SVEA COURT OF APPEAL	**JUDGMENT**	Case No.
Department 02	10 February 2017	T 5937-12
Division 020107	Stockholm	

CLAIMANT
Mr. S
[INFORMATION OMITTED]

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Russia

2. The Committee of Property Relations of St. Petersburg
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Smolny Proezd 1, bld B
191060 St. Petersburg
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3. Joint Stock Company Rossiya Airlines
c/o Saprykin Dmitriy Petrovich
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Russia

4. Joint Stock Company Pulkovo Airport
c/o Rostislav Sergeevich Chernyshov
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MATTER
Challenge of arbitration award given in Stockholm on 30 March 2012

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JUDGMENT OF THE COURT OF APPEAL

1. By annulment of the District Court's default judgment of 19 December 2014 in respect of Joint Stock Company Pulkovo Airport (formerly Pulkovo Airport JSC) the Court of Appeal rejects Mr. S's action in its entirety.

2. Mr. S is ordered to compensate the litigation costs of

a) The City of St. Petersburg in the amount of USD 500,574, of which USD 451,708 comprises of costs for legal counsel, plus interest on the former amount pursuant to Section 6 of the Swedish Interest Act from the day of the Court of Appeal's judgment until the day of payment.
b) Joint Stock Company Rossiya Airlines in the amount of USD 76,568, of which USD 69,093 comprises of costs for legal counsel, plus interest on the former amount pursuant to Section 6 of the Swedish Interest Act from the day of the Court of Appeal's judgment until the day of payment.
c) Joint Stock Company Pulkovo Airport in the amount of USD 40,569, of which USD 36,609 comprises of costs for legal counsel, plus interest on the former amount pursuant to Section 6 of the Swedish Interest Act from the day of the Court of Appeal's judgment until the day of payment.

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1. BACKGROUND

In the beginning of the 1990's the parties commenced a partnership for the purpose of constructing a new terminal for passenger traffic at the St. Petersburg airport.

On 19 May 1995, the Property Management Committee of the City of St. Petersburg, the "Committee", State Enterprise Pulkovo, the "State Enterprise", Pulkovo (Strategic Partners) Limited "Strategic Partners" and two further investors entered into a Founders Agreement, the "Founders Agreement". On the same day, the parties entered a Charter, the "Charter", and incorporated the company Closed Joint Stock Company (CSCJ) International Airport Terminal Pulkovo, "IAT Pulkovo". The Founders Agreement and the Charter are collectively herein also referred to as the "Investment Agreement".

On 1 May 1996, IAT Pulkovo and The City of St. Petersburg, the "City", entered into a leasehold agreement, the "Lease". By way of the Lease, IAT Pulkovo acquired the right to a plot of land upon which the international terminal would be erected. The term of the Lease was for 49 years, with options to extend.

Open Joint Stock Company (OJSC) Aviation Company Rossiya, "Rossiya", and Open Joint Stock Company (OJSC) Airport Pulkovo, "Pulkovo", have acceded to and replaced the State Enterprise as parties to the Founders Agreement.

The parties' project in respect of the new terminal would not come to fruition.

In January of 2008, Mr. S opened arbitration proceedings against the City, the Committee, the State Enterprise, Rossiya and Pulkovo under the UNCITRAL Arbitration Rules. He moved that the respondents should be ordered to pay damages to him in the amount of USD 459,700,000.

In the arbitration, the parties agreed that Russian and international law applied to the dispute.

IAT Pulkovo was wound up in October of 2008.

The arbitration award was rendered on 30 March 2012 following arbitration proceedings in Stockholm. The arbitral tribunal comprised Dr. MB (chairman), Mr. AB and Mr. PR. Mr. S's action was rejected in its entirety and he was ordered to compensate the City and the Committee for their respective litigation costs in the arbitration. Mr. PR dissented.

Hereafter, Mr. S opened litigation against the City, the Committee, the State Enterprise, Rossiya and Pulkovo Airport. Following an application for a re-trial, the proceedings were reopened with respect to Pulkovo Airport. The default judgment has become final in respect of the State Enterprise.

2. MOTIONS

Mr. S has moved that the Court of Appeal shall annul the arbitration award partially or in its entirety.

The City, the Committee, Rossiya and Pulkovo Airport (collectively, the "Respondents") have disputed the annulment of the arbitration award.

The parties have claimed compensation for their litigation costs.

3. LEGAL GROUNDS

Mr. S

1. The arbitration award shall be annulled in its entirety, because one or two of the arbitrators were not impartial and thereby disqualified from serving as arbitrators, item 5 of the first paragraph of Section 34 of the Swedish Arbitration Act (1999:116).

2. The arbitration award shall be annulled in its entirety, because the arbitral tribunal exceeded its mandate pursuant to item 2 of the first paragraph of Section 34 of the Swedish Arbitration Act. In the alternative, the same course of action constituted a procedural error which likely affected the outcome of the arbitration, item 6 of the first paragraph of Section 34 of the Swedish Arbitration Act. The circumstances, viewed separately or as a whole, entail that the arbitration award

shall be annulled in its entirety. All circumstances collectively provide support for the conclusion that the arbitrators were not impartial in respect of the matter and in respect of the parties.

The Respondents

The arbitral tribunal was impartial and consequently the arbitral tribunal was not disqualified from resolving the dispute. Neither the alleged statements nor the alleged excesses of mandate/procedural errors constitute circumstances which would imply partiality. The arbitral tribunal neither exceeded its mandate nor did it commit any procedural errors which affected the outcome of the arbitration. Mr. S has lost the right to reference certain grounds for any challenge (see below) because the circumstances upon which they are based have been barred by preclusion. Due to the above, there are no grounds for annulment of the arbitration award pursuant to Section 34 of the Swedish Arbitration Act.

4. CIRCUMSTANCES REFERENCED BY THE PARTIES (LEGAL FACTS)

Mr. S

Summary of referenced circumstances

The arbitral tribunal was partial to the detriment of Mr. S, which is evident from several statements aimed at Mr. S's person and action during the arbitration as well as in the interim decision of 8 February 2011 and the arbitration award. The arbitral tribunal acted inquisitorially through which circumstances which were never referenced by a party were allowed to influence arbitral tribunal's review. The reasoning concerning how the project had become a "*still-born child*" and the question whether Mr. S's exclusive rights could violate the hypothetical contents of Russian public procurement law were introduced to the arbitration by the arbitral tribunal. The review of the arbitral tribunal was not carried out according to Russian and international law, which the arbitral tribunal was obliged to apply as per the parties' agreement. Further, the arbitral tribunal did not take undisputed circumstances into account in its decision, alternatively did not base its decision on circumstances referenced by the parties in respect of the Lease. The arbitral tribunal

did not review the grounds for Mr. S's claim for damages and also failed to review Mr. S's grounds for his claim for compensation for litigation costs in the arbitration. Alternatively, the arbitral tribunal has added circumstances which were never referenced by a party as grounds for its decision in these respects. Further, the arbitral tribunal incorrectly decided Mr. S's motion for disclosure. The circumstances have not been barred by preclusion.

I. Mr. MB and/or Mr. AB were partial and thereby disqualified to serve as arbitrators in the arbitration

On several occasions during the arbitration and in the arbitration award the arbitral tribunal made evaluative statements on Mr. S's person and his action, which were irrelevant for the review of the dispute. The evaluative statements were exclusively aimed at Mr. S. Arbitrator PR, in his dissenting opinion, stated that he had not participated in the irrelevant statements and he objected to the statements concerning, amongst other things, Mr. S's professional background. Therefore, the evaluative statements shall be attributed to arbitrators MB and AB. By way of the statements, the arbitral tribunal has demonstrated partiality in the form of a negative attitude to Mr. S's person and action, and it was thereby disqualified from resolving the dispute in the arbitration.

The arbitral tribunal made the following evaluative statements, amongst others, in the interim decision of 8 February 2011 (case document No. 42) concerning Mr. S's person, which were irrelevant for the review of the dispute.

- When the arbitral tribunal, as an interim decision, reviewed Mr. S's right to bring his action, it stated that Mr. S had displayed an "*impressive enthusiasm*" during the Zurich hearing and that his assurance was "*impressive*", see paragraphs 123 and 124 of the interim decision of 8 February 2011 (case document No. 42).
- When the arbitral tribunal commented on the Zurich hearing, it stated that "[i]t is always particularly appreciated to have the presence of the persons who, at the time, *dramatis personae*", which statement was aimed at Mr. S,

see paragraph 164 of the interim decision of 8 February 2011 (case document No. 42).

The arbitral tribunal made the following evaluative statements amongst others, concerning Mr. S's person in the arbitration award, which were irrelevant for the review of the dispute.

- The arbitral tribunal stated that Mr. S at the Stockholm hearing "*eloquently*" and with "*charisma and enthusiasm*" had argued his position as to whether he had fulfilled his obligations under the parties' agreement, see paragraph 441 of the arbitration award.
- The arbitral tribunal stated that Mr. S at the Stockholm hearing "*possibly overly enthusiastic[ally]*" had argued that the project was expected to generate substantial profits for the parties, see paragraph 737 of the arbitration award.
- The arbitral tribunal referenced Mr. S's "impressive entrepreneurial approach", "*eloquence*" and "*enthusiasm*" and that Mr. S "*beyond doubt took center-stage*" at the hearings in the arbitration and had become "*unforgettable*" for the participants in the arbitration, see paragraph 844 of the arbitration award.
- The arbitral tribunal stated that Mr. S, because he was a "*most experienced lawyer*" must have been aware that the issues in the arbitration award were not complicated and that the review was based on the most straight forward and most obvious legal principles, see paragraph 792 of the arbitration award.

The arbitral tribunal made the following evaluative statements, amongst others, in the arbitration award about Mr. S's action, which were irrelevant to the review of the matter.

- In its grounds for the decision, the arbitral tribunal held that Mr. S's claims under article 200.1 of the Russian Civil Code were "*obviously – entirely non meritorious*", see paragraph 784 of the arbitration award (case document No. 5).

- The arbitral tribunal stated that Mr. S's claims as investor were "*the most unhelpful*" and that he had "*a zero chance of success*", see paragraph 785 of the arbitration award (case document No. 5).
- The arbitral tribunal stated that general principles and starting points in the arbitration "*must have been known*" to Mr. S, see paragraph 792 of the arbitration award (case document No. 5).
- The arbitral tribunal stated that Mr. S had opened the arbitration "*not in good faith, but indeed frivolously*", see paragraph 789 of the arbitration award (case document No. 5).

During the hearings made the following evaluative statements, which were irrelevant for the review of the matter:

1. Mr. MB said to Mr. S's counsel after his opening statement at the Zurich hearing: "*Thank you, Andrew. I very much like your enthusiasm and you will see, unfortunately, the details are a little bit more complicated. Nothing that we are going to say should case any disrespect to [Mr. S's] achievement, but you will see, as we go on, it will be a little bit more difficult, a little bit, than you thought*", see p. 17 of the transcripts of the Zurich hearing (case document No. 11).
2. During his opening statement, Mr. MB interrupted Mr. S's counsel by stating: "*Can you understand how much our court reporter must suffer with your presentation?*", see p. 26 of the transcripts of the Zurich hearing (case document No. 11).
3. Mr. MB made the following statement to Mr. S's counsel after having listened to the counsel to the respondents: "*I hoped the case would be so simple as you depicted it this morning, Andrew, with your enthusiasm which I greatly admire, but we have some details here to look at.*", see p. 36 of the transcripts of the Zurich hearing (case document No. 11).
4. Mr. MB interrupted Mr. S during his witness statement with the following comment: "*Why do we sit here instead of in one of your beautiful hotels?*", see p. 85 of the transcripts of the Zurich hearing (case document No. 11).
5. Mr. MB interrupted Mr. S during his witness statement by saying: "*I know. I know. You are always a little bit taken too far by your enthusiasm – a little*

bit", see p. 35 and 36 of the transcripts of the Stockholm hearing (case document No. 12).

6. Mr. MB addressed Mr. S in particular prior to the Stockholm hearing by making the following statement: "*So Carl, next time, don't be taken away by your enthusiasm and speak a little bit slower*", see p. 106 of the transcripts from the Stockholm hearing (case document No. 12).

The arbitral tribunal has shown that it was not impartial also in other respects. The arbitral tribunal has introduced new circumstances to the arbitration, which had not been referenced by a party, has failed to base its decision of circumstances which were not disputed between the parties, has failed to review the grounds of Mr. S's claim for compensation for damages and litigation costs, has failed to review the matter pursuant to Russian and international law in violation of the parties' agreement, and has incorrectly rejected Mr. S's motion for disclosure.

Mr. S disputes that he would be prevented from referencing the statements/character evaluations concerning Mr. S's person and action due to preclusion. He has not refrained from, and cannot be assumed to have waived his right to rely upon any of the circumstances referenced in the Statement of Complaint and its supplement.

The circumstances which form the grounds for the challenge in the action at issue became known to Mr. S through the arbitration award. Prior thereto, Mr. S had no reason to assume that the arbitral tribunal would take circumstances into account, which it should rightfully not have taken into account.

In the event that the arbitral tribunal would conclude that Mr. S, in order to avoid preclusion of the statements/character evaluations during the Zurich and Stockholm hearings and the decision of 8 February 2011, should have objected to each and every statement during the course of the arbitration, then Mr. S shall nevertheless not be prevented from relying upon them, since they are referenced in conjunction with the statements/character evaluations that were set forth in the arbitration award. Seen as a whole, the arbitral tribunal's statements/character evaluations concerning Mr. S's person and action, as well as its other expressions of partiality,

made during the arbitration have not been barred by preclusion in these proceedings.

At any event, Mr. S is not prevented from referencing the statements/character evaluations made in the arbitration award as grounds that Messrs. MB and AB were partial and thus disqualified to serve as arbitrators. Even if the Court of Appeal would conclude that Mr. S must be deemed to have waived his right to rely upon the statements/character evaluations which were made during the course of the arbitration, any preclusion of those circumstances could not cover future circumstances, even if they would be of the same or similar nature.

II. The arbitral tribunal acted inquisitorially without support in the arbitration agreement by introducing new circumstances to the arbitration which had not been referenced by a party

The arbitral tribunal rejected Mr. S's action because, amongst other reasons, it concluded that the project had ceased in the late 1990's and become a "*still-born child*" as a result of Mr. S having failed to fulfill his obligation to arrange the financing of the project. Therefore, the Respondents had been relieved of their obligation to continue to cooperate with Mr. S pursuant to, amongst others, article 328.2 of the Russian Civil Code. This line of reasoning was referenced by the Respondents as a direct result of the arbitral tribunal's questions to the parties.

The arbitral tribunal introduced new circumstances to the arbitration by way of procedural orders of 29 November 2010, 8 February 2011 and 2 September 2011, which set out a large number of detailed questions (in excess of 100) to the parties. Some questions concerned circumstances and legal reasoning which none of the parties had referenced.

By way of the procedural order of 29 November 2010, circumstances concerning the abandoning of the project and its termination were introduced, see paragraphs 10, 14 and 15 of the procedural order (case document No. 45). The Respondents adjusted their grounds in response hereto in their submission of 16 December 2010, see paragraphs 26 and 27 of the submission (case document No. 16).

The reasoning concerning a *still-born child* was introduced by the arbitral tribunal through the procedural order of 8 February 2011, which is set out in the interim decision of the same date, see paragraph 172 of the interim decision (case document No. 42).

The Respondents adjusted their grounds in response to the arbitral tribunal's questionnaires in their subsequent submission, see paragraph 95 of the Respondents' submission of 2 July 2011 (case document No. 17)

Through the questionnaires, the arbitral tribunal guided the arbitration in a specific direction and set a scope which was wider than the framing determined by the parties. The Respondents' adjusted grounds were an exact recounting of the theories presented by the arbitral tribunal through its questionnaires. It appears unlikely that the Respondents would have adjusted their grounds in the absence of the arbitral tribunal's active guidance of the arbitration. The Respondents' adjusted grounds served as the basis for the arbitral tribunal's rejection of Mr. S's action, see paragraphs 459, 495, 680 and 742 of the arbitration award.

Mr. AB also introduced new circumstances, which had not been referenced by any party, at the Zurich hearing by mentioning articles 450.3 and 328.2 of the Russian Civil Code, see paragraphs 53 and 54 of the transcripts of the Zurich hearing (case document No. 12). The articles subsequently formed the legal basis of the arbitration award, see paragraphs 400, 476, 490, 492, 657 and 744 of the arbitration award.

The arbitral tribunal acted without support in the arbitration agreement and thereby exceeded its mandate. Through the inappropriate assistance to the Respondents in the framing of their defense, the arbitral tribunal acted partially and committed a procedural error which likely affected the outcome.

Mr. S disputes that the above circumstances have been barred by preclusion. He has not refrained from, and cannot be assumed to have waived his right to rely upon any of the circumstances that have been referenced in the Statement of Complaint and its supplement.

The arbitral tribunal's introduction of new circumstances through its questionnaires and statements constituted excesses of mandate and/or procedural errors, of which Mr. S became aware only by them having been taken into account in the arbitration award. Mr. S did therefore not have the knowledge as required for preclusion to occur prior to the arbitration award was given.

As regards the introduction of new circumstances through questionnaires/statements and the influence of the procedural guidance on the Respondents' defense, it should be particularly noted that it would be disproportional to review Mr. S's objections as barred by preclusion, because any objection, irrespective of when it was raised, would not have prevented the actions of the arbitral tribunal, i.e. the actions already carried out could not have been "healed".

III. The arbitral tribunal on its own initiative reviewed the issue of whether Mr. S's exclusive rights possibly violated the hypothetical contents of Russian public procurement law

An important component of Mr. S's case was that he held exclusive rights concerning the expansion of the Pulkovo airport through the construction of a new international passenger traffic terminal, which increased the value of the Lease.

In its interim decision of 8 February 2011, the arbitral tribunal took into account the content of *hypothetical public procurement rules* which could have been enacted in Russian law and if those rules permitted agreement provisions granting exclusive rights, see paragraphs 128-130 of the interim decision of 8 February 2011 (case document No. 42). The arbitral tribunal took these circumstances into account, despite that they had not been referenced by the Respondents, which the arbitral tribunal admitted in its decision, see paragraph 127 of the interim decision (case document No. 42). The circumstances impacted the arbitral tribunal's interim decision on whether Mr. S had any exclusive rights.

The conclusion reached in the interim decision was repeated in the arbitration award, see paragraphs 228, 230-232 of the arbitration award. It cannot be excluded that the arbitral tribunal was influenced by the reasoning concerning public

procurement rules set forth in the interim decision, when it rejected Mr. S's action in the arbitration award. The arbitral tribunal has, by taking circumstances into account which had not been referenced by the parties, exceeded its mandate and/or committed a procedural error, which likely affected the outcome of the arbitration.

Mr. S disputes that the above circumstances would be barred by preclusion. He has not refrained from, and he cannot be assumed to have waived the right to rely upon any of the circumstances referenced in the Statement of Complaint and its supplement.

The arbitral tribunal's decision to on its own initiative determine the applicability of hypothetical public procurement law constituted excesses of mandate and/or procedural errors, of which Mr. S became aware only when they were deemed relevant and taken into account in the arbitration award. Thus, Mr. S did not have the required knowledge for preclusion to take effect until after the arbitration award had been given.

IV. The arbitral tribunal has failed to take undisputed circumstances into account in their review, alternatively has based its decision on circumstances which had not been referenced by a party

In the arbitration, it was undisputed between the parties that IAT Pulkovo was the entitled party under the Lease and that the Lease represented a value which, at the very least, was not immaterial. Despite that the Lease undisputedly was valid at the time of the winding up of IAT Pulkovo, the arbitral tribunal concluded that the company did not hold any assets. Against this background, the arbitral tribunal concluded that Mr. S could not have any claim for damages against the Respondents in relation to the winding up of IAT Pulkovo.

The arbitral tribunal's conclusion that IAT Pulkovo did not hold any assets meant that the arbitral tribunal neglected to take into account the undisputed circumstance that the Lease was an asset of IAT Pulkovo, and was not of immaterial value, since the land could, amongst other things, be utilized to develop the airport. Hereby the arbitral tribunal exceeded its mandate and/or committed a procedural error. If the arbitral tribunal had taken undisputed facts concerning IAT Pulkovo's assets into

account, it would have had to review the issue of whether the Respondents had become liable against Mr. S because of the winding up of IAT Pulkovo. If Mr. S had known that the arbitral tribunal would decide not to take these undisputed circumstances into account, Mr. S could have referenced evidence to establish these circumstances. The actions of the arbitral tribunal influenced the outcome of the arbitration, because a substantial portion of Mr. S's action was rejected by the arbitral tribunal based on the incorrect conclusion that IAT Pulkovo did not have any assets.

The arbitral tribunal's failure to take circumstances which were undisputed between the parties into account has been detrimental only to Mr. S.

V. The arbitral tribunal has failed to review the grounds for Mr. S's claim for damages and/or has based its decision in this respect on circumstances which had not been referenced

In the arbitration, Mr. S moved that the Respondents should be ordered to pay damages to him. As grounds for the motion, he maintained that the Respondents had breached their agreements and referenced articles 401, 393 and 15 of the Russian Civil Code.

The arbitral tribunal restated Mr. S's motion so it became a claim in the capacity of creditor, i.e. the grounds of the motion were changed to be based on a specific agreement granting Mr. S the right to compensation, from being a non-contractual claim for damages, see paragraph 119 of the arbitration award. The arbitral tribunal reviewed the claim for compensation on the adjusted grounds and did not take articles 401, 393 and 15 of the Russian Civil Code into account, see paragraphs 547- 560 of the arbitration award. The grounds reviewed by the arbitral tribunal were thus not those which had been referenced by Mr. S. Hereby. The arbitral tribunal exceeded its mandate and/or committed a procedural error which likely affected the outcome of the arbitration.

The arbitral tribunal's actions in these respects provide further support that the arbitral tribunal was not impartial and that it was therefore disqualified from resolving the dispute.

VI. The arbitral tribunal has failed to review the grounds of Mr. S's claim for compensation for his litigation costs and/or has based its decision on litigation costs on circumstances which had not been referenced by a party

In the arbitration, Mr. S moved that the Respondents, irrespective of the outcome, should be ordered to compensate his litigation costs, and based his motion on article 20.10 of the Charter. In the main, Mr. S maintained that the Respondents, by committing a breach of contract, had acted in bad faith and should therefore bear the full amount of the costs for the arbitration, and in the alternative maintained the costs should be allocated between the parties in accordance with their respective shareholdings in IAT Pulkovo.

The arbitral tribunal was obliged to review whether article 20.10 of the Charter was applicable to the arbitration, or if general principles on allocation of costs should be applied instead. The arbitral tribunal failed to decide whether or not article 20.10 of the Charter was applicable and opined that the issue could be left open, see paragraph 774 of the arbitration award.

The arbitration award provided that the arbitral tribunal concluded that Mr. S's main motion should be rejected. However, no decision as regards Mr. S's alternative motion was provided. This motion was not conditional upon whether Mr. S or the Respondents had acted in bad faith. Instead, this issue was directly related to whether article 20.10 of the Charter was applicable to the arbitration. The arbitral tribunal was therefore obliged to review this issue.

By failing to decide whether article 20.10 of the Charter was applicable to the arbitration or not, the arbitral tribunal neglected to review the grounds for Mr. S's claim for compensation for litigation costs. Thereby, the arbitral tribunal exceeded its mandate and/or committed a procedural error. Since the arbitration award provides no guidance as to whether the arbitral tribunal neglected the grounds by negligence or if the arbitral tribunal rejected it upon a review of the merits, this circumstance could have affected the outcome. Therefore, the arbitration award shall be annulled in this respect.

The arbitral tribunal's failure to review the grounds for Mr. S's alternative motion has been detrimental only to Mr. S.

VII. In violation of the parties' agreement, the arbitral tribunal did not review the dispute pursuant to Russian and international law.

The parties are free to agree on the applicable law. In the present dispute, the parties had agreed that Russian and international law should govern the dispute. The arbitral tribunal was obliged to apply Russian and international law as per the parties' agreement. In violation of the parties' agreement, the arbitral tribunal failed to decide the dispute pursuant to Russian and international law and thereby exceeded its mandate and/or committed a procedural error which likely affected the outcome.

The fact that the arbitral tribunal failed to apply Russian and international law, or at the very least applied Russian and international law substantially incorrectly, is a further indicator that the arbitral tribunal was not impartial and therefore disqualified from resolving the dispute.

Mr. S referenced, amongst others, articles 393, 301 and 15 of the Russian Civil Code in support of his action. Mr. S explained the contents or Russian law in, amongst other things, *Reply to Statement of Defense* (case document No. 14) and also submitted a legal opinion on Russian law in the arbitration (case document No. 235). Under Russian law it is not possible to terminate an agreement, as the Respondents did, without becoming liable for the damages incurred by the counterparty. Nevertheless, the arbitral tribunal failed to review the dispute under the said provisions of the Russian Civil Code. In fact, the arbitration award is not in any way based on Russian law, albeit that a few references have been made thereto. If the arbitral tribunal would have applied Russian law, it would likely have granted Mr. S's action. Thus, the error did affect the outcome.

Mr. S detailed the contents of international law in, amongst other things, *Reply to Statement of Defense* (case document No. 14) and further submitted a legal opinion on the contents of international law (case document No. 236). The arbitral tribunal should, for example, have applied international law to the issue of whether Mr. S's

claims had been barred by statute of limitations. The arbitral tribunal failed to do so. If the arbitral tribunal would have applied international law to the dispute, it would likely have granted Mr. S's action. Thus, the error did affect the outcome.

VIII. The arbitral tribunal incorrectly rejected Mr. S's motion for disclosure.

Through submissions of 20 January 2010 and 21 January 2011, Mr. S lodged a motion for disclosure which was rejected by the arbitral tribunal. Mr. S's motion fulfilled the requirements of the *IBA Rules on the Taking of Evidence in International Arbitration*. Even if the arbitral tribunal was not bound by these rules, the arbitral tribunal had stated in the opening stages of the arbitration that they would be applied in the event a motion for disclosure was lodged. Mr. S's motion concerned specific documents/categories of documents that were not in his, but in the Respondents' possession. The documents had obvious evidential value in the arbitration. Thereby, the requirements for granting the motion were fulfilled and the arbitral tribunal's decision to reject Mr. S's motion was incorrect.

The arbitral tribunal was in particular obliged to review whether the requirements for disclosure were fulfilled as regards each document/category of document covered by the motion for disclosure. The arbitral tribunal did not, and instead categorically rejected Mr. S's motion. The arbitral tribunal committed a procedural error also in this respect when rejecting Mr. S's motion for disclosure.

By incorrectly rejecting Mr. S's motion for disclosure, he did not have access documents which likely would have provided support for his case in the arbitration. In connection with the review of the issue at the Zurich hearing, the arbitral tribunal even requested Mr. S to defer the issue of disclosure. Mr. S indicated that the arbitral tribunal thought that the requested documents would not be decisive for the outcome. The arbitral tribunal's incorrect decision deprived Mr. S of the right to properly argue his case. Thereby, the arbitral tribunal committed a procedural error. Considering that the arbitral tribunal in material respects based its rejection of Mr. S's action on insufficient evidence, the arbitral tribunal's rejection of his motion for disclosure affected the outcome of the arbitration.

Mr. S disputes that the above circumstances would be barred by preclusion. He has not refrained from, and he cannot be assumed to have waived the right to rely upon any of the circumstances which have been referenced in the Statement of Complaint and its supplement.

The arbitral tribunal's incorrect rejection of Mr. S's motion for disclosure constituted excesses of mandate and/or procedural errors of which Mr. S became aware only when they had been taken into account in the arbitration award. Thus, Mr. S cannot be deemed to have had the knowledge required for preclusion to take effect until after the arbitration award had been given.

The Respondents

Summary of referenced circumstances

The above referenced grounds cannot entail the annulment of the arbitration award under Section 34 of the Swedish Arbitration Act. Moreover, the following circumstances are barred by preclusion and Mr. S has lost the right to rely upon them: the arbitral tribunal's statements during the arbitration and in the interim decision of 8 February 2011, that the arbitral tribunal on its own initiative introduced the reasoning concerning the project having become a *still-born child*, and the issue of whether Mr. S's exclusive rights could violate the provisions of hypothetical Russian public procurement law was introduced to the arbitration by the arbitral tribunal. Also the assertion that the arbitral tribunal has decided Mr. S's motion for disclosure incorrectly has been barred by preclusion.

I. Messrs. MB and/or AB have not been partial and disqualified from serving as arbitrators

The arbitral tribunal's statements concerning Mr. S and him as a person are not circumstances that could disqualify an arbitrator. The arbitral tribunal was not disqualified. At any event, Mr. S's right to reference the circumstances have been barred by preclusion because he did not object to statements of the same or similar nature when used during the hearings and in decisions long before the arbitration award was given, see the first paragraph of Section 10 and the second paragraph of

Section 34 of the Swedish Arbitration Act. Moreover, the arbitral tribunal informed the parties in its first "*Procedural Order*" on their obligation to object to any procedural errors during the arbitration.

The arbitral tribunal's statements concerning Mr. S's action have been factually correct, and also factually justified considering the parties' respective motions and arguments in respect of the costs of the arbitration and the wording of article 20.10 of the Charter. The statements cannot serve as grounds for disqualification. The arbitral tribunal was not disqualified.

At any event, Mr. S's right to rely upon the circumstances has been barred by preclusion because he did not object without delay after the decision of 8 February 2011 against statements of the same or similar nature.

The Respondents dispute that Mr. MB's statements during the hearings are of such nature that they could disqualify him from serving as arbitrator. None of the statements during the Zurich and Stockholm hearings imply any partiality against Mr. S on the part of the arbitral tribunal. Statements 1 and 3 (see p. 8 and 9) were aimed at Mr. S's American counsel Mr. AD, and politely describes that the chairman admires the counsel's enthusiasm and explains that the case is complicated.

Statement 2 (see p. 9) is aimed at Mr. S's Russian counsel Mr. VG, and was solely predicated on the fact that he spoke too quickly and not clearly enough so that the keeper of the minutes could not take appropriate notes.

Statement 4 (see p. 9) was a polite comment from the chairman Mr. MB in reference to the fact that Mr. S at the time of the hearing ran a hotel business. It was one of many examples of polite jokes on the part of the chairman. One example of other such comments is the below quote, aimed at one of the representatives of the city of St. Petersburg, who was present at the hearing;

"Thank you, Maria. A fair statement. Only one question: When can I fly to St. Petersburg and land in the new Pulkovo airport? When?"

Examples of the light mood during the hearing was that also Mr. S made some lighthearted statements during the hearing, see the dialogue below;

THE CHAIRMAN: "All right. Mr. [S], welcome once again."
MR. S: "Thank you, Dr. [D]. I appreciate the opportunity to testify here and I, more than that, appreciate the opportunity of being able to do it in shirt sleeves."
THE CHAIRMAN: "You can even --"
MR. S: "That's all right. I don't have to get that informal, but you now that all Americans are heat-sensitive".
THE CHAIRMAN: "Yes, indeed, we know."

Statements 5 and 6 are a comment from the chairman MB concerning Mr. S's enthusiasm in his opening statement.

There are also comments to the other participants in the arbitration which shows that the arbitral tribunal's comments were indeed not only aimed at Mr. S.

- Expert witness Mr. THC and his witness statement were described by the chairman as "*interesting and eloquent*".
- The chairman described one of the expert witnesses, Professor O, as follows;
  "Okay. Thank you so much. You gave a very eloquent, very interesting, very stimulating assessment. We could have listened to you up to midnight probably, but we are being thrown out in a couple of minutes."

The interpreter was given the following comment: "*Elizabeth, thank you so much for your translation. It was wonderful. You were a perfect translator.*"

The keeper of the minutes received the following comment: "*We have the most important person on the programme, Ms. M; she is providing the verbatim transcript of what is going to be discussed during this week.*"

The chairman interrupted the Respondents' counsel Mr. Sk with the following comment: "*Okay, look, we can read and understand this kind of basic text. We are not novices.*" and "*No, no, we are not misunderstanding. That is so basic, actually, we are a little bit losing time. That is so basic.*"

The chairman also commented the Respondents' counsel's line of questioning during witness statements with the comment; "*I really think, [O and L], on this we heard enough. But, okay, what else? Good questions only*" and the following comment; "*[O], look, we have even marked in yellow seven points in his witness statement. We know it. Unless he has something to add we understand this very well.*"

On one occasion during the witness statements, the Respondents' counsel requested a short recess to deliberate, but the chairman responded: "*No, we would like to finish. Because I don't think – really, [O], this is not a crucial issue. We have some important issues to deal with, we have an important witness, and these issues here are not crucial.*" see [*sic!*]

The arbitral tribunal was not disqualified. At any event, Mr. S's right to rely upon the circumstances has been barred by preclusion since he did not without delay after the decision of 8 February 2011 object against the relevant statements, or against statements of the same or similar nature, when they occurred at hearings and in decisions.

II. <u>The arbitral tribunal did not act inquisitorially without support in the arbitration agreement by introducing to the arbitration circumstances which had not been referenced by a party</u>

It is disputed that the Respondents would have adjusted their grounds in response to the arbitral tribunal's questionnaires of 29 November 2010 or 8 February 2011. The arbitral tribunal did not on its own initiative introduce any issue (or circumstance) to the arbitration. The question of whether the project had become a *still-born child* was entirely made relevant by the parties' positions and referenced circumstances. The fact that the project was more or less "dead" at the end of the 1990's had been maintained by the Respondents also prior to the arbitral tribunal's questionnaires and formed a key part of the Respondents' grounds from the very beginning of the arbitration. The Respondents did not adjust their grounds in response to the arbitral tribunal's questionnaires.

The arbitral tribunal's questionnaires formed part of active and appropriate guidance of the proceedings in order to clarify the parties' respective cases and did not influence the outcome of the arbitration. According to article 17(1) of the UNCITRAL Rules, the arbitral tribunal may, in line with the other provisions of the UNCITRAL Rules, including the requirement of impartiality, manage the proceedings as it deems appropriate. Similar questions were posed to Mr. S, whereupon the arbitral tribunal to the benefit of Mr. S introduced the locution *locus standi* without Mr. S raising any objection.

It is disputed that the alleged adjustment of the grounds by the Respondents would mean that any new circumstances were entered into the arbitration or that any excess of mandate and/or procedural error were committed by the arbitral tribunal. Further, the issue had no effect on the outcome of the arbitration. Moreover, this issue concerns the merits of the case and involves the application of the law, and cannot serve as grounds for a challenge.

At any event, Mr. S's right to rely upon the circumstances has been barred by preclusion because he did not without delay object against the questionnaires of the arbitral tribunal, which were provided at the beginning of the arbitration.

It is disputed that any new circumstances were introduced to the arbitration or that any excess of mandate and/or procedural error occurred through the reference to article 328.2 of the Russian Civil Code. In addition, this is issue concerns the merits and involves the application of the law, and cannot serve as grounds for a challenge. Moreover, the issue has been barred by preclusion. Further, the issue had not effect on the outcome of the arbitration.

It is disputed that Mr. AB would have introduced any new circumstances to the arbitration and/or exceeded his mandate and/or committed a procedural error by referring to articles 450.3 and 328.2 of the Russian Civil Code. In addition, this is issue concerns the merits and involves the application of the law, and cannot serve as grounds for a challenge. Moreover, the issue has been barred by preclusion. Further, the issue had not effect on the outcome of the arbitration.

The alleged circumstances do not support the assertion that the arbitral tribunal was not impartial.

III. The arbitral tribunal did not on its own initiative decide the issue whether Mr. S's exclusive rights would violate the contents of hypothetical Russian public procurement law

It is disputed that Mr. S had exclusive rights for the expansion of the Pulkovo airport by the construction of the new international passenger traffic terminal and it is disputed that such rights would have increased the value of the lease. Moreover, the issue had no effect on the outcome of the arbitration.

The application and review of hypothetical Russian law does not concern a procedural issue, but rather relates to the merits. The circumstance constituted neither an excess of mandate nor a procedural error which affected the outcome of the arbitration. At any event, Mr. S's right to reference the circumstance has been barred by preclusion, because he did not without delay raise any objection. The arbitral tribunal informed the parties on their obligation to raise objections against possible procedural errors during the arbitration in its first "*Procedural Order*". The reference to public procurement law was made already in the interim decision of 8 February 2011, and so Mr. S was aware thereof during the course of the arbitration.

Mr. S's objection against this issue is in fact not that the arbitral tribunal introduced any new *circumstance* that had not been referenced by a party, but rather that the arbitral tribunal on its own initiative has taken a *potential legal provision* into account that had not been referenced by a party.

This ground for the challenge does not constitute any excess of mandate or procedural error. It is evident from the arbitration award (paragraph 231) that the statement was made *obiter dictum* by the arbitral tribunal, and it is evident that the arbitral tribunal did not base its decision on it. Moreover, there is nothing that would indicate that the reference to Russian public procurement law would have had any effect on the outcome of the arbitration.

An arbitral tribunal is permitted to base its decision on a specific legal provision, even if it has not been referenced by a party. Consequently, this does not involve an error concerning the merits [*sic!*], i.e. incorrect application of the law, and cannot serve as grounds for challenge.

The arbitral tribunal's reference to Russian public procurement law did not entail any actual deviation from the legal argument presented by the Respondents.

IV. The arbitral tribunal did not fail to base its decision on undisputed factual circumstances nor did it base its decision on circumstances which had not been referenced by a party.

The alleged excess of mandate and/or procedural error relates to factual circumstances and evaluation of evidence, and not a procedural error.

The alleged undisputed circumstance is not undisputed. In the arbitration, the Respondents did not maintain that IAT Pulkovo at the time of the winding up in October of 2008 held any rights under the Lease and that the Lease was in effect at the time of the winding up. The Respondents maintained that the fact that the claimant had failed to fulfill his obligation as regards financing entailed that when the project fell through by the end of the 1990's there was no longer any project pursuant to which the Lease could have represented any value between the parties.

At any event, in its review the arbitral tribunal took the Lease into account as an asset of the company but concluded that Mr. S was not entitled to that possible value in the event of a winding up, for seven reasons set forth in six bullet points in paragraph 630 of the arbitration award. The main reasons were that the Foreign Parties had failed to fulfil their main obligation (to secure the financing of the project), that they had not contributed any value to IAT Pulkovo and because the shares in the company had not been duly issued (paragraphs 624-630 of the arbitration award).

Even if the Lease would have been valid, and if it would have represented any value, this would have had no impact on the outcome of the arbitration.

The alleged circumstance does not imply that the arbitral tribunal was partial.

V. The arbitral tribunal has not failed to review the grounds of Mr. S's claim for damages and/or has not based its decision in these respects on any circumstances which had not been referenced by a party.

The arbitral tribunal did review the issue of damages. The relevant circumstances concern the interpretation and assessment of the parties' agreement and application of principles governing tort law. This relates to the merits and cannot serve as grounds for a challenge. The circumstance did not constitute an excess of mandate or procedural error. At any event, the circumstance did not effect the outcome of the arbitration.

Because of the ambiguous framing of Mr. S's claim for damages, it became necessary to put a legal label on the various claims, e.g. his "Pre-Development Advance Claim". In paragraphs 118-120 of the arbitration award, the arbitral tribunal describes the claimant's claim and divides it into various categories, since they were of quite different nature, and entirely correctly described his "Pre-Development Advance Claim" "as a creditor". This changes nothing, and adds nothing, as compared to how Mr. S had worded his claims. Moreover, its does not render any particular provisions of the Russian Civil Code inapplicable.

In paragraphs 528-560 of the arbitration award, the arbitral tribunal provides a thorough discussion of Mr. S's alternative grounds, *inter alia* the claim for damages and the claim for compensation for expenses. Consequently, the arbitral tribunal has in fact reviewed all of Mr. S's motions and grounds, including the claim for damages and the claim for compensation for "pre-development costs".

In the arbitration award, the arbitral tribunal reviewed and concluded (a) that no breach of contract had occurred on the part of the Respondents (see, e.g., paragraphs 560-561, 693 of the arbitration award), (b) that there was no agreement between the parties under which the Russian parties were obliged to compensate Mr. S for "pre-development expenses" (see, e.g., paragraphs 547-559, 563-577 of the arbitration award). Thus, all of Mr. S's grounds for his "pre-development claim" were reviewed and taken into account in the arbitration award.

During the arbitration, Mr. S repeatedly asserted that he had an agreement or arrangement with the Russian parties that he should be compensated for his "pre-development expenses" and that they "could not have been considered a gift". The issue of compensation for expenses was even added to the loan proposal from EBRD, see, e.g., 526-546 of the arbitration award and paragraph 498 of the submission of 20 January 2010, i.e. the response question 15 – appendix 1 to CM-84, Mr. S "Pre-Hearing Brief on Liability issues" dated 13 October 2011. Thus, the arbitral tribunal has reviewed this claim on, amongst other things, the grounds that there would have been an agreement/arrangement with the Russian parties and Mr. S concerning compensation for expenses.

The issue of compensation for "pre-development expenses" versus compensation for breach of contract as grounds for a claim based on an agreement versus Russian law, was in fact raised and reviewed by the arbitral tribunal, see paragraphs 560-561, 687-689, 693, 698 of the arbitration award. Thus, the arbitral tribunal has reviewed all of Mr. S's referenced grounds for his compensation claims, and the arbitral tribunal has not based its decision on any circumstances which had not been referenced by a party.

Under Russian law the term "creditor" can be applied to a claim for compensation for "pre-development expenses" as well as a claim for compensation for breach of contract, see paragraph 172 of the arbitration award. The fact that the arbitral tribunal added the phrase "as a creditor" does therefore not in any way alter the grounds for Mr. S's claim for compensation for "pre-development expenditures".

In view of the fact that no breach of contract occurred on the part of the Russian parties (see, e.g., paragraphs 560-561, 693 of the arbitration award) under articles 393, 401 and 15 of the Russian Civil Code Mr. S's claim for compensation for "pre-development expenses" was not justified.

The arbitral tribunal clearly stated (paragraph 400 of the arbitration award) that the decision was based on, amongst others, articles 15, 393 and 401 of the Russian Civil Code, even if this was not set out in each individual paragraph.

Irrespective of any breach of contract would have occurred on the part of the Russian parties, the arbitral tribunal concluded that Mr. S's claim for "pre-development expenditures" had been barred by statute of limitations, see paragraphs 689 and 697 of the arbitration award. Consequently, the outcome of the issue concerning breach of contract or damages would not have been different if the arbitral tribunal would have applied the general principles set out in articles 393, 401 and 15 of the Russian Civil Code.

The arbitral tribunal was obliged to apply Russian law, applicable conventions and international law. Thus, the arbitral tribunal was obliged to apply rules of Russian and international law that it concluded were applicable. There was no obligation to apply any specific provision of Russian law, such as articles 393, 401 and 15 of the Russian Civil Code. The legal interpretation undertaken by the arbitral tribunal does not entail that any procedural error occurred.

The alleged circumstance does not imply that the arbitral tribunal was partial.

VI. The arbitral tribunal did not fail to review the grounds of Mr. S's claim for compensation for litigation costs and did not base its decision concerning costs on circumstances which had not been referenced by a party.

The alleged procedural error/excess of mandate concerns the interpretation of a provision of the parties' agreement. This concerns the merits, and cannot serve as grounds for a challenge.

The arbitral tribunal reviewed Mr. S's alternative motion and did therefore not exceed its mandate or commit any procedural error. In paragraphs 772-774 of the arbitration award, the arbitral tribunal has reviewed this issue. The arbitral tribunal concluded in paragraph 774 of the arbitration award that the provision referenced by Mr. S in this respect was not applicable and thereby reviewed the claimant's objection as regards the costs.

Article 20.10 of the Charter sets forth an explicit obligation for the arbitral tribunal to determine whether any party has acted in "bad faith" and in the present case, the arbitral tribunal concluded that Mr. S had acted in bad faith.

In addition to the above-mentioned conclusion, the arbitral tribunal concluded that the principle governing the allocation of litigation costs set forth in article 20.10 of the Charter was not applicable and it was consequently irrelevant whether IAT Pulkovo was a party in the arbitration, or whether the provision could be applied to the previous shareholders or not. This was the reason that the arbitral tribunal concluded that the issue of whether article 20.10 could be applied if IAT Pulkovo was a party in the arbitration or not in relation to the previous shareholders of IAT Pulkovo "could be left open", i.e. it was irrelevant because one of the parties had acted in bad faith.

At any event, the issue would not have had any effect on the outcome of the allocation of costs.

The arbitral tribunal's review of the grounds of the claim for compensation for litigation costs does not support the allegation that the arbitral tribunal was partial.

VII. The arbitral tribunal did not fail to review the dispute under Russian and international law.

These grounds for challenge appears to include an assertion of incorrect application of the law, which in fact relates to the merits of the case. There is no obligation for the arbitral tribunal to apply any specific provisions of Russian law, and any failure to do so cannot serve as grounds for a challenge.

The arbitral tribunal has, in relevant respects, reviewed the dispute under international law.

It is disputed that Russian law provides that "*... it is impossible to terminate an agreement, as the Respondents have, without becoming liable for the losses incurred by the other party*". In addition, this concerns the merits and involves the application of the law, and cannot serve as grounds for a challenge. Further, the issue did not affect the outcome of the arbitration.

There is nothing that would indicate that articles 393, 401 and 15 of the Russian Civil Code would lead to a different conclusion, since they are general rules concerning compensation for losses. Further, the arbitral tribunal rejected the action

on its merits, and so the issue of whether barring by statute of limitations had not occurred under any given legal system would not have affected the outcome of the arbitration.

The alleged circumstances do not imply that the arbitral tribunal was partial.

VIII. The arbitral tribunal has not incorrectly rejected Mr. S's motion for disclosure nor pressed him not to make another motion.

The alleged procedural error/excess of mandate concerns the merits of the case. The arbitral tribunal rejected the motion for disclosure correctly. The arbitration contained a substantial number of documents, and Mr. S allegations that more documents would have resulted in a different outcome is mere conjecture. Moreover, the majority of the documents covered by the motion for disclosure, e.g. company registrations, were already available to the claimant through the Russian Companies Register, and so a motion for disclosure was in these respects not necessary. The arbitral tribunal did not press Mr. S to not lodge another motion for disclosure. It is disputed that the arbitral tribunal rejected material aspects of Mr. S's action for lack of evidence. The alleged procedural error did not affect the outcome of the arbitration.

At any event, Mr. S's right to reference the alleged procedural error has been barred by preclusion. Mr. S was aware of the arbitral tribunal's decision to reject the motion for disclosure already on 8 February 2011, but he failed to object thereto in due time during the arbitration.

The alleged circumstance does not imply that the arbitral tribunal was partial.

5. THE INVESTIGATION

The parties have referenced oral as well as documentary evidence. As regards the oral evidence, Mr. S has referenced a witness statement by himself and also by attorneys AD, VG, and DH. Upon the Respondents' request, witness statements by attorney JW and Director BO have been taken.

6. GROUNDS

General starting points

The action at issue involves the annulment of an arbitration award due to, amongst other things, the assertion that one or several of the grounds set forth in items 2 or 6 of the first paragraph of Section 34 of the Swedish Arbitration Act are at hand, i.e. that the arbitrators have exceeded their mandate or that, without having been caused by the parties, a procedural error occurred which likely affected the outcome. Even if it is not explicitly set forth in the wording of the provision, case-law from the Courts of Appeal and jurisprudence has concluded that an excess of mandate which in no way affected the outcome arbitration award cannot entail the annulment thereof (see, e.g., judgment of Svea Court of Appeal of 25 June 2015 in case no. T 2289-14 with its references to case-law and jurisprudence).

