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[COAT OF ARMS]

KYIV COURT OF APPEAL proceeding number No 2-vk/824/4/2020

unique case number 824/178/19

D E C I S I O N

I N T H E N A M E O F U K R A I N E

7 September 2020 Kyiv

Kyiv Court of Appeal

composed of: S.V.

Kulikova, presiding judge

(N.V. Osinchuