assessment were different, such that I were to conclude that the fraud and corruption alleged in the Re-Amended Defence in relation to the Initial Acquisition was not merely collateral to the HVY Acquisition but closely connected to it, I would be bound to consider that enforcement of the Award would be contrary to public policy, as explained by the English authorities I have referred to in Sections VIII and IX above.
174. This is not because I feel able to disregard any finding made by the Tribunal. It is because, in so far as there is a finding here on a question of law, the legal question decided by the Tribunal does not seem to me to be, necessarily, precisely the same question as the one I have to decide under s. 103(3).

XV(b): Findings made by the Dutch courts

175. I have already noted that Mr Crow KC made it clear that he did not suggest that the Dutch judgments gave rise to any issue estoppel (subject to one arguable exception). This means that findings made by the Dutch courts are not binding on me (subject to that exception). However, it does not mean that they are of no interest.
176. First, I have noted that the matters considered by the Dutch courts included challenges to the Awards on the basis of public policy. When deciding questions of public policy, I have to assume that the Dutch courts did so by reference to Dutch public policy – whether Dutch domestic public policy or Dutch notions of international public policy. Neither of these, even the latter, is strictly the same as English public policy. It was on

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this basis that Mr Crow KC accepted that the findings made by the Dutch courts could not in general give rise to any issue estoppel, and could not bind this court.

177. Nevertheless, because the English public policy considerations that are in play here concern international public policy rather than purely domestic public policy, and because international public policy reflects universal (or near-universal) morality, what the Dutch courts have had to say about public policy is of some relevance when it comes to identifying what the relevant rules of international public policy are, as a matter of English law. Something that the Dutch courts regard as innately immoral may well be contrary to international public policy; something that they do not regard as immoral is unlikely to be contrary to international public policy.
178. I believe that Cockerill J had something similar in mind in *Alexander Brothers* [2020] EWHC 1584 (Comm), at [156], when she said that the English court should not normally prioritise English public policy over that of the seat. There may be cases where the English court comes to the view that something that a foreign court or system of law regards as acceptable is, in truth, contrary to universal morality and international public policy. However, the English court should think long and hard before doing so. It certainly must not simply apply its own parochial views on morality, for reasons of petty chauvinism.
179. Second, the simple fact is that Dutch judges are extremely clever people and their judgments are (in my experience) invariably excellent. I would be a fool not to look at what they have to say on questions that are (at the lowest) very similar to the questions I have to decide. If nothing else, they provide food for thought.
180. Third, I noted in paragraphs [80]-[82] and [90]-[91] that it may sometimes be necessary to consider *Henderson v Henderson*-type points. These will involve considering whether a particular argument should have been raised before the arbitration tribunal, or before the supervisory court. In cases such as the present, questions of this type will often be considered by the supervisory court, which is an obvious forum for such challenges.
181. Where the question is whether the argument should have been raised before the supervisory court itself, that court is likely to be particularly well qualified to determine that question; because it is bound to be especially knowledgeable about its own procedural rules, which are likely to have a significant bearing on whether and when an argument should have been raised. If, therefore, the supervisory court makes a finding to the effect that an argument should have been raised at a particular stage of the proceedings before it, and that the party which raised it belatedly is at fault for not having done so in time under the applicable procedural rules, such a finding is important, and may well be decisive.
182. In this regard, HVY relied on the findings of the Amsterdam Court of Appeal to the effect that the Russian Federation should have raised its case of fraud in the arbitrations earlier than it did. This is the arguable exception to Mr Crow KC's confirmation that HVY did not rely on the Dutch judgments for any issue estoppel. I have described it as an arguable exception, because it is a matter of debate whether *Henderson v Henderson* is truly a form of issue estoppel. Fortunately, no controversy broke out over nomenclature, because Mr Flynn KC did not object to HVY running the point.

XVI: Pleaded case re the Initial Acquisition**XVI(a): Pleaded case re the Bribery Pact**

183. Paragraphs 12 to 17A of the Re-Amended Defence allege an agreement in September/October 1995 (referred to as a “Bribery Pact”) between the Russian Individuals and certain office-holders of Yukos (“the Red Directors”) that the Red Directors would be paid bribes, in return for their assistance in illegally manipulating the 1995 and 1996 Auctions, so as to enable the Russian Individuals (through Bank Menatep) to acquire a controlling block of Yukos shares. The pleading particularises the provisions of the Russian Criminal Code that were said to have been breached. It then goes on to explain how the alleged Bribery Pact was put into effect, by (i) the Red Directors illegally manipulating the 1995 and 1996 Auctions, so that Yukos shareholdings were acquired by companies owned and controlled by the Russian Individuals, and (ii) bribes then being paid to the Red Directors.
184. I have noted that the Tribunal made no finding as to the Russian Federation’s factual allegations in respect of the Initial Acquisition. It follows that, for the purposes of the Preliminary Issues, the allegations that I have summarised in the preceding paragraph must be assumed to be true. This is subject to any argument from HVY that the allegations are irrelevant, unintelligible and/or not supported by documents, as long as such arguments did not challenge the accuracy or veracity of the facts alleged.
185. HVY argued that the pleaded allegations were incapable of sustaining a case of illegality. This was principally because (HVY said) the case was contingent on the Russian Individuals having bribed government officials; but the Red Directors were not government officials, they were mere Yukos managers.
186. This is an argument that might succeed at trial, but it does not strictly reflect the Re-Amended Defence. The Russian Federation has asserted in terms that bribing the Red Directors was contrary to various specified provisions of the Russian Criminal Code. As an allegation of foreign law, this is, so far as the English court is concerned, an allegation of fact of precisely the kind that HVY undertook not to challenge, in the context of the Preliminary Issues. In any event, Dias J’s order of 28 June 2024 did not provide for any evidence of Russian law, and I in fact received no evidence to contradict this part of the pleaded case. I therefore do not accept that the Russian Federation’s case is, in general, to be dismissed in the summary manner for which HVY contended.
187. However, two specific elements of this part of the Re-Amended Defence merit particular mention, and careful consideration. The first is paragraphs 16.7 to 16.13, where it is alleged that, on 26 March 2002, YUL and HVY’s parent company GML entered into a contract with the Red Directors and a company owned by them (“the Compensation Agreement”), which set out the terms of the Bribery Pact, and by which GML and YUL agreed to pay to the Red Directors 15% of the revenue from the sale of Yukos’s shares. It is then alleged that substantial payments were then made on various dates from 2 April 2002 to 17 December 2003, pursuant to the Compensation Agreement.
188. Even if these allegations were made out at trial, they would have no real bearing on the Initial Acquisition (save as corroborative evidence), because the Compensation Agreement was concluded many years after the Initial Acquisition. Nor would they

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have any bearing on the HVY Acquisition, primarily because the Compensation Agreement is not alleged to have any connection with the HVY Acquisition, but also because it was not concluded until after the HVY Acquisition had been completed.

189. It may be that, on the case pleaded by the Russian Federation, the Compensation Agreement was illegal, as an agreement to pay bribes. However, the Final Awards that this court is asked to enforce are not concerned with the Compensation Agreement. The Compensation Agreement was not the subject-matter of any of the Awards.
190. The second part of the Re-Amended Defence that requires special care in this context is paragraph 17A. Here, it is alleged that, in the course of the arbitrations, HVY concealed evidence which showed that there was a close connection between HVY and the Russian Individuals. My understanding from Mr Flynn KC was that this was a reference to the Concealed Documents. It follows that paragraph 17A falls to be dealt with in the context of the Concealed Documents case and, not as part of the Initial Acquisition case.
191. This is because the allegations in paragraph 17A are not concerned with the Initial Acquisition (i.e., with events in 1995/1996) but with the Tribunal's findings in relation to it – which is different. These allegations really relate to fraud in the arbitrations – which happened much later. The evidence alleged to have been concealed consists of the Concealed Documents, which nearly all date from after 2003; and the concealment itself occurred in the course of the arbitration, i.e. from after 2005. The allegations feature in the part of the Re-Amended Defence that is concerned with the Initial Acquisition, in order to emphasise the Russian Federation's argument that the deliberate withholding of the Concealed Documents had a causative effect on the Tribunal's decision in relation to the Initial Acquisition; i.e., the decision in the Hulley Final Award at [1370], which the Russian Federation characterises as “the Control Finding”. I have already commented on this in Section XIII(b) above. I give further consideration to paragraph 17A of the Re-Amended Defence, and the Concealed Documents case more broadly, in Sections XXII and XXIII below.
192. It follows that, with the exception of paragraphs 16.7 to 16.13 and paragraph 17A, the allegations in the Re-Amended Defence in relation to the Initial Acquisition must be assumed to be true, for the purposes of the Preliminary Issues.
193. Furthermore, like the Tribunal I must proceed on the basis that it is common ground that the Russian Individuals had real control over the Yukos shareholdings at least until the Guernsey trust structures were put in place in 2003; and on the basis that I should assume that they continued to exercise such control even after 2003. Moreover, it is apparent from the Hulley Final Award at [1370] that I should assume that the degree of this control, and the manner in which it was exercised, was such that, if it were relevant to lift or pierce the corporate veil, I should be prepared to do so.

XVI(b): Plead case re product of fraud

194. It is also appropriate to note here the allegations in paragraph 18B of the Re-Amended Defence. This paragraph appears in a part of the Re-Amended Defence that is, in general, concerned not with the Initial Acquisition, but with the series of subsequent share transfers in 1996 to 2001, which ultimately led to the HVY Acquisition and the shareholdings now in the hands of HVY. However, the case asserted in paragraph 18B

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is essentially founded on the case pleaded in paragraphs 12 to 17, i.e., the illegal conduct of the Russian Individuals in relation to the Initial Acquisition. It therefore falls to be considered in the part of my judgment that focuses on the Initial Acquisition, in connection with Preliminary Issue 3.

195. Paragraph 18B needs to be treated carefully. It reads as follows:

“18B. HVY (i) benefitted directly from the Russian Oligarchs’ unlawful conduct regarding the privatisation, acquisition and operation of Yukos, and (ii) were sham companies ultimately owned and controlled by the Russian Oligarchs at all relevant times. In particular, the series of transactions set out at paragraphs 19-26 below were part of an unlawful and fraudulent money laundering and tax evasion scheme by which the Russian Oligarchs sought to (i) obscure their connection with the Yukos shares they had illegally obtained, and (ii) evade Russian taxes associated with the ownership of those shares. These transactions show that HVY thereby obtained the relevant Yukos shares as a benefit of the Russian Oligarchs’ unlawful conduct. The Final Awards, which purported to compensate HVY for the loss of their shares in Yukos, therefore were the direct product of such unlawful and fraudulent conduct.”

196. The allegation that HVY were ultimately owned and controlled by the Russian Individuals relates to matters that I have covered in relation to the Final Awards, in Section XIII(b) above.

197. As regards the allegation that HVY were “sham companies”, this (like similar allegations elsewhere in the Re-Amended Defence) is loose language which cannot be meant literally. HVY are all real companies, which were properly incorporated in Cyprus and the Isle of Man, remain fully in existence and have genuine legal personalities. They are not fake companies with forged corporate documentation. I explored this with Mr Flynn KC, who accepted that they are in fact real companies, but said they had been created and used to give a misleading appearance of separation from the Russian Individuals, who were their alter egos. This (he said) was what the reference to “sham companies” was really intended to convey.

198. As regards the allegation that there was an unlawful money-laundering scheme, the Russian Federation’s case that the HVY Acquisition was unlawful was the subject of findings in the Interim Awards, which were re-adopted in the Final Awards. The Tribunal expressly determined that the share transfers by which HVY acquired their shareholdings were legal. This does not mean that there was not a scheme, or that the scheme cannot properly be characterised as money-laundering (or, more accurately, asset-laundering). However, it was not unlawful under Russian law.

199. As regards the allegation that there was a tax evasion scheme, this was the subject of the Tribunal’s findings, summarised in Section XIII(c) above.

200. As regards the allegations in the first and penultimate sentences of paragraph 18B that HVY obtained the Yukos shares as a direct benefit of the Russian Individuals’ unlawful conduct, and the associated allegation in the final sentence, this is complex.

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- (1) The premise is that the Initial Acquisition involved illegal conduct by the Russian Individuals. This is an issue on which the Tribunal considered it unnecessary to make a finding.
- (2) As to the conclusion that is said to follow from that premise, it depends on public policy points that are ultimately for this court to decide, as set out in Sections IX and XV above. It depends on the degree of connection between (i) the unlawful conduct (if any) in relation to the Initial Acquisition and (ii) the HVY acquisition.

XVII: Preliminary Issue 3

201. Preliminary Issue 3 asks the following question:

3. Whether the allegations of misconduct in relation to the privatisation of Yukos contained in paragraphs 5-17 of the Defence would, if true, be capable of rendering the enforcement of the Awards contrary to English public policy?

202. This formulation is followed by sub-issues 3.1 and 3.2, which specifically ask about the significance, in this regard of the findings of the Tribunal and of the Dutch courts, to the effect that the alleged misconduct did not negate HVY's entitlement to relief under the ECT. For the reasons that I have given in Section XV above, I do not consider that the conclusions of the Tribunal in this regard or the similar findings of the Dutch courts are, strictly, determinative of Preliminary Issue 3.
203. However, the Tribunal's conclusion on this point was underlain by several important findings of fact and/or law, which it made in the course of its way towards the conclusion in the Hulley Final Award at [1373]. I have in mind the following findings, in particular:
 - (1) That the Initial Acquisition occurred in 1995-1996.
 - (2) That HVY did not come into existence until September 1997 (in the cases of Hulley and YUL) and February 2001 (in the case of Veteran).
 - (3) That the HVY Acquisition occurred in 1999-2000.
 - (4) That the HVY Acquisition was legal.
204. It follows that there is no connection at all between the Initial Acquisition and HVY. HVY were simply not involved in the Initial Acquisition.
205. It also follows that there is no real connection between the Bribery Pact alleged in the Re-Amended Defence and HVY. HVY's only alleged involvement is as set out in paragraphs 16.7 to 16.13, arising out of the Compensation Agreement of 26 March 2002. As I have already explained, even if true, this is not material.
206. It further follows that, in itself, the HVY Acquisition does not assist the Russian Federation.

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207. These features seem to have been enough for the Tribunal and then the Hague Court of Appeal and the Dutch Supreme Court to conclude that the Russian Federation's unclean hands argument must fail, because the alleged illegalities in relation to the Initial Acquisition were not "sufficiently connected" with the HVY Acquisition. They did not examine or explain what nature or degree of connection is required, in order for the connection to be legally "sufficient".
208. I feel it is necessary to consider matters more closely, because this is not a case where there is no connection whatsoever. The alleged illegalities are said to have been crucial to the Russian Individuals and Bank Menatep getting control over the Yukos shareholders in the first place, i.e., by the Initial Acquisition in 1995-1996. No bribery or other illegality was required for the HVY Acquisition and (the Tribunal has found) none was involved, but only because this involved a series of transfers between companies that were all under the Russian Individuals' control, in respect of shareholdings that they beneficially owned. Without the original alleged illegalities, the Russian Individuals would never have been in a position to arrange those transfers, and the HVY Acquisition – i.e., the investment for the purposes of the ECT – would not have taken place. Indeed, without those illegalities, HVY would not have been able to make claims under the ECT and would not have obtained the Final Awards.
209. Accordingly, in terms of classic "but for" causation, there is undoubtedly a causal connection between the alleged illegalities and the HVY Acquisition; and, by extension, between the alleged illegalities and the Final Awards.
210. This is at the heart of the argument that was developed by Dr Annacker in the arbitration proceedings, and was put very forcefully by Mr Flynn KC before me. It is also the case pleaded out in paragraph 18B of the Re-Amended Defence, to the effect that HVY obtained the Yukos shares as a benefit of the Russian Individuals' unlawful conduct. Stripped to its essentials, the case proceeds as follows:
- (1) The Russian Individuals obtained the Yukos shareholdings by criminality. The victim of that criminality was the Russian Federation.
 - (2) After some years had passed, and following a series of transfers via a number of companies (many of them offshore SPVs), the Yukos shareholdings were ultimately acquired by HVY. This was all arranged by the original criminals, i.e. the Russian Individuals.
 - (3) To accept that these arrangements put sufficient distance between the original criminality and its proceeds, such that their connection is no longer "sufficient", is to accept that the Russian Individuals have successfully laundered the proceeds of their crimes.
211. This is a morally weighty argument, and it troubles me. In considering it, I find it helpful not to focus exclusively on the circumstances of this case, but to consider also how matters would look in analogous contexts; if (say) the Final Awards were concerned not with shareholdings originally acquired by bribery, but with the proceeds of more conventional criminality such as theft, fraud or drug-trafficking. I would find the argument against laundering the proceeds of crime challenging, in those contexts. I apprehend that Colman J might also have found it challenging, bearing in mind his list in *Westacre* at first instance.

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212. Ultimately, however, I consider that the approach I have to follow is established by the Court of Appeal decisions that, in the context of bribery, distinguish between a contract to bribe and a contract procured by bribery: see [77-78] above. The investment which is the subject-matter of the Final Awards was at most one procured by bribery (and/or, possibly, other forms of illegality). It was not an investment which was illegal or criminal in itself, because the business invested in was not a criminal concern. It was an oil and gas business. The fact that the individuals that beneficially owned it had acquired their controlling interests via criminality, and the fact that in the course of its business operations there was systematic criminality in respect of some of its tax affairs, are not matters that alter the fundamental nature of the business.
213. I note that this was also the approach of Cockerill J in *Alexander Brothers* [2020] EWHC 1584 (Comm), at [158] ff. She first suggested that an award on a contract in respect of trades such as contract-killing, slavery or terrorism would not be enforced under s. 103(3). She then went on at [162]-[163] to accept the distinction that was already established, in the context of bribery, between a contract to bribe and a contract procured by bribery. My understanding of this is that an award on a contract which was concerned with a legal trade such as the trade of widgets, would be enforced; and this would be so even though the widgets, although inoffensive in themselves, were the proceeds of contract-killing, slavery or terrorism.
214. I sense that the application of this distinction may sometimes be difficult, in practice. For one thing, trading in items that are the proceeds of crime is not universally accepted as moral, and in some contexts is specifically criminalised. The clearest example is the receipt of stolen goods, which I suspect is universally or near-universally regarded as immoral. In addition, some forms of money-laundering are specific offences in this country, and arguably breach rules of international public policy. The Russian Federation's case here is, fundamentally, that the Yukos shareholdings were stolen from the Russian people, and the HVY Acquisition – even if legal in itself – was an attempt to conceal and launder their criminal origins.
215. Furthermore, while most of the English authorities support the distinction between a contract to commit illegality (or, by extension, the investment in a business in an illegal trade) and a contract (or investment) that results from illegality, the jurisprudence on this point is perhaps not entirely clear-cut. In paragraph [72] above, I have quoted Cockerill J's judgment in *Alexander Brothers* [2020] EWHC 1584 (Comm), at [158]. In this passage, Cockerill J then quoted the Court of Appeal's judgment in *Soleimany* [1999] QB 785, at 799H-800A:

“... it is in our view inconceivable that an English court would enforce an award made on a joint venture agreement between bank robbers, any more than it would enforce an agreement between highwaymen, *Everet v Williams* (unreported): see *Lindley on Partnership*, 13th ed. (1971), p. 130, note 23. Where public policy is involved, the interposition of an arbitration award does not isolate the successful party's claim from the illegality which gave rise to it.”

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216. *Everet v Williams* (1725) was indeed a joint venture between highwaymen.¹⁰ The legal dispute was concerned with sharing the proceeds of robbery, but the agreement under which Everet sued Williams was one for the commission of robbery by the two of them, jointly, as highwaymen. It was not concerned merely with the trade, as between Everet and Williams, of goods that were innocuous in themselves but happened to have been obtained by robbery. It therefore fell on the wrong side of Cockerill J's dividing-line.
217. However, in *Betamax*, the Privy Council treated *Soleimany* as going further. The judgment given by Lord Thomas appears to have accepted, as a matter of general principle, that a contract for the distribution of the proceeds of crime would be unenforceable: [2021] UKPC 14, [132]:
- “The decision [in *Soleimany*] was based on the principle that a court would not enforce an award in respect of what the arbitral tribunal had accepted was an illegal contract, just as it would not, for reasons of public policy, enforce a contract between highwaymen or bank robbers for the distribution of the profits of their crimes.”
218. This view of *Soleimany* is consistent with the second sentence that I have set out from the judgment of the Court of Appeal in that case, i.e., that “... the interposition of an arbitration award does not isolate the successful party's claim from the illegality which gave rise to it” – my emphasis. If that is strictly correct, then the award in my imaginary example involving widgets might not be enforceable: cf. paragraph [213] above.
219. In a similar vein, Mr Flynn KC referred me to the ICSID arbitration decision in *World Duty Free Co. Ltd. v Republic of Kenya* (2006) ICSID Case No. ARB/00/7, where a bribe was paid by a natural person, Mr Ali, to a government official, in order to procure a contract with Kenya. The contract was for the construction and operation of duty-free complexes at Nairobi and Mombasa international airports. It was originally concluded with Kenya by a company incorporated in Dubai; it was then transferred to the claimant company, which was incorporated some years later in the Isle of Man. Both companies made significant investments in Kenya, on the basis of the contract.
220. The tribunal found Mr Ali to be the alter ego of both companies and treated his conduct as the conduct of both companies: see the ICSID award at [167]-[168]. It concluded that Kenya had been entitled to avoid the contract with the claimant, because of the bribe. In arriving at this conclusion, the tribunal refused to accept that there could be any severance of (i) the payment of a bribe from (ii) a contract procured by the bribe: [174]-[175]. In doing so, it was influenced by its understanding of English law's abhorrence of corruption: [173].
221. The approach of the arbitration tribunal in *World Duty Free* was consistent with that of the tribunal in *Churchill Mining*: see paragraph [106] above. However, notwithstanding the understanding of the tribunal, it was not consistent with the approach of English law. The balance of the authorities favours distinguishing between an award on a

¹⁰ *Everet v Williams* is in effect fully reported in *The European Magazine*, May 1787, vol. 11, p. 360. The reliability of this report is vouched for in a note on the case in the *Law Quarterly Review*: LQR XXXV (July 1893), p. 197. The article in *The European Magazine* is freely available from Princeton University Library, via HathiTrust, at <https://catalog.hathitrust.org/Record/008893409>. I commend it to any reader who is a student of (or, merely, interested in) law, social history or human nature.

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contract (or investment) to commit crime and an award on a contract (or investment) concerned with the proceeds of crime; in particular, a contract (or investment) obtained by bribery.

222. Furthermore, the Tribunal's finding that the HVY Acquisition was legal – even though the Initial Acquisition may have involved illegality on the part of the Russian Individuals, and even though they owned and controlled HVY and were behind the HVY Acquisition – must be taken to mean that the HVY Acquisition did not involve any breach of Russian laws against laundering the proceeds of crime: see [198] above, as well as the conclusion on Preliminary Issues 4 and 5, in Section XVIII, below.
223. My conclusion on this point therefore is:

Preliminary Issue 3

The allegations of misconduct in relation to the privatisation of Yukos contained in paragraphs 5-17 of the Re-Amended Defence, if true, would not render the enforcement of the Awards contrary to English public policy.

XVIII: Preliminary Issues 4 & 5

224. Preliminary Issues 4 and 5 ask the following questions:

4. Whether, in these Proceedings, it is open to the Defendant to raise allegations of illegality in connection with the Claimants' acquisition of their shares in Yukos.

5. If so, whether the matters alleged in paragraphs 18-25 of the Defence are capable of rendering the enforcement of the Awards contrary to English public policy.

225. Paragraphs 18 to 25 of the Re-Amended Defence are concerned with the transfer of Yukos shares to HVY – i.e., the HVY Acquisition. In paragraph 18A, it is alleged that the transactions which comprise this process violated “Article 18 of RSFSR Law 948-I on Anti-Monopoly Policy and the prohibition of money-laundering under Articles 174 and 175 of the 1996 Russian Criminal Code”.
226. Preliminary Issues 4 and 5 can be dealt with briefly, because of the Tribunal's findings as to the legality of the HVY Acquisition: Hulley Interim Award, [430]; Hulley Final Award, [1370]. These findings are conclusive and binding, so far as the English court is concerned. It is not possible to go behind them in the context of s. 103(3).
227. It therefore is not open to the Russian Federation to allege, in the proceedings before this court, that the HVY Acquisition violated the provisions of Russian law identified in paragraph 18A of the Re-Amended Defence. It is not clear to me whether RSFSR Law 948-I or Articles 174 and 175 of the 1996 Russian Criminal Code were cited and relied on before the Tribunal; if so, they are not referred to in the Awards. However, either (i) they were relied on, but the Tribunal found that they had not been violated or (ii) they were not cited or relied on, but no explanation has been given for the Russian Federation's failure to raise them. I am satisfied that these Russian law provisions could and should have been raised before the Tribunal, and that there were no special

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circumstances which make the application of the *Henderson v Henderson* principle inappropriate: see paragraphs [73] and [74(2)] above.

228. My conclusion on this point therefore is:

Preliminary Issues 4 & 5

It is not open to the Defendant to raise allegations of illegality in connection with the Claimants' acquisition of their shares in Yukos.

XIX: Pleded case re Tax Fraud

229. Preliminary Issue 6 asks if it is open to the Russian Federation to raise allegations of misconduct in relation to Yukos's tax affairs, beyond that found by the Tribunal.

230. The first question to consider is whether the Re-Amended Defence raises any such allegations in the relevant part (paragraphs 32-40). I asked Mr Flynn KC about this at the outset of the hearing, because it was not clear to me that there was, in fact, a pleaded case in respect of tax misconduct beyond that found by the Tribunal, and the Russian Federation's skeleton argument shed no light on this. Mr Flynn KC was unable to give an immediate answer to this, but I received an email following the end of the first day of the hearing (21 January 2026), which read:

“Your Lordship asked today which part of Russia's pleaded case as to misconduct in relation to tax goes beyond what the tribunal found in the relevant award.

1. What the Tribunal found

As reflected in the Final Awards, the Tribunal accepted Russia's argument that Yukos committed tax evasion in Lesnoy and Trekhgorniy. That is reflected at ¶¶ 639 [I/8/525], 1611 [I/8/814] and 1637 [I/8/820] of the Final Awards.

Those findings are reflected in Russia's pleaded case at paragraphs 33-39 and 41.1 of the Re-Amended Defence [I/1/36-37].

2. Additional allegations in the Re-Amended Defence

In addition to the tax evasion concerning the low-tax regions of Lesnoy and Trekhgorniy, Russia's case is that there was also tax evasion committed by the Oligarchs and/or persons and entities acting on their behalves in relation to the regions of Mordovia, Evenkia, Kalmykia, Baikonur and Sarov.

These regions are not expressly named in the Re-Amended Defence, however they are captured by the pleading at paragraphs 32A, 33, 40, 41.2-41.3 and 42 of the Re-Amended Defence [I/1/36-38].

In particular, paragraphs 32, 32A and 33 set out Russia's case that the abuse of low tax regions by “the Russian Oligarchs and/or persons and entities acting on their behalf” generally, without limitation as to which low tax regions Russia's case relates. Other elements of Russia's pleaded case confirm that it goes beyond the narrow case as to the Lesnoy and Trekhgorniy tax frauds.

3. Relationship to the Concealed Documents

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If the Concealed Documents had been disclosed, the Tribunal might well have found that the tax frauds committed by the Russian Oligarchs and/or persons and entities acting on their behalf in each of Mordovia, Evenkia, Kalmykia, Baikonur and Sarov should be imputed to the Claimants, in addition to the frauds committed in Lesnoy and Trekhgorniy.”

231. I carefully re-read paragraphs 32 to 42 of the Re-Amended Defence following receipt of this email, and have done so again for the purposes of this judgment. I remain unable to find anything that can properly be said to allege that abuse of the tax optimisation schemes in LTRs occurred in any LTRs other than Lesnoy and Trekhgorniy.
232. If it had been the Russian Federation’s intention to allege that similar tax fraud also occurred in any of Mordovia, Evenkia, Kalmykia, Baikonur and Sarov, it would have been necessary to identify those LTRs and the companies within the Yukos group that had been involved. Instead (and contrary to the email), paragraphs 33 and 41 provide those particulars in relation to Lesnoy and Trekhgorniy and the Yukos companies involved in fraud in those LTRs, but go no further than this.
233. The email therefore is right to concede, in section 2, that no LTRs are named in the relevant part of the Re-Amended Defence, other than Lesnoy and Trekhgorniy. However, the email is wrong to state that the pleaded case of abuse of the tax optimisation schemes in LTRs was expressed in general terms. The pleaded explanation of this abuse is in paragraphs 33, 34, 35, 37, 39, 41, and 46. A particularised case is set out of the fraudulent tax evasion alleged to have occurred in relation to Lesnoy and Trekhgorniy. It is not alleged, either expressly or by implication, that similar fraudulent tax evasion occurred elsewhere.
234. Paragraph 46 is especially important. It summarises the findings made by the Tribunal in this regard – i.e., in relation to Lesnoy and Trekhgorniy. If the Russian Federation wished to advance a case before this court that the Tribunal should have gone further, that should have been made clear.
235. I therefore conclude that the Russian Federation’s pleaded case on Tax Fraud does not raise allegations of misconduct in relation to Yukos’s tax affairs, beyond that found by the Tribunal.

XX: Preliminary Issue 6

236. Preliminary Issue 6 asks the following question:

6. Whether, in these Proceedings, it is open to the Defendant to raise allegations of misconduct in relation to Yukos’s tax affairs beyond that which the Tribunal has already found to have occurred.

237. The short answer to this question is that it does not arise – notwithstanding the submissions to the contrary from Mr Flynn KC, and notwithstanding the email of 21 January 2026. The Russian Federation does not have a pleaded case that there was misconduct in relation to Yukos’s tax affairs beyond that found by the Tribunal.

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238. However, if there had been any such case pleaded in the Re-Amended Defence, it would then have been necessary for the Russian Federation also to set out its case as to why the Tribunal's findings on this point were not binding in relation to LTRs other than Lesnoy and Trekhgorny.
239. The problem for the Russian Federation is that the Tribunal made findings that there was no tax fraud in those additional LTRs. This was said in the Final Awards most volubly in relation to Mordovia, but it is clear that the Tribunal took the same view in relation to all the LTRs, other than Lesnoy and Trekhgorny: Hulley Final Award, [639]-[648], [1614]-[1615].
240. The email to me of 21 January 2026 suggests in section 3 that disclosure of the Concealed Documents might have led the Tribunal to find tax frauds in other LTRs. Mr Flynn KC made a similar suggestion in oral submissions.
241. This argument is baseless. I address the case on Concealed Documents in more detail in Section XXII below. The gravamen of that case is that the Concealed Documents were relevant to the Russian Individuals' alleged control over HVY. It is not alleged that the Concealed Documents had any bearing on whether abuse of the LTRs' tax optimisation schemes occurred in any LTRs other than Lesnoy and Trekhgorny.
242. I note that paragraph 46A of the Re-Amended Defence – which is the only part of the pleaded case where the Concealed Documents are discussed in the context of fraudulent tax evasion – alleges only that the Concealed Documents demonstrated the Russian Individuals' control over and close connection with HVY. It does not allege that the Concealed Documents demonstrated where fraudulent tax evasion occurred, i.e., in which LTRs.
243. My conclusion on this point therefore is:

Preliminary Issue 6

It is not open to the Defendant to raise allegations of misconduct in relation to Yukos's tax affairs beyond that found by the Tribunal.

XXI: Preliminary Issue 7

244. The question posed by Preliminary Issue 7 depends on the answer to Preliminary Issue 6. Because my conclusion is that the Russian Federation has not pleaded a case on Tax Fraud beyond that found by the Tribunal, and that it would not be open to the Russian Federation to do so, the question that arises under Preliminary Issue 7 is:

7.1 Whether the misconduct in relation to taxation which was found to have occurred by the Tribunal is capable of rendering the enforcement of the Awards contrary to English public policy.

245. As already noted, the Tribunal found that fraudulent tax evasion had occurred in respect of the abuse of the tax optimisation schemes in Lesnoy and Trekhgorny, and the abuse of the Cyprus-Russia DTA. It then considered the effect of this fraudulent tax evasion for the purposes of its conclusions on contributory fault, in Section X.E of the Final Awards. It concluded that the scale and quantum of those frauds had contributed

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significantly to the destruction of Yukos, and so to HVY's losses. As the Tribunal put it:

“In the view of the Tribunal, Claimants should pay a price for Yukos' abuse of the low-tax regions by some of its trading entities, including its questionable use of the Cyprus-Russia DTA, which contributed in a material way to the prejudice which they subsequently suffered at the hands of the Russian Federation.”

Hulley Final Award, [1634]

246. The Tribunal's assessment of this contribution as 25% led to the damages awarded being reduced by 25%. In other words, the sums awarded as damages have been reduced in order to reflect HVY's involvement and responsibility for fraudulent tax evasion. The Tribunal's view was that a reduction of 25% was appropriate.
247. It follows that enforcing the Final Awards will not compensate or reward HVY in respect of fraudulent tax evasion. On the contrary, the Final Awards have already been priced down, as appropriate, on account of the relevant misconduct.
248. My conclusion on this point therefore is:

Preliminary Issue 7

The misconduct in relation to taxation, which the Tribunal found to have occurred, does not render enforcement of the Awards contrary to English public policy.

XXII: Pledged case re Concealed Documents

249. The heart of the Russian Federation's case as to the Concealed Documents is set out in paragraph 28 of the Re-Amended Defence. This reads as follows:

“28. Throughout both the jurisdiction/admissibility and merits phases of the Arbitrations, HVY intentionally and unlawfully concealed from the Defendant and the Tribunal the Concealed Documents which demonstrated that the Russian Oligarchs had exercised ownership and control over HVY and Yukos at all relevant times, including (1) throughout the period 1997-2003, despite the purportedly strict corporate formalities that had been imposed, and (2) during the period after 2003, despite the additional interposition of the Guernsey Trusts. The Concealed Documents demonstrated that HVY and the Russian Oligarchs were one and the same.”

250. Paragraph 28 then goes on to identify each of the Concealed Documents in numbered sub-paragraphs, making allegations about their content and significance. One of them dated from 5 April 2000. The others all related to the period after 2003.
251. It is important that it is alleged that the Concealed Documents were “intentionally and unlawfully” concealed. My understanding of the Russian Federation's case is that HVY had been ordered to disclose the Concealed Documents, pursuant to various disclosure orders made by the Tribunal – in particular, Procedural Order No. 12. The Russian

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Federation's case is that HVY's breach of those disclosure orders was intentional. Paragraph 28 does not use the words "dishonest" or "fraud", but it is difficult to see that an intentional failure to disclose documents, in breach of an order, can be anything other than dishonest; and dishonesty is expressly alleged in paragraph 25AA.

252. As to the significance of the Concealed Documents, paragraph 28 is clear about their relevance and effect: they demonstrated that the Russian Individuals exercise ownership and control over HVY both before and after the imposition of the Guernsey trust structures in 2003. In fact, all the individual Concealed Documents related to the period after the imposition of the Guernsey trust structures, except one: a Voting Rights Agreement dated 5 April 2000, which was an agreement between the Russian Individuals, by which Mr Khodorkovsky transferred his right to exercise the voting rights in GML, HVY and Yukos to Mr Lebedev.
253. I am troubled by the final sentence of paragraph 28, alleging that the Concealed Documents demonstrated that HVY and the Russian Individuals were "one and the same". I find this impossible to take literally. A human being and a corporate entity are not one and the same. One has arms, legs and consciousness; the other does not.
254. Mr Flynn KC accepted that this was poor drafting. Much like the equally poor drafting in paragraph 18B (and elsewhere) in relation to "sham companies", this sentence was intended to convey that the Russian Individuals (or some of them) were the alter egos of HVY. It related to the allegation that the Russian Individuals exercised ownership and control over HVY, and to the case advanced in the arbitration proceedings (per the *Barcelona Traction* case) that the corporate veil should be lifted or pierced.
255. The alleged effect of HVY's having dishonestly concealed the Concealed Documents is primarily set out in paragraph 25AB of the Re-Amended Defence, which alleges that the Concealed Documents would have decisively affected the outcome of the arbitrations. It asserts that the Tribunal would have concluded that HVY were owned and controlled by the Russian Individuals, that there was a close connection between the Russian Individuals and HVY and that the HVY Acquisition was itself illegal or in bad faith, so that the claim was inadmissible and/or HVY was at contributory fault for all or most of their loss. At the least, the Tribunal would have sanctioned HVY. Paragraph 25AB therefore echoes paragraph 17A, which I mentioned in paragraphs [190] and [191] above.
256. Finally, paragraph 30A of the Re-Amended Defence alleges that, if the Tribunal had discovered this intentional scheme to withhold the truth, that could have materially impacted the Tribunal's discretionary assessment of the case.
257. As ever, the multiple strands of these allegations need to be unpicked and considered carefully.
258. The allegations to the effect that the Concealed Documents were concealed, and that this was done intentionally and/or unlawfully and/or dishonestly, are allegations of fact that HVY cannot challenge, for the purposes of the Preliminary Issues.
259. However, the allegations as to the significance of the Concealed Documents to the issues in the arbitrations, and as to what the Tribunal would have done if they had known of the Concealed Documents or of HVY's dishonesty in concealing them, are

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not allegations about which I must or can simply make assumptions in the Russian Federation's favour. This is for two reasons:

- (1) Allegations of this kind have to be measured against what happened in the course of the arbitration proceedings, all of which is a matter of record. Above all, they have to be measured against the findings made by the Tribunal, as set out in the Award. In so far as the Russian Federation's allegations are inconsistent with such findings, they must be rejected; unless, of course, it is arguable that such findings were procured by fraud in the arbitration proceedings, i.e., in relation to the Concealed Documents: see [79]-[82] above. I stress this because the Re-Amended Defence contains a lengthy passage at paragraphs 25A to 27, under the heading "Treatment of the Control Issue During the Arbitrations". With great respect to the pleader, what the Tribunal actually said about the control issue matters rather more than the allegations in these paragraphs.
- (2) Although there was some difference between Mr Crow KC and Mr Flynn KC as to the relevant test (i.e., "would have" or "might well have" affected the outcome), they agreed that this court must decide whether the dishonest concealment of the Concealed Documents made a difference. The burden is on the Russian Federation to prove this. The Russian Federation cannot simply rely on an assumption in its favour: see Section X above.

XXIII: Preliminary Issue 8

260. Preliminary Issue 8 raises the following matter:

8. The extent to which the issue of the control which the Individuals exercised over the Claimants was relevant to the outcome of the Arbitrations.

261. I have essentially addressed this in Section XIII(a) and (b) above, in particular at paragraphs [133]-[134]. Although the Russian Federation invited the Tribunal to conclude that the Russian Individuals exercised control over HVY at all material times, the Tribunal did not find it necessary to decide this. They rejected the Russian Federation's case on unclean hands (as regards the Initial Acquisition and the HVY Acquisition), but they did not do so because they were not satisfied that the Russian Individuals did not exercise the necessary control over HVY, such that this was not a case where it would be proper to lift or pierce the corporate veil. They did so for the different reasons given in the Hulley Final Award at [1370].

262. My conclusion on this point therefore is:

Preliminary Issue 8

The issue of the control that the Russian Individuals exercised over HVY was of no relevance to the outcome of the Arbitrations.

263. While this is my answer to the question posed by Preliminary Issue 8, confining myself to this conclusion would not do proper justice to the parties' arguments on the point. Mr Peters KC and Mr Crow KC both submitted that, in relation to Concealed

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Documents, the relevant counterfactual was, what would have happened/might well have happened in the arbitrations, if those documents had not been concealed but had been disclosed. If that is the right question, then it seems to me wholly clear from the Final Awards that the “outcome” (whatever that may mean) was never going to be any different. This is so no matter whether the causal test is “would have” or “might well have”.

264. Mr Flynn KC suggested that the court should also consider what would have happened/might well have happened if the Tribunal had discovered that disclosable documents had been intentionally, unlawfully and dishonestly concealed. If this had happened, I still see no basis on which to conclude that the Tribunal’s conclusion on the admissibility of the claim, on liability or on quantum could ever have been any different – for all the reasons that I have set out above. In particular, this is not a case where such dishonest conduct could have affected the Tribunal’s view of the reliability of an important factual witness.
265. However, I think it very likely that this would have affected the Tribunal’s decision on costs – which is very much part of the discretionary assessment referred to in paragraph 30A of the Re-Amended Defence. In the Hulley reference alone, the Tribunal awarded costs in Hulley’s favour of about US\$50 million. That award of costs would not have been made, if the Tribunal had known that Hulley had intentionally and dishonestly concealed disclosable documents. The sum awarded in respect of costs is undoubtedly a sum sufficiently large that, if wrongfully made, this would cause “substantial injustice”: cf. paragraph [97] above. This is so, even though it represents a very small fraction of the damages awarded.
266. In arbitration, just as in litigation in this court, a party’s obligation to disclose relevant documents is a continuing obligation. Accordingly, both parties are right in their contentions about the counterfactual(s) to be considered. First, I must consider what would or might have happened if the Concealed Documents had been disclosed from the outset. However, if the answer to that question is that it could not have made any difference, I then must consider what would or might have happened if, at any stage before publication of the Final Awards, HVY had made late disclosure of the Concealed Documents, and had thereby revealed their earlier and (ex hypothesi) dishonest failure to disclose them when they should have. I have no doubt that this would have affected the Tribunal’s award of costs.

XXIV: Dr Illarionov’s evidence

267. Dr Illarionov received a PhD in economic science from Leningrad State University. He is a professional economist and policy advisor. He was an important and trusted advisor to President Putin from April 2000 to December 2005 and was his personal representative (“sherpa”) to the G8 forum. He then became a Senior Fellow at the Cato Institute’s Center for Global Liberty and Prosperity in Washington DC, as well as being the President of the Institute of Economic Analysis in Moscow.
268. In the Final Awards, his evidence is mentioned on the following points:
- (1) He gave evidence of a televised meeting on 19 February 2003 between President Putin and business leaders, at which Mr Khodorkovsky made a presentation on corruption. President Putin responded badly, referring to the Initial Acquisition

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of Yukos and saying “I return the ball in your corner”. It was clear that something had gone wrong, and that Mr Khodorkovsky could be attacked and was no longer tolerated: Hulley Final Award, at [142], [508-510], [768].

- (2) He said that he was told by a source (whom he would not name, but who was “a very high-placed official”) that, after this meeting, a special unit was set up to fabricate evidence against Yukos. Various pretexts were tested for the expropriation of Yukos, including tax evasion. In oral evidence, Dr Illarionov provided a satisfactory explanation for protecting the source of his information: Hulley Final Award, at [142], [146], [516], [767], [799].
- (3) He said that he met Mr Khodorkovsky in September 2003 to tell him he was in danger and should leave Russia. Mr Khodorkovsky replied that he had not committed any offence and did not want to leave: Hulley Final Award, at [776].
- (4) He said he had a conversation with President Putin after Mr Khodorkovsky’s arrest in October 2003, at which President Putin said that Mr Khodorkovsky no longer had his protection and would have to fend for himself against “the boys”: Hulley Final Award, at [145], [780].
- (5) President Putin then publicly stated that there should be no criticism of Mr Khodorkovsky’s arrest: Hulley Final Award, at [147].
- (6) Dr Illarionov claimed knowledge and understanding of the valuation of YNG and the process that led to its auction in December 2004. He said that YNG was sold well below even the most conservative estimates prepared by experts. He admitted that his figure was based on a full enterprise value that did not take into account Yukos’s tax liabilities. He said that the auction was carried out rapidly and conducted on a Sunday, which was unusual as Russian Government agencies are closed on Saturdays and Sundays. The circumstances warded off other bidders, but not those with the support of the Russian Government: Hulley Final Award, at [143], 144, [1013], [1016], [1019].
- (7) The sale of YNG dealt a fatal blow to Yukos: Hulley Final Award, at [1038], [1041].

269. The Tribunal found Dr Illarionov a credible and convincing witness: Hulley Final Award, at [799].

XXV: Pleaded case re Dr Illarionov

270. For the purposes of these proceedings, the crux of the Russian Federation’s case as to Dr Illarionov is set out in paragraphs 47A and 52 of the Re-Amended Defence.

271. Paragraph 47A reads as follows:

“Bribery of a Witness

47A. HVY deliberately and dishonestly paid a bribe to Dr Andrei Illarionov in exchange for his favourable witness testimony during the Arbitrations. HVY intentionally concealed this payment. This was a fraud on the Tribunal and was contrary

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to (i) Dutch law (as set out in paragraph 55A below), and (ii) the rules and practice of international arbitration.”

272. There then follow paragraphs (i) summarising some of Dr Illarionov’s evidence and (ii) setting out references to his evidence in the Final Awards, which lead up to paragraph 52:

“52. However, as was not disclosed and/or intentionally concealed from the Defendant and the Tribunal during the Arbitrations, Dr. Illarionov was paid an exorbitant fee (US\$ 200,000) in exchange for his witness evidence. This fee went far beyond reasonable remuneration in exchange for his tainted witness evidence, and was a dishonest and illegal bribe. Dr. Illarionov’s witness evidence was therefore tainted. If the Tribunal had known this fact, it would have:

- 52.1. discounted Dr. Illarionov’s witness evidence;
- 52.2. therefore not made the findings in the Final Award that were made in reliance on Dr Illarionov’s evidence. These included, inter alia, the findings set out at paragraph 50 above; and
- 52.3. sanctioned HVY for their dishonest and unlawful conduct.”

273. Like a number of parts of the Re-Amended Defence, the passages that I have set out require careful treatment.

274. Paragraph 47A and paragraph 52 both characterise the payment to Dr Illarionov as a “bribe” (a word loaded with the implication of dishonesty), and expressly allege that HVY acted “dishonestly”. Allegations of this kind can only be made if they are properly particularised. The Re-Amended Defence contains no direct explanation of the matters relied on to support these allegations.

275. In submissions, Mr Flynn KC made two related submissions:

- (1) He said that Dr Illarionov would not have given evidence if he had not been paid.
- (2) He said that Dr Illarionov’s evidence contained untruths, and HVY knew that what Dr Illarionov said was untrue (or were reckless). This was critical to the case that HVY’s payments to Dr Illarionov were dishonest.

276. The Re-Amended Defence twice alleges that the fee was paid to Dr Illarionov “in exchange for” his evidence. I accept that the implication is that, if he had not been paid, he would not have given evidence.

277. However, I do not accept that it is expressly or impliedly pleaded that Dr Illarionov’s evidence was untruthful, or even incorrect. A case that Dr Illarionov gave untrue evidence, and still more a case that HVY knew this or were reckless, would have to be clearly pleaded and properly particularised: see paragraph [92(2)] above. The Re-Amended Defence comes nowhere close to this, save that paragraph 47 says, of his evidence that he was President Putin’s Chief Economic Advisor, that this position did not exist. With that exception, the Re-Amended Defence only says that Dr Illarionov

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was paid for his “favourable” evidence. This signifies very little: favourable evidence can, of course, be truthful; and I suspect that parties do not generally pay for unfavourable evidence.

XXVI: Oral case re Dr Illarionov

278. In oral submissions, Mr Flynn KC told me that there were three specific points on which Dr Illarionov’s evidence was untrue: (i) his alleged position as Chief Economic Advisor, (ii) the special unit and (iii) the evidence relating to the auction of YNG. Taken together, and along with his other evidence, Dr Illarionov’s evidence went to an overarching point, namely that there was a campaign against Yukos and the Russian Individuals, in particular Mr Khodorkovsky.
279. The first of these points is of no materiality to the Tribunal’s reasons. In the Final Awards, Dr Illarionov was said to have been President Putin’s “Chief Economic Advisor”: Hulley Final Award, at [141]. In these proceedings, the Russian Federation said that this was incorrect and no such position existed. This is nit-picking. Even if Dr Illarionov did not hold the title of “Chief Economic Advisor”, it is clear that he was an economic advisor to President Putin, and probably the most senior and influential of all such economic advisors – i.e., his chief economic advisor (all lower case), even if not his Chief Economic Advisor. The Russian Federation does not dispute (for example) that Dr Illarionov was President Putin’s sherpa to the G8 forum.
280. Mr Flynn KC’s second point corresponds to the evidence summarised at paragraph [268(2)] above. This was of some importance, but was not critical. In the event, the Russian Federation did not rely on fabricated evidence, for its prosecution of Yukos. Before the Tribunal, HVY disputed that there had been fraudulent tax evasion, but did not assert that the evidence against it had been fabricated. The Tribunal did not accept that fraud in relation to the tax optimisation schemes in LTRs had been established, other than in relation to Lesnoy and Trekhgornyy, but it did not find that the proceedings in relation to tax fraud in other LTRs relied on fabricated evidence.
281. When I asked Mr Flynn KC about this, he clarified that the Russian Federation did not say that Dr Illarionov was lying when he said that his source had told him about the special unit.¹¹ Its case was, rather, that the special unit did not exist. Mr Flynn KC also said that HVY must have known that there was no special unit, i.e., HVY knew that Dr Illarionov’s evidence was incorrect. However, Mr Flynn KC was unable to explain how HVY would have known this, and this submission had no basis in the Re-Amended Defence or in any of the evidence. Mr Flynn KC made the point that the evidence ultimately used against Yukos in the tax proceedings was not fabricated, but that is not to the point and would not have indicated to HVY that there had never been any special unit.
282. The third point identified in paragraph [278] above corresponds to some of the evidence summarised at paragraph [268(6)] – but not all of it. Mr Flynn KC did not suggest (for example) that Dr Illarionov was wrong to say that the auction was conducted very rapidly or that it was unusual for an auction to take place on a Sunday. Nor did Mr

¹¹ This concession was inevitable, because a review of the arbitration transcript showed that Dr Illarionov was not challenged on this in cross-examination. I accept that in modern litigation, and especially in arbitration proceedings, it often is no longer necessary to cross-examine a witness on every contested point. However, this is still generally necessary if it is going to be said that the witness was lying.

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Flynn KC say that Dr Illarionov was incorrect to say that the price achieved was well below the expert estimates he referred to. However, Mr Flynn KC said that it was untrue that YNG was sold at an undervalue and for an improper motive.

283. I regard these contentions as problematic. Dr Illarionov's evidence that Yukos was sold at an undervalue was opinion evidence, of the kind typically given by an expert such as an economist. It depended on his opinion as to the true value at the relevant date. Mr Flynn KC showed me that it was put to Dr Illarionov that his view of value was inappropriate, primarily because of the failure to take account of tax liabilities. However, whether or not it was necessary to take account of tax liabilities was, itself, a matter of opinion – which means that it is difficult to say that the evidence was untrue. I did not understand Mr Flynn KC to be saying that that Dr Illarionov's evidence did not reflect his opinion.
284. In any event, the Tribunal ultimately concluded that the value of Yukos/YNG should be assessed without reference to the tax liabilities – not least because they related to tax penalties that were imposed a few weeks before the auction, and then cancelled shortly after the acquisition by Rosneft. The Tribunal further concluded that the price paid at the auction was far below the fair value of YNG. In other words, Dr Illarionov had been right to assess value without reference to the tax liabilities, and had been right that YNG was sold at a gross undervalue.
285. Moreover, it is striking that, in the part of the Final Awards that set out the Tribunal's reasoning on this, there is no reference to the evidence of Dr Illarionov: Hulley Final Award, at [1020]-[1023]. The Tribunal then went on to conclude (again, without reference to the evidence of Dr Illarionov) that Baikal was a front for the Russian Federation and that the auction was rigged: Hulley Final Award, at [1036]-[1037]. My impression is that Dr Illarionov's evidence had no real influence on the Tribunal's conclusions on these points.
286. As regards the over-arching point as to the campaign against Yukos, in so far as Dr Illarionov gave evidence on this point, he was stating his opinion. Here, too, he was arguably giving expert evidence, as someone who at the relevant time was an insider within the regime, with privileged access to President Putin.
287. In any event, the Tribunal concluded, for reasons that were not dependent on Dr Illarionov's evidence, (i) that there had been no tax fraud in LTRs other than Lesnoy and Trekhgornyy, (ii) that the Russian Federation's tax demands therefore were largely unjustified, (iii) that its actions were not a good faith tax collection exercise, (iv) that YNG was sold at a gross undervalue, at a rigged auction, and (v) that the sale of YNG dealt a fatal blow to Yukos. These findings (and other, similar findings) make it impossible to resist the further conclusion that there was a campaign against Yukos.
288. That being so, it cannot sensibly be asserted that it was dishonest of HVY to call Dr Illarionov to give evidence of his opinion on this point. What he said about this undoubtedly represented his bona fide opinion; and the opinion happens to have been correct.
289. I make these points in order to highlight the lack of clarity and logical rigour in the Russian Federation's case as to the untruthfulness of Dr Illarionov's evidence, and as to dishonesty on the part of HVY. This is important because the purpose of pleadings

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is to ensure precisely such clarity and rigour. These qualities are particularly important in a case that involves, or amounts to, dishonesty or fraud.

290. It is not acceptable that, having failed to set out a case as to untruthfulness in the Re-Amended Defence, the Russian Federation sought to do so in oral submissions. The reason it is not acceptable is not mere arid formalism. One consequence of such an unstructured approach is that the case being advanced will, itself, often become unstructured. This was noticeable in Mr Flynn KC's oral submissions.
291. I therefore do not accept that it was open to the Russian Federation to assert in submissions that Dr Illarionov's evidence was untruthful, on the basis of the case pleaded in the Re-Amended Defence, save on the question whether he held a position with the title Chief Economic Advisor. Furthermore, in so far as a wider case as to untruthfulness was nevertheless advanced by Mr Flynn KC in his oral submissions, I reject it. I do so for the reasons that I have given above, and because the case as explained to me was irrelevant, unintelligible and/or not supported by documents: cf. paragraphs [52]-[53] above.

XXVII: Case re Dr Illarionov's fee

292. The other aspect of the Russian Federation's case that it is convenient to address at this stage is the allegation that the payment to Dr Illarionov of US\$200,000 was exorbitant. For the purposes of this hearing, it was not disputed by HVY that a payment of US\$200,000 was made by HVY or on their behalf. However, it was disputed that such a payment was inappropriate or "exorbitant".
293. In oral submissions, Mr Flynn KC accepted that there is nothing unusual about paying a fee to an expert. Where the expert is a highly qualified professional, the fee may be substantial.
294. Dr Illarionov was characterised by the Tribunal as a factual witness, and was treated as such in Mr Flynn KC's submissions. However, I find it difficult to treat his evidence regarding the valuation of YNG or the adequacy of the price achieved at auction as factual evidence. It was opinion evidence, and his opinion was being given in an area where he had suitable academic qualifications and considerable specialised real-world experience. In this regard, even if not generally, he was giving expert evidence.
295. Moreover, even if his evidence is considered in the round, whether witnesses such as Dr Illarionov should be characterised as experts or as factual witnesses is perhaps somewhat subjective. I am conscious that in the *Russian Aircraft Lessor Policy Claims* litigation, [2025] EWHC 1430 (Comm), similar witnesses were treated as experts: see per Butcher J at [606]. I have no doubt that they were paid significant fees.
296. Finally, English law and procedure do not contain any rule against paying factual witnesses. Mr Flynn KC accepted this in principle, but suggested that such payments should be limited to the witnesses' expenses, or at least should be modest. He referred in this regard to *Hollander: Documentary Evidence* (15th ed.), at §30-15. However, this does not suggest that payments should be limited to expenses; or, ultimately, even that they should be modest. The full extract reads:

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“Is it permissible to agree to pay the witness for his evidence? Yes, within limits, so long as the payments are not contingent on the nature of the evidence or the outcome of the case.⁴⁹ There is no problem with “reasonable expenses” or compensation for loss of time in attending court. There comes a stage when the compensation may go beyond that. In *Odyssey*⁵⁰ three crucial witnesses in a major case who had previously all effectively been sacked by the party who wanted their evidence were proving less than helpful and their recollection of the relevant events was limited. The Court of Appeal expressed concern about an arrangement which it described as a “charm offensive” whereby the former employer had them in for lunch and agreed to pay them £50 per hour in 1988 with retrospective effect for their time in assisting.

It may be that the concern in the *Odyssey* case was as much with the circumstances and timing of the arrangement as with the actual money. In fact, the witness who says, “I will not help unless you pay me a decent sum for my time”, and means it, may be more objective than the man who remains employed. The latter does have an interest in assisting his employer and whether the party paying him wins; whereas the former may well take the view he has fulfilled his part of the bargain by giving the statement and spending the time. It does mean the position is difficult where there is an important witness who wants rather generous compensation.

⁴⁹ The Solicitors Regulation Authority Code of Conduct previously provided in its Guidance to Rule 11 “there is no objection to your paying reasonable expenses to witnesses and reasonable compensation for loss of time attending court” but this has also been omitted from the current version.

⁵⁰ *Re Odyssey (London) Ltd v OIC Run-Off Ltd* [2001] Lloyd’s Rep IR 1”

297. The current text of the relevant provisions of the Solicitors Regulatory Authority’s Code of Conduct for Solicitors is as follows:

“2: Dispute resolution and proceedings before courts, tribunals and inquiries

2.1 You do not misuse or tamper with evidence or attempt to do so.

2.2 You do not seek to influence the substance of evidence, including generating false evidence or persuading witnesses to change their evidence.

2.3 You do not provide or offer to provide any benefit to witnesses dependent upon the nature of their evidence or the outcome of the case.”

298. There is no prohibition on making payments to witnesses, subject to 2.1, 2.2 and 2.3. In these proceedings, the Russian Federation’s pleaded case does not assert that HVY or anyone acting for them sought to influence the substance of Dr Illarionov’s evidence, or that his fee was dependent on the nature of his evidence or the outcome of the case.
299. In *Odyssey* [2001] Lloyd’s Rep IR 1, much of the debate concerned whether a factual witness (Mr Sage) had committed perjury in earlier proceedings. Mr Sage had been paid for his evidence at £50 per hour – a rate that counsel approved, although the solicitors’ litigation department had recommended £25 per hour: see at 59 lhc. This

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payment was part of a broader “charm offensive”, which (contrary to the summary in Hollander) involved not merely giving Mr Sage and other witnesses a lunch but inviting them to meetings, as part of a conscious effort to make them feel part of the team, and to make them feel important and valued: see at 59 rhc. The Court of Appeal’s concern with the arrangement, and the explanation it found to be the reason that Mr Sage lied in evidence, was that the “charm offensive” converted him from being a mere witness into someone in the centre of a close-knit litigation team, conducting a case that he believed was being resisted by the defendant with no moral basis: see at 63 lhc. The fees paid were part of this charm offensive, but the judgment does not suggest that they were objectionable in themselves.

300. There are in fact many examples of cases in this country where payments have been made to factual witnesses. Two of the best-known are *Astrovlanis Cia Nav. SA v Linard (The “Gold Sky”)* [1972] 2 Lloyd’s Rep 187, at p. 201 lhc-rhc (payments offered of £5,000 to a ship’s master and £2,500 to the radio officer, plus an unknown amount to the chief engineer), and *Piermay Shipping Co. SA v Chester (The “Michael”)* [1979] 1 Lloyd’s Rep 55, at p. 86 rhc. The facts of these cases date back to 1968 and 1973, respectively. In both cases, the court appears to have accepted without surprise that such witnesses would recognise their value to the litigating parties, and so would be reluctant to give evidence without payment.
301. Furthermore, it is fair to say that Greek seamen in the late 1960s were not highly paid (even officers). To them, fees of £2,500 or £5,000 will have been substantial. Moreover, the sum claimed in *The Gold Sky* was £225 5s 2d, out of a total insured value of £88,000: [1972] 2 Lloyd’s Rep. 187, at 188 lhc, 189 rhc; so the payments offered/made represented a significant proportion of the amounts involved. These figures do not make the fee paid to Dr Illarionov seem especially exorbitant, given his specialised expertise and professional status, and given that it was vastly exceeded by HVY.
302. I therefore agree with *Hollander* that it is permissible to pay a factual witness, as long as the payment is not contingent on the nature of the evidence or the outcome of the case. I would go further and say that such payment remains permissible, even if it exceeds reasonable expenses or compensation for loss of time in attending court. At any rate, an arrangement of this kind is not inherently immoral, unlawful or dishonest.
303. Of course, the court might well be interested to know that a witness is being paid for his/her evidence, and this knowledge might affect the court’s view of the witness’s reliability. However, under English law and procedure, there is no obligation to disclose the existence of an agreement to pay a witness, because it relates not to the issues in the case but solely to the creditworthiness of the witness: *Favor Easy Management Ltd v Wu* [2010] EWCA Civ 1630; *Razeem v Desai* [2024] EWHC 689 (Ch), at [44].
304. If the other party asks whether the witness is being paid, a truthful answer must be given. In many cases, it is fairly obvious if a witness may be paid for his/her evidence. It therefore happens reasonably frequently that questions of this kind are ventilated, either in pre-hearing correspondence or in cross-examination. But there is no obligation on the party calling the witness to volunteer any information about the fee, if a question is not put.

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305. It was not wholly clear to me what significance the Russian Federation attributed to its characterisation of the fee paid to Dr Illarionov in this case as “exorbitant”. If it was merely intended to mean that the fee exceeded his likely expenses, etc., that may well be right. However, if it was intended to suggest that there was something inherently improper about the fee, or something dishonest or untoward about paying it, or even, simply, that there was something unusual about the arrangement, I cannot accept this. Such a fee is not an indication of dishonesty on the part of the payor.

XXVIII: Preliminary Issue 9

306. Preliminary Issue 9 asks the following question:

“Whether any payment which was made to Dr Illarionov (and/or any failure by the Claimants to make the existence of the same known) would have been wrongful under any applicable principle of Dutch law and/or international arbitration rules and practice.”