The arbitral tribunal's mandate is determined by the arbitration agreement, possible arrangements between the parties and the parties' cases in the arbitration. At times, it can be difficult to determine what forms part of the mandate and whether certain procedural errors should be considered as excesses of mandate pursuant to item 2 or if they should be considered as procedural errors pursuant to the general provision of item 6 (see Lars Heuman, Skiljemannarätt, 1999 p. 605 f., and Lindskog, Skiljeförfarande. En kommentar, Zeteo, May 2016, the commentary to Section 34, section 4.2.3).

In NJA 2009 p. 128, the Supreme Court summarized its view of when a committed error should be considered an excess of mandate or a procedural error, and included references to preparatory works and jurisprudence. The Supreme Court also clarified the requirements posed on the grounds of the arbitration award. The Court stated:

> "The provision in item 2 of the first paragraph of Section 34 on excesses of mandate takes aim at the framing of the arbitral tribunal's review of the merits of the matter submitted for arbitration. An example of an excess of mandate is that the arbitral tribunal goes beyond the parties' motions, another is that it has based its decision on a circumstance which has not been referenced by a party (Government

Bill 1998/99:35 p. 145; cf., amongst others, Lindskog, Skiljeförfarande. En kommentar, 2005, p. 960 f.).

The parties can also by other means than motions and references limit the scope of the arbitral tribunal's review. For example, they can limit the arbitral tribunal's review to the application of a specific legal provision, or otherwise act to limit the scope of the review. Section 21 of the Swedish Arbitration Act provides that in these instances, the arbitral tribunal shall comply with the instructions of the parties, unless a deviation is justified. In the event that such a limiting instruction from the parties is disregarded, an excess of mandate has generally occurred (see Government Bill 1998/99:35 p. 146, cf., amongst others, Heuman, Skiljemannarätt, 1999, p. 616).

It is different for instructions that concern how the arbitration proceedings are to be carried out within the framing provided by arbitration agreement, motions, referenced circumstances and evidence. If the arbitral tribunal fails to comply with such instructions, it generally commits a procedural error under item 6 of the first paragraph of Section 34 of the Swedish Arbitration Act (see, e.g., Heuman, *op. cit.*, p. 652 f., and Lindskog, *op. cit.*, p. 965 f.). There could be several reasons underlying a provision in the arbitration agreement that the arbitration award shall contain grounds. The parties could also, in the absence of more detailed provisions on what the grounds should contain, have differing expectations on the arbitral tribunal's account of its reasoning. However, what the parties justifiably or not expect in respect of the grounds, and what could be considered generally accepted practices amongst arbitrators, must be separated from the issue of whether the arbitral tribunal's grounds are so insufficient as to cause grounds for challenge.

An account of sufficient grounds in an arbitration award is a safeguard of legal security, because it forces the arbitral tribunal to analyze the legal issues and evidence. However, the benefits of detailed grounds for the arbitration award must, as regards the issue of challengeability, be weighed against the interest of the finality of the arbitration award. A review of the merits of the arbitration award does not fall within the scope of challenge proceedings. In view of the foregoing, and since a qualitative review of the grounds would give rise to difficult questions on the limits of such reviews, only a total lack of grounds or grounds which having regard to the circumstances must be deemed so insufficient as to be equated to a complete lack of grounds could entail that a procedural error has occurred."

A prerequisite for some of the referenced challenge grounds to justify annulment is that Mr. S should not have lost the right to rely upon them in these proceedings pursuant to the second paragraph of Section 34 of the Swedish Arbitration Act. The relevant provision provides that a party in arbitration proceedings must have been active during the proceedings and have objected against circumstances and procedural measures with which the party disagrees in order to not lose the right to challenge. The purpose of the provision is to ensure that the arbitration award is a final and binding solution to the dispute between the parties (see, amongst others, Heuman, *op. cit.*, p. 287 f.). As soon as a party becomes aware of an error which could serve as grounds for a challenge, it must without delay object thereto in order to preserve the right to rely upon the grounds in challenge proceedings. The aforementioned applies irrespective of whether the arbitral tribunal can heal the error or not. The point in time when a party must object should generally be set to when the party became, or ought to have become, aware of the error. (See, *inter alia*, SOU 1994:81 p. 291 and Government Bill 1998/99:35 p. 236, Lindskog, *op. cit.*, section 6.1.5, footnote 247.)

The Court of Appeal's review of referenced grounds for the challenge

As the main grounds for his challenge, Mr. S has maintained that Mr. MB and/or Mr. AB have been partial, not only through various oral and written statements, but also upon a collective review of all circumstances referenced in the action at issue. For this reason, the Court of Appeal will review the first grounds for the challenge last.

II. Did the arbitral tribunal act inquisitorially without support in the arbitration agreement by introducing new circumstances to the arbitration which had not been referenced by a party?

On this issue, Mr. S has in sum maintained that the arbitral tribunal has, by posing questions to the parties, introduced new circumstances, which had not been referenced by the parties and which affected the outcome of the arbitration.

The Respondents have disputed all the above assertions, and maintained that Mr. S at any event has lost the right to reference the grounds because they have been

barred by preclusion, since the questions were posed already in the opening stages of the arbitration. Against this, Mr. S has objected that the relevance of the circumstances became known to him only through the arbitration award and that the arbitral tribunal's actions could not have been "healed" by way of an objection, since the damage to his case had already occurred.

A more detailed account of the parties' arguments is set forth in section 4.

First, the Court of Appeal will decide whether Mr. S has lost the right to rely upon the circumstances due to his passivity under the second paragraph of Section 34 of the Swedish Arbitration Act. Mr. S's own statements provide that he became aware of the now relevant circumstances through the questions set forth in Procedural Order No. 22 and Mr. AB's questions during the Zurich hearing, i.e. towards the end of 2010. Mr. S has not claimed anything other than that the objection was first raised in connection with the challenge of the arbitration award in July of 2012, i.e. one and a half years later. Therefore, the objection cannot be deemed to have been made without undue delay. Thus, it has been made too late. The fact that Mr. S during the arbitration did not understand the relevance that the now relevant questions could have for the outcome of the arbitration does not justify any other conclusion. This is the case, because in general the parties should assume that all questions, decisions or other measures relevant to the factual matters of the case taken by the arbitral tribunal could affect the outcome of the arbitration. The now relevant questions had a direct effect on the decision on the merits of the case. Nothing has been presented entailing that Mr. S, despite the aforementioned, should not have realized that they could affect the review of the case.

Therefore, Mr. S has lost the right to rely upon the now relevant circumstances. Thus, his challenge cannot be granted on these grounds.

Irrespective of the above conclusion, it is now justified, as a consequence of the subsequent review of challenge grounds I., to review whether the circumstances could have entailed the annulment of the arbitration award. In this respect, the Court of Appeal concludes that the questions posed by the arbitral tribunal were caused by the parties' respective cases and that the arbitral tribunal did not

introduce any new circumstances which had not been referenced by a party, albeit that the locution *still-born child* had not previously been used by a party. As clarified below, Russian law was, without limitations, applicable in the arbitration. The questions concerning the now disputed legal provisions did therefore not entail that the arbitral tribunal introduced new circumstances to the arbitration.

III. Did the arbitral tribunal on its own initiative decide whether Mr. S's exclusive rights could violate hypothetical provisions of Russian public procurement law?

In this respect, Mr. S has in sum maintained that the arbitral tribunal also in the arbitration award took into account the reasoning set forth in the interim decision of 8 February 2011 on the relevance of Russian public procurement law.

The Respondents have disputed that Mr. S's assertions entail that the arbitral tribunal considered circumstances which had not been referenced by a party, and have added that Mr. S at any event has lost the right to rely upon these grounds due to preclusion, since he was aware of the arbitral tribunal's reasoning already during the arbitration. Against this, Mr. S has objected that the relevance of the arbitral tribunal's reasoning became known to him only through the arbitration award.

A more detailed account of the parties' arguments is set forth in section 4.

First, the Court of Appeal will decide whether Mr. S has lost the right to rely upon the now relevant circumstance due to his passivity under the second paragraph of Section 34 of the Swedish Arbitration Act. For the reasons set forth under the preceding heading, also in respect of the now relevant issue does the Court of Appeal conclude that Mr. S no longer has justified grounds for his challenge, since he did not object against the reasoning already when it became known to him through the interim decision in February of 2011. Therefore, he has lost the right to reference the now relevant circumstances. Thus, his challenge cannot be granted on these grounds.

Irrespective of the above conclusion, it is now justified, as a consequence of the subsequent review of challenge grounds I., to review whether the circumstances

could have entailed the annulment of the arbitration award. In this respect, the Court of Appeal concludes that the arbitral tribunal's reasoning in its *obiter dictum* concerned the contents of Russian law and that the question thus concerned the application of the law (paragraphs 228-231). Therefore, the actions of the arbitral tribunal are not challengeable. Moreover, it has not been established that the reasoning had any effect for Mr. S's possible exclusive rights and thereby the outcome of the arbitration (see further under V. below).

IV. Did the arbitral tribunal fail to base its decision on undisputed factual circumstances, alternatively did the arbitral tribunal base its decision on circumstances which had not been referenced by a party?

Mr. S has maintained that the arbitral tribunal's conclusion that IAT Pulkovo had no assets when it was wound up entailed the arbitral tribunal's failure to take into account the undisputed circumstance that the Lease constituted an asset in IAT Pulkovo of a not immaterial value.

The respondents have disputed that the circumstance was undisputed, and have added that the arbitral tribunal at the very least considered the Lease as an asset, and that the issue of the agreement and its value did not affect the outcome of the arbitration.

A more detailed account of the parties' arguments is set forth in section 4.

The referenced documents do in fact establish that also the respondents considered the Lease an asset in IAT Pulkovo. However, the documents do not support the conclusion that the respondents during the arbitration considered that the agreement represented a not immaterial value at the time of the winding up of IAT Pulkovo. The referenced oral evidence does not support Mr. S's assertion in this respect, either. To the contrary, even Mr. S confirmed in his witness statement that the question of the value of the Lease was disputed, at least during the later stages of the arbitration.

Therefore, the Court of Appeal's conclusion is that Mr. S, against the denials of the respondents, has failed to establish the alleged grounds for his challenge. Therefore, the challenge cannot be granted on these grounds, either.

V. Did the arbitral tribunal fail to review the grounds of Mr. S's claim for damages and/or take circumstances which had not been referenced into account for its decision in this respect?

Mr. S has maintained that the arbitral tribunal failed to review the referenced grounds that the respondents had breached the agreement between the parties. According to him, the arbitral tribunal has instead reviewed whether there was a separate agreement between the parties which entitled a party to compensation and in this context failed to take the provisions of the Russian Civil Code which he had referenced into account.

The respondents have disputed that the arbitral tribunal failed to review Mr. S's grounds or that the arbitral tribunal took circumstances into account which had not been referenced by a party. The respondents have maintained, amongst other things, that Russian law, without limitations, was applicable to the dispute and that the contents thereof has been interpreted by the tribunal.

A more detailed account of the parties' arguments is set forth in section 4.

The grounds referenced in this respect by Mr. S are stated in the arbitration award in paragraphs 110-117. In the subsequent paragraphs 118-120 the arbitral tribunal provides a summary of those grounds. Of importance for the Court of Appeal's review in this respect is whether the arbitral tribunal's rewording of Mr. S's action in paragraph 119, particularly the first sub-item, entailed that the arbitral tribunal had understood Mr. S's grounds in a way differing from what Mr. S actually had argued, and thereby failed to review his grounds and the provisions of the Russian Civil Code to which he referred.

In his witness statement, Mr. S has summarized his case in the arbitration as follows. His claims concerned damages for breach of contract as a result of the Russian parties having excluded him from the construction of the new airport in St.

Petersburg. Moreover, during the years 1996-2000 he incurred costs for investments in IAT Pulkovo. Mr. DH has in his witness statement and in his written witness statement confirmed Mr. S's description of the grounds for his action and added that the breach of contract occurred in 2007.

The respondents have objected that the description of Mr. S's action provided by the arbitral tribunal in paragraphs 118-120 is correct and that the term "creditor" is a correct description of Mr. S's role in the arbitration under Russian law. In support of this opinion they have referenced a legal opinion and witness statement from Mr. BK. Mr. BK, who according to a referenced CV holds a degree from a law school in Russia, has stated that the term "creditor" under article 307 of the Russian Civil Code means anyone, who holds a claim of any kind against anyone else, a "debtor".

In this context, the respondents have also pointed out that the arbitral tribunal reviewed Mr. S's action against the background of their objection that there was no agreement which entitled to damages for alleged breach of contract during 2007 and that no separate agreement entitling Mr. S to compensation for development costs (see paragraphs 474-481 of the arbitration award).

In view of what has been established concerning the contents of Russian law, particularly as regards the term "creditor", the Court of Appeal disagrees with Mr. S's opinion, specifically that the arbitral tribunal by ascribing him the role as "creditor" would have adjusted his case to concern something different than he had referenced in his request for arbitration and subsequent supplements.

A number of paragraphs of the arbitration award establishes that the arbitral tribunal has in fact reviewed Mr. S's referenced grounds for his claim. In the section where Mr. S's claim for compensation for development costs is reviewed, the arbitral tribunal provides the following general statement: "Having reached the conclusion that the Russian Parties could not be blamed for not having accepted the EBRD financing proposal, and that they were indeed free to do so on the basis of the contractual documents, no violation of a contractual obligation could be affirmed, nor a liability in tort, nor a liability in the sense of *culpa in contrahendo*." (paragraph 561). The arbitral tribunal returns to this conclusion when it deals with

the allocation of litigation costs (paragraphs 778-793). The other sections of the arbitration award to which the respondents have referred (see above) further provide that the arbitral tribunal's conclusion was not based on any circumstances which had not been referenced in the arbitration.

Finally, as regards the issue of whether the arbitral tribunal took other legal provisions into account than those referenced by Mr. S, nothing has been established to indicate otherwise than that Russian law, without limitations, was applicable to the parties' agreement. Thus, the arbitral tribunal was entitled as well as obliged to take into account all legal provisions that applied to the circumstances referenced by the parties.

In view of the foregoing, what remains is that Mr. S is discontent with the conclusion on the merits the arbitral tribunal reached, i.e. that no breach of contract occurred during 2007, since the respondents did not have any contractual obligations against Mr. S after the expiry of 1998 (see, amongst others, paragraph 587) of the arbitration award. The arbitral tribunal's review of the merits, whether correct or not, cannot entail the annulment of the arbitration award. Therefore, Mr. S's challenge cannot be granted on these grounds, either.

VI. Did the arbitral tribunal fail to review the grounds of Mr. S's claim for compensation for litigation costs in the arbitration and/or did the arbitral tribunal base its decision for the allocation of costs on circumstances which had not been referenced?

In sum, Mr. S has maintained that the arbitral tribunal has failed to decide whether article 20.10 of the Charter was applicable to the arbitration and thereby failed to decide on the grounds for his claim for compensation for litigation costs in the arbitration. The respondents have disputed the assertion. A more detailed account of the parties' assertions and objections on this issue are set out in section 4.

The arbitral tribunal's review of the cost issues is set out in paragraphs 768-793 of the arbitration award. In paragraph 775 the arbitral tribunal states: "However, this Tribunal cannot share Claimant's view, as explained below, after an introductory comment." Thereafter, the arbitral tribunal sets out under "Clear Text" the starting

points for its review of the cost issues. In view of the foregoing, the arbitral tribunal concludes that the arbitral tribunal did not fail to take the grounds referenced by Mr. S in support of his claim for compensation for litigation costs in the arbitration into account, nor did it base its decision on costs on circumstances which had not been referenced. As under the preceding heading, the Court of Appeal concludes that what remains is that Mr. S is discontent with the arbitral tribunal's conclusions on the merits, which cannot give cause to annul the arbitration award. Thus, his action cannot be granted on these grounds.

VII. Did the arbitral tribunal, in violation of the parties' agreement, fail to review the dispute in accordance with Russian and international law?

In sum, Mr. S has maintained that the arbitral tribunal has failed to apply certain provisions of the Russian Civil Code referenced by him, and that the arbitration award is not at all based on Russian or international law. The respondents have disputed this. A more detailed account of the parties' assertions and objections on this issue are set out in section 4.

In its review of challenge ground V, the Court of Appeal has concluded that the arbitral tribunal did apply Russian law to its decision. As regards the issue of whether the arbitral tribunal has applied international law, the Court of Appeal notes *that* the arbitral tribunal noted that international law is applicable (paragraph 107) and referenced *that* the parties had referred to several international arbitration awards (paragraph 402), and that it has explicitly referred to international law in its grounds (paragraph 792). Therefore, the Court of Appeal concludes that Mr. S's view is not supported, i.e. that the arbitral tribunal did not review the dispute in accordance with the legal systems agreed by the parties. It is true that the grounds of the arbitral tribunal are sparse in these respects, but they must nevertheless be deemed to meet the rather low requirements set by the Supreme Court (NJA 2009 p. 128).

What remains is to conclude that Mr. S is discontent with the arbitral tribunal's application of the legal systems agreed between the parties. As already mentioned by the Court of Appeal, any possible incorrect application by the arbitral tribunal of

legal provisions does not constitute challengeable excesses of mandate or procedural errors. Thus, Mr. S's action cannot be granted on these grounds, either.

VIII. Did the arbitral tribunal incorrectly reject Mr. S's motion for disclosure?

In sum, Mr. S has maintained that the arbitral tribunal's review of his motion for disclosure constitutes an excess of mandate or a procedural error which affected the outcome of the arbitration.

The respondents have disputed the merits of Mr. S's assertion, and have added that he at any event has lost the right to rely upon the circumstances due to preclusion, because he was aware of the now relevant circumstances during the arbitration. Against this Mr. S has objected that he did not become aware of the importance of the rejection until he read the arbitration award.

A more detailed account of the parties' assertions and objections on this issue is set out in section 4.

The Court of Appeal will first review whether Mr. S has lost the right to rely upon the circumstances due to his passivity under the second paragraph of Section 34 of the Swedish Arbitration Act. For the reasons set forth above under challenge ground II., the Court of Appeal also for this issue concludes that Mr. S no longer has a justifiable interest to be allowed to challenge the arbitration award, since he did not object to the arbitral tribunal's review of the motion for disclosure when he became aware thereof through the interim decision of February of 2011. Therefore, he has lost the right to rely upon the now relevant circumstances. Thus, his challenge cannot be granted on these grounds.

Irrespective of the above conclusion, it is now justified, as a consequence of the subsequent review of challenge grounds I, to review whether the circumstances could have entailed the annulment of the arbitration award. In this respect, the Court of Appeal concludes that even Mr. S's own statements clarify that the IBA's rules were not directly applicable to the arbitration. In addition, Mr. S has not established that the arbitral tribunal failed to comply with these rules. Finally, he has not established that the arbitral tribunal's application of the rules on disclosure

would have affected the outcome of the arbitration. Thus, no challengeable excess of mandate or procedural error has occurred.