XXVIII(a): Dutch criminal law

307. In relation to Dutch criminal law, HVY relied on expert evidence from Professor Geert-Jan Alexander Knoops. The Russian Federation relied on expert evidence from Mr Alphonsus Orie.
308. Fortunately, most of the relevant points were agreed by the experts. In particular, they agreed that the only relevant provision was Article 285a of the Dutch Criminal Code, which provides (in translation) as follows:
- “A person who intentionally expresses himself orally, by gesture, by written or graphic means towards a person, apparently to influence his freedom to make a statement to the truth or conscience before a judge or official, while knowing or having serious reason to suspect that such statement will be made, is punished with imprisonment of up to four years or fine of the fourth category.”
309. There was a modest disagreement about the meaning and effect of the Dutch word “uiten”, which in the translation above has been rendered as “expresses”. It is cognate with the English word “utter”, but it is not confined to verbal utterances, as is apparent from the fact that Article 258a expressly extends to an expression or utterance made by gesture, etc. I have no information about the communications that HVY and its legal team had with Dr Illarionov before he made his witness statement in the arbitration proceedings, or before he gave his oral evidence. However, it is inevitable that there must have been such communications, in the course of which HVY or its legal team expressed themselves to Dr Illarionov.
310. Much more important than this modest disagreement was the fact that Professor Knoops and Mr Orie agreed that there must be an intention to influence the content of the witness’s evidence. I have noted above that the case pleaded in the Re-Amended Defence implies that, without the fee that he was paid, Dr Illarionov would not have

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given evidence. However, it is not pleaded that, by the fee or otherwise, HVY influenced or intended to influence the content of his evidence.

311. The fact that Dr Illarionov would not have given evidence without a fee is not enough for an offence to have occurred under Article 258a. If it were, it would in practice be impossible to make any payment to any witness, in proceedings taking place in the Netherlands. This is not the case: not least, in that expert witnesses are usually paid for their services there, just as they are here. Mr Orié confirmed that he was being paid, but said that this was not a crime under Article 258a because (as he said, and I accept) the payment had no influence on his opinion.
312. Accordingly, the payment to Dr Illarionov was not contrary to Article 258a of the Dutch Criminal Code.

XVIII(b) Dutch Code of Civil Procedure

313. In relation to Dutch civil law and procedure, HVY relied on expert evidence from Professor Jan Biemans. The Russian Federation again relied on expert evidence from Mr Orié.
314. They agreed that the only potentially relevant provision was Article 21 of the Dutch Code of Civil Procedure (“DCCP”), which provides as follows:
- “Parties must make a full and truthful presentation of the facts that are relevant to the decision. In the event of non-compliance, the court may draw such adverse inferences as it considers appropriate.”
315. The Russian Federation’s case was that the arrangement to pay Dr Illarionov a fee of US\$200,000 was a relevant matter, which should have been disclosed to the Tribunal.
316. The first issue that arises is whether Article 21 applies, in the context of arbitration proceedings. On this, I found the evidence of both experts of little if any assistance, because they both accepted, and I would anyway have found, that they were not experts in arbitration law or practice. The best they could do was explore whether Article 21 was a “fundamental principle” or a mere “general provision”, but their evidence on this was unclear. I was referred to one decision of the Dutch Supreme Court, 25 March 2011, which stated that Article 21 applies to “all proceedings regulated in the Code of Civil Procedure”: NJ 2011/627. However, this was a decision that concerned proceedings in court, not in arbitration; the question that arose for determination was whether Article 21 applied in the context of a claim brought in court for alimony and child support.
317. Article 21 appears in Section 3 of Title 1 of Book 1 of the DCCP. Book 1 is headed “Procedure in the District Courts, Courts of Appeal and the Supreme Court”. It is divided into a number of Titles, of which Title 1 is headed “General Provisions”. Title 1 is in turn divided into a number of Sections, of which Section 3 is headed “General Rules of Procedure”.
318. Article 21 is a relatively new provision, which was introduced as part of the reform of civil procedure on 1 January 2002. Before that reform, parties would file two rounds

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of statements (followed by oral pleadings), and evidence was submitted together with those statements. In practice, parties would often provide very little information in the first round, preferring to keep their powder dry until the second round – often withholding crucial facts and matters. The 2002 reform reduced this to a single round of statements (in most cases), in order to ensure that all information that should be made available was presented from the outset.

319. Article 21 was introduced in order to support this intention. In other words, it is directly related to the procedure that applies in Dutch courts, under Book 1 of the DCCP. This procedure is very different from the way that disclosure is carried out in international arbitration proceedings – not least in that there is no disclosure process of the kind familiar across common law systems and in international arbitrations. It was common ground between Professor Biemans and Mr Orie that the Dutch system, like most civil law systems, abhors our approach to disclosure.
320. It is also notable that, in the original Dutch text of Article 21, the word that is translated into English as “court” is the Dutch word “rechter”. This is not the word used for an arbitral tribunal – “scheidsgerecht”.
321. Arbitration proceedings are dealt with in Book 4 of the DCCP. This is a part of the DCCP that neither Professor Biemans nor Mr Orie seemed familiar with.
322. Title 1 of Book 4 is headed “Arbitration in the Netherlands”. Section 2 of Title 1 is headed “Arbitral Proceedings.” Within Section 2, Article 1036 provides:
- “Article 1036
1. Without prejudice to the provisions of mandatory law in this Title 1, the arbitral proceedings will be conducted in the manner agreed by the parties.
If and to the extent the parties have not made an agreement on the arbitral proceedings, the arbitral proceedings will, without prejudice to the provisions in this Title 1, be conducted in the manner determined by the arbitral tribunal.
323. There are no mandatory provisions in Title 1 of Book 4 that relate to disclosure. However, HVY’s original Request for Arbitration was made pursuant to the ECT and the Arbitration Rules of the United National Commission on International Trade Law (“the UNCITRAL Rules”) and the arbitrations proceeded, and the Interim Awards and Final Awards were all made, pursuant to the UNCITRAL Rules.
324. Article 15.1 of the UNCITRAL Rules provides as follows:
- “Article 15
1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.”
325. Also relevant is Article 24.3:

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“Article 24

...

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.”

326. The Tribunal set out the general procedural framework for the arbitrations in Procedural Order No. 1 of 8 November 2005. This adopted a pattern which is entirely commonplace in international arbitration proceedings. Sequential dates were set for the service of Memorials (in effect, pleadings), with supporting documents, expert reports and witness statements. After this, there were dates for requests for the production of documents, objections to those requests and comments, which were to be followed by the Tribunal’s ruling on these matters, which would give rise for an order for the production of documents by a further date.
327. As is also commonplace, the procedural steps required to accomplish all these matters turned out to be much more protracted and complex than Procedural Order No. 1 anticipated. Nevertheless, there were requests for the production of documents, and there were orders made by the Tribunal upon such requests. The arbitrations were conducted as the Tribunal considered appropriate, pursuant to Article 15 of the UNCITRAL Rules and to Article 1036.1 of the DCCP, without reference to Article 21 or any other provision of Book 1 of the DCCP and in a manner that bears no resemblance to the approach that would be followed in the Dutch courts.
328. This was particularly obvious in relation to disclosure. Article 21 of the DCCP exists because, without it, there would be no obligation to present the facts, and no sanction for not doing so. This is not generally the case in international arbitration proceedings, and it was not the case here. The Tribunal defined and imposed the parties’ disclosure obligations by its various procedural orders, as it saw fit, and as it was expressly empowered to by Article 24.3 of the UNCITRAL Rules.
329. I therefore conclude that Article 21 of the DCCP does not apply to international arbitration proceedings, even when they take place in the Netherlands.
330. It certainly did not apply in this case, because the Interim Awards and Final Awards all state in terms that, at a preliminary hearing on 31 October 2005, the parties and the Tribunal signed Terms of Appointment confirming that “the proceedings shall be conducted in accordance with the UNCITRAL Rules”: Hulley Interim Award, at [12]; Hulley Final Award, at [12]. It is not open to the Russian Federation to contradict this. It is very difficult to see how Article 21 of the DCCP can have been applicable, if the UNCITRAL Rules applied. The UNCITRAL Rules provide a complete code.
331. If (contrary to the above) Article 21 of the DCCP were applicable, a second issue would arise: whether the failure to disclose the fee paid to Dr Illarionov was a breach of Article 21.
332. On this, there was considerable debate between the experts and in the parties’ submissions as to the meaning of the word “relevant”, in the translation of Article 21.

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333. I found this semantic discussion intellectually interesting, but not helpful or, ultimately, significant. If Article 21 is applied at all, it must be applied to the facts as I have found them.
334. In its submissions, the Russian Federation placed great emphasis on the fact that the Re-Amended Defence alleges that the payment was exorbitant, and that the arrangement to pay it constituted bribery and involved dishonesty on the part of HVY; and that it led Dr Illarionov to give untruthful evidence, which had a material effect on the Tribunal. I have rejected all these submissions in Sections XXV, XXVI and XXVII above. In the light of those factual conclusions, it is very difficult to see that the fee can have been “relevant” for the purposes of Article 21 – no matter what, precisely, that word means.
335. I am confirmed in this view by the fact that the experts agreed that, as a general proposition, Dutch law and procedure is intended to result in the production of far fewer documents than under the common law approach to disclosure, and much less onerous obligations on the parties. I have already noted that English law would not regard the payment of a fee as disclosable, in the circumstances of this case: see paragraph [303] above. It would be surprising if disclosure would be required in Dutch court proceedings, under Book I of the DCCP.

XXVIII(c): International arbitration rules/practice

336. The Russian Federation was not able to identify any specific international rules or practice. I was referred to the International Bar Association’s Guidelines on Party Representation (“the IBA Guidelines”), which provides as follows at Article 25:
- “25. A Party Representative may pay, offer to pay, or acquiesce in the payment of:
- (a) expenses reasonably incurred by a Witness or Expert in preparing to testify or testifying at a hearing;
- (b) reasonable compensation for the loss of time incurred by a Witness in testifying and preparing to testify; and
- (c) reasonable fees for the professional services of a Party-appointed Expert.”
337. The Russian Federation suggested that a payment that exceeded this would be a breach of international best practice. Perhaps so, although the IBA Guideline is concerned with the conduct of legal representatives; it has no bearing on payments made by lay parties – which is what is alleged by the Russian Federation here.
338. In any event, if paying a fee to a factual witness is acceptable in litigation in England (cf. Section XXVII above), it cannot be contrary to English public policy for such a fee to be paid in the course of foreign international arbitration proceedings. It is striking that a provision similar to Article 25 of the IBA Guidelines used to appear in the Solicitors Regulation Authority Code of Conduct (as noted in *Hollander* §30-15, at footnote 49), but has been removed: see paragraphs [297]-[298] above.
339. The only rule with which I am familiar is that matters that go only to a witness’s credit are not generally considered disclosable. The only practice with which I am familiar is

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that, if a party wants to know if a witness has been paid to give evidence, they should ask.