I. Were Mr. MB of AB partial or disqualified from serving as arbitrators?

In sum, Mr. S has maintained that arbitrators MB and AB, through statements during the arbitration and in the arbitration award, have displayed partiality by way of a negative disposition as towards Mr. S's person and action, and were thereby disqualified from serving as arbitrators. In this respect, Mr. S has referenced particularly to the dissenting opinion of arbitrator PR. Further, Mr. S has maintained that the partiality of the arbitral tribunal is evident from all circumstances referenced in the action at issue, i.e. the above reviewed grounds for the challenge.

The respondents have disputed that the referenced statements show that the arbitral tribunal was partial and thus disqualified and has added that Mr. S's right to rely upon the circumstances at any event has been barred by preclusion, since he did not without delay object against the same or similar statements when used during the hearings and in the decisions that preceded the arbitration award. Against this Mr. S has objected that the implication of the statements was evident only through the arbitration award and that preclusion could not apply to statements made in the arbitration award.

A more detailed account of the parties' assertions and objections on this issue is set out in section 4.

First, the Court of Appeal will review whether Mr. S has lost the right to rely upon the relevant circumstances, wholly or partially, due to passivity pursuant to the second paragraph of Section 34 of the Swedish Arbitration Act.

As the Court of Appeal has already noted under the general starting points, the review of when a party must act against an error in order to preserve the right to reference the circumstance in challenge proceedings, must in general be determined based on when the party became, or ought to have become, aware of the error. As regards the now relevant circumstances, Mr. S has stated in his witness statement

that he during the arbitration perceived them as compliments of sorts and as the chairman's way of creating a good atmosphere. Only after the arbitration award, when he grasped the whole picture and read Mr. PR's dissenting opinion, did he conclude that what he had previously perceived as compliments were instead expressions of irony. The witness statement of Mr. JW has established that also the respondents got the impression that the chairman gave Mr. S sincere compliments during the arbitration, and that they perceived this as somewhat troublesome.

Even if the referenced circumstances were known to Mr. S already during the arbitration, neither the contents of the statements nor that, which has been established during the investigation concerning the circumstances of the time the statements were made support the conclusion that Mr. S already during the arbitration ought to have realized that the statements indicated an error and that he should object. Therefore, he has not lost the right to rely upon these circumstances. For this reason alone, he has not lost the right to reference the same or similar statements made in the arbitration award.

The Court of Appeal has above concluded that the reference grounds for the challenge II, III and VII have been barred by preclusion. This does not necessarily mean that they cannot be taken into account in a review of whether or not an arbitrator is disqualified (cf. Lindskog, *op. cit.*, in the commentary to Section 34, section 6.2.3, footnote 272). On this issue, the Court of Appeal concludes as follows. In respect of the now relevant issues and decisions by the arbitral tribunal, the Court of Appeal has concluded that Mr. S was aware thereof already during the arbitration, and that he then should have realized that the now alleged factual circumstances could constitute errors, at least in the form of excesses of mandate or procedural errors. However, the Court of Appeal concludes that the investigation does not support that Mr. S already then ought to have realized that they could in fact be due to the arbitral tribunal acting partially. The factual circumstances referenced under challenge grounds II, III and VIII shall therefore be taken into account also in the review of the now relevant challenge grounds.

In the review of the preceding challenge grounds (II-VIII), the Court of Appeal has concluded that Mr. S has failed to establish the alleged errors. Consequently, he has also failed to establish that the tribunal would have acted partially in these respects.

What remains to review is whether the arbitral tribunal through its statements and character evaluations during the arbitration and in the arbitration award acted partially. Irrespective of whether seen together or separately, the Court of Appeal concludes that they do not establish that Messrs. MB or AB would have acted partially to the detriment of Mr. S. The language used by the arbitral tribunal can justifiably be questioned, as it can easily be understood as an expression of such partiality, even if the purpose may have been different. The actual wording of the statements and what has been established during the witness statements concerning how the parties understood them during the arbitration indicate, as the Court of Appeal has concluded above, that they should not be understood as expressions of partiality against Mr. S. What has otherwise been presented, namely similar statements in the arbitration award and arbitrator PR's dissenting opinion, do not lead to a different conclusion.

Therefore, the Court of Appeal's conclusion is that Mr. S has not succeeded in establishing that the arbitral tribunal, Messrs. MB or AB have been partial. Thus, Mr. S's challenge cannot be granted on these grounds.

Summary

In sum, the Court of Appeal has concluded that Mr. S due to preclusion has lost his right to rely upon the grounds referenced under II, III and VIII, and has failed to establish the other grounds for his challenge. Thus, Mr. S's action shall be rejected.

Therefore, the default judgment given against Pulkovo Airport on 19 December 2014 shall be annulled.

Litigation costs

Upon the conclusion reached by the Court of Appeal, Mr. S shall, as the losing party, be ordered to compensate the respondents for their litigation costs pursuant to Section 1 of Chapter 18 of the Code of Judicial Procedure.

The respondents have claimed compensation for their litigation costs in a total amount of USD 898,342, of which USD 836,115 comprises costs for legal counsel and USD 62,227 relates to expenses. Mr. S has refused to attest the amount claimed for legal counsel. As regards expenses, he has attested the amount USD 17,583.

The starting point for a claim for compensation for litigation costs is Section 8 of Chapter 18 of the Code of Judicial Procedure. Thus, compensation shall be awarded for the preparation for the litigation as well as the actual defense in the court, including fees to legal counsel, provided, however, that the costs has been reasonably justified to protect the interests of the party. The nature and scope of the action shall be taken into account in this assessment. It is the claiming party who bears the burden to prove that the costs have been reasonably justified.

The Court of Appeal concludes as follows.

Fees for legal counsel

The invoice specification establishes that the claimed compensation covers fees to DLA Piper Rus Limited, DLA Nordic, Claes Rainer Advokatbyrå and Lundblad Svahn Advokatbyrå for the tasks specified therein. Mr. S has raised specific objections to the claim, including the scope of the work, change of counsel, and costs related to the preliminary issues that were relevant. In sum, he has argued that the claim for compensation for legal counsel appears as clearly unreasonable and should be adjusted downwards to a reasonable amount. The respondents have not commented on Mr. S's objections.

Initially, the Court of Appeal notes that the action at issue has not been entirely straight-forward. Mr. S has presented a multitude of challenge grounds which must be assumed to have caused not unsubstantial work on the respondents' side. The main hearing was carried out during five days, where both oral and documentary evidence was taken. The issues that arose during the course of the proceedings were also not straight-forward. The respondents are foreign legal entities and were represented by Swedish counsel in these proceedings, who was assisted by counsel in the respondents' country of domicile. The Court of Appeal concludes that the assisting counsel's work has been justified and that the respondents consequently

are entitled to compensation for its work. However, Mr. S cannot be held liable for the additional costs incurred as a result of the change of counsel for the respondents shortly before the commencement of the main hearing. Moreover, he is not liable to compensate the work spent on the motion for dismissal, which the Court of Appeal rejected on 14 July 2016, or the application for re-trial in respect of the default judgment against State Enterprise Pulkovo. Finally, the Court of Appeal notes that the respondents' invoice specification contains no specification of time spent on the various work tasks, and contains a very sparsely worded specification of the various work tasks.

In view of the foregoing, having regard to the nature and scope of these proceedings, the Court of Appeal concludes that the respondents shall be reasonably compensated by USD 557,410 for costs for legal counsel.

Expenses

Mr. S has objected to the respondents' claim for compensation for expenses for interpretation at the oral preparatory hearing before the Court of Appeal, Mr. BK's legal opinion, Mr. LK's costs to appear at the oral preparatory hearing as well as the main hearing and to Mr. SA's costs to appear at the main hearing.

The Court of Appeal has already concluded that the costs for the Russian legal counsel were reasonably justified to protect the interests of the respondents. As a result, also the costs for interpretation at the oral preparatory hearing have been reasonably justified.

Mr. S has maintained that the costs for Mr. BK's legal opinion is unreasonably high, and have referred to the lower cost for the legal opinion from Mr. DH, which Mr. S has referenced. Mr. BK's opinion concerned prominent issues in response to Mr. S's action. The opinion was relevant for the evaluation of evidence relevant in these proceedings. Having regard to these circumstances, and the nature and scope of the action, the Court of Appeal concludes that the claim for compensation is reasonable also in this respect. The fact that Mr. DH's opinion has incurred a lesser cost does not lead to a different conclusion.

Finally, as regards the cost for Mr. SA's appearance at the main hearing before the Court of Appeal (USD 1,926), the respondents have not clarified why his presence was required. Therefore, and against Mr. S's objection, this cost cannot be deemed to have been reasonably justified to protect the interests of the respondents in these proceedings. Thus, this portion of the claim for compensation shall be rejected.

Summary

In sum, Mr. S shall be ordered to compensate the respondents in a total amount of USD 617,711, of which USD 557,410 comprises costs for legal counsel and USD 60,310 expenses. Considering that the Committee of Property Relations of St. Petersburg has not presented a claim for compensation for its costs, the relevant amount shall be allocated among the remaining respondents according to the allocation set forth in the invoice.

Appeals

The second paragraph of Section 43 of the Swedish Arbitration Act provides that the judgment of the Court of Appeal may be appealed only if the Court finds that it is of importance for the development of case-law that an appeal is reviewed by the Supreme Court. The Court of Appeal finds no reason to grant leave to appeal.

The judgment of the Court of Appeal may not be appealed.

The decision has been made by: Judges of Appeal CS, MU (reporting) and GS.