340. This is not unfair. Nor, in my experience, does it generally create any real difficulties. I do not accept that, in this particular case, it was unfair to the Russian Federation, or that it caused any difficulties that the Russian Federation could not have dealt with.
341. I have noted above that it is usually fairly obvious where a witness may have been paid, and questions can be asked accordingly. I find it difficult to conceive of a more obvious example than Dr Illarionov, of a factual witness likely to have been paid for his evidence.
342. Dr Illarionov had no personal connection with HVY and owed them no loyalty. He is an outspoken advocate for unrestrained free market economics, allowing everything to find its natural price on the basis of supply and demand. He will have known that this was a huge claim, and that his evidence would be considered valuable by HVY. In his mind, giving that value away for nothing would, I suspect, have been not merely foolish, but contrary to the economic principles he holds dear.
343. In the light of the significance that the Russian Federation now attaches to the fact that Dr Illarionov was paid, I am extremely surprised that HVY's lawyers were not asked about this before the merits hearing in 2012, and that questions on this were not put to Dr Illarionov in cross-examination. It was an obvious topic to explore.

XXVIII(d): Conclusion on Preliminary Issue 9

344. My conclusion on this point therefore is:

Preliminary Issue 9

Any payment to Dr Illarionov (and/or the failure by HVY to make the existence of the same known) was not wrongful under applicable principle of Dutch law and/or international arbitration rules or practice.

XXIX: Preliminary Issue 10

345. Preliminary issue 10 asks the following question:

“The extent to which any part of Dr Illarionov's evidence was relevant to the outcome of the Arbitrations.”

346. There is no doubt that some parts of Dr Illarionov's evidence were of some relevance to the outcome. However, most of his evidence was undoubtedly correct, and is accepted by the Russian Federation to have been correct – for example, his evidence as to the televised meeting on 19 February 2003, and as to his conversation with President Putin in October 2003.
347. The only point on which the Russian Federation arguably has pleaded that Dr Illarionov's evidence was incorrect was as to whether he held the position of “Chief Economic Advisor”, rather than merely being an economic advisor and probably the most important such advisor. This was not relevant to the outcome.

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348. Beyond that, it is not open to the Russian Federation to assert that Dr Illarionov's evidence was incorrect, in the two additional specific respects that Mr Flynn KC explained in oral submissions – i.e., as to (i) the special unit and (ii) the value of Yukos/YNG at the time of the 2004 auction. But, even if it had been:

- (1) Mr Flynn KC did not seek to contend that Dr Illarionov knew that his evidence in relation to the special unit was incorrect. He suggested that HVY knew that there was no special unit, but that suggestion had no basis either in the Re-Amended Defence or in any of the evidence.
- (2) Mr Flynn KC's objection to Dr Illarionov's evidence as to YNG's value at the time of the 2004 auction made no real sense, when it is borne in mind (i) that this was opinion evidence and (ii) the Tribunal's findings indicate that Dr Illarionov's opinion on value was not merely reasonable but correct.

349. My conclusion on Preliminary Issue 10 therefore is:

Preliminary Issue 10

Dr Illarionov's evidence was of some relevance to the outcome of the Arbitrations. However, the sole point on which the correctness and truthfulness of his evidence was properly challenged was a point of no relevance to the outcome.

350. In any event, Preliminary Issue 10 is of secondary importance, in the light of my answer to Preliminary Issue 9.

XXX: Preliminary Issue 11

351. Preliminary Issue 11 asks the following question:

“Whether, in light of the Court's decision on Issues 8-10 above, the allegations of “procedural fraud” which the Defendant raises in its Defence would be capable of rendering the enforcement of the Awards contrary to English public policy.”

352. It was common ground that the reference to “allegations of procedural fraud” meant the allegations in paragraphs 4, 25A-31, and 47A-55A of the Re-Amended Defence. These are the pleaded allegations discussed in Section XXII and Section XXV above.

353. My conclusion on this is:

Preliminary Issue 11

The allegations in relation to Concealed Documents are capable of rendering the enforcement of the Awards contrary to English public policy, solely in so far as costs were awarded in HVY's favour. Otherwise, the allegations in relation to Concealed Documents and in relation to Dr Illarionov are not capable of rendering the enforcement of the Awards contrary to English public policy.

XXXI: Preliminary Issue 13

354. Preliminary Issue 13 asks the following question:

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“Whether, in light of the Court’s decision on Issues 1-12 above, judgment ought to be entered for the Claimants on their Claims.”

355. HVY’s claim form seeks the following relief:

- (1) Leave under s. 101(2) of the Arbitration Act 1996 to enforce each of the Final Awards.
- (2) An order recognising the Awards pursuant to s. 101(1) of the Arbitration Act 1996, and leave pursuant to s. 101(3) to enter judgment in terms of the Awards.
- (3) Interest under the Judgments Act 1838 to run from the time at which judgement is entered pursuant to s. 101(3).
- (4) The costs of the application.

356. The dispositive part of each of the Final Awards was the last paragraph. Subject to the precise sums awarded, they were all in the same form as the Hulley Final Award, [1888], which reads as follows:

“1888. For the reasons set forth above, the Tribunal unanimously:

- (a) DISMISSES the objections to jurisdiction and/or admissibility, based on Article 21 of the Energy Charter Treaty;
- (b) DISMISSES the objections to jurisdiction and/or admissibility, pertaining to Respondent’s contentions concerning “unclean hands” and “illegal and bad faith conduct”;
- (c) DISMISSES the renewed objections to jurisdiction and/or admissibility based on Article 26(3)(b)(i) of the Energy Charter Treaty;
- (d) HOLDS that the present dispute is admissible and within the Tribunal’s jurisdiction;
- (e) DECLARES that Respondent has breached its obligations under Article 13(1) of the Energy Charter Treaty;
- (f) ORDERS Respondent to pay to Claimant Hulley Enterprises Limited damages in the amount of USD 39,971,834,360;
- (g) ORDERS Respondent to pay the amount of EUR 3,388,197 to Claimant Hulley Enterprises Limited as reimbursement for the costs of the arbitration;
- (h) ORDERS Respondent to pay the amount of USD 47,946,190 to Claimant Hulley Enterprises Limited for a portion of the costs of its legal representation and assistance in the arbitration proceedings; and
- (i) ORDERS Respondent to pay to Claimant Hulley Enterprises Limited, if within 180 days of the issuance of this Award Respondent fails to pay in full the amounts set forth in paragraphs (f), (g) and (h) above, post-award interest on any outstanding amount starting from 15 January 2015, compounded annually. Post-award interest shall be

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determined as the yield on 10-year U.S. treasury bonds as of 15 January 2015 and then the dates of compounding yearly thereafter.”

357. On the assumed facts that I have adopted for the Preliminary Issues, HVY have succeeded on most points, but not in relation to the costs awarded by the Tribunal. This affects the enforcement and recognition of paragraph [1888(g)] and [1888 (h)], and the interest awarded at [1888(i)] on (g) and (h).
358. However, it has no bearing on the enforcement of paragraph [1888(f)].
359. The parties agreed that, in principle, the court can order recognition and enforcement of part of an award: *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corp* [2008] EWCA Civ 115, at [14]-[20]; *Star Hydro Power Ltd v National Transmission And Despatch Co. Ltd* [2025] EWCA Civ 928, at [56]. As the Court of Appeal noted in *IPCO (Nigeria)* at [15], it is significant that s. 103 does not provide that recognition and enforcement shall be refused if it would be contrary to public policy; only that it may be refused, meaning that the court has a discretion to allow recognition and enforcement even in such a case. This discretion permits the court to choose to enforce part of an award, as long as the part to be enforced can be ascertained from the face of the award, and judgment can be given in the same terms.
360. In this case, the appropriate result is to allow recognition and enforcement of paragraph [1888(f)] of the Hulley Final Award, but not paragraph [1888(g)] and [1888(h)]. This has obvious consequences for interest on costs – i.e., paragraph [1888(i)].
361. My conclusion on this point is:

Preliminary Issue 13

Judgment should be entered giving HVY leave under s. 101(2) of the Arbitration Act 1996 to enforce the Final Awards in the same manner as a judgment, and ordering the Awards to be recognised pursuant to s. 101(1) and giving leave for judgment to be entered pursuant to s. 101(3), save for the award of costs and of interest on costs.

362. I should make it clear, even at the risk of repetition, that the fact that I am not ordering recognition or enforcement in relation to the Tribunal’s award of costs does not mean that HVY have no recourse in relation to that part of the award. My decision is one made on the Preliminary Issues, and thus on assumed facts (as explained in Section VII above). It will be open to HVY to seek to challenge the facts asserted by the Russian Federation in the Re-Amended Defence, in due course, at trial.

XXXII: Overall result

363. The overall result is that HVY are entitled to judgment against the Russian Federation in respect of the damages awarded of over US\$50 billion, plus the compound interest awarded on those damages (i.e., interest that has accrued since 18 July 2014).
364. I am conscious that some readers may have skipped directly to this final section of my judgment. It is important that all such readers understand, as I hope will already be

Approved Judgment

apparent to the few diligent stalwarts who have ploughed through from beginning to end, that litigation of this kind is not a moral beauty contest. Despite the references above to public policy and universal morality, it has not been the function of this judgment to grade either HVY or the Russian Federation for morality; nor for beauty. In investor-state disputes, these qualities are not always present in abundance.

365. The New York Convention and the implementing provisions in ss. 101 to 103 of the Arbitration Act 1996 are inherently pro-enforcement. Within the parameters set by the authorities that I have discussed, they can be relied on by sinners, no less than by saints. It is difficult for any defendant to resist the enforcement of a valid New York Convention arbitration award; especially when (as here) the jurisdiction of the Tribunal is no longer open to challenge. The moral failings that the Russian Federation has alleged against the Russian Individuals and HVY, whether or not they could be made out at trial, are simply incapable of affording any defence – save to the very limited extent that I have indicated in relation to costs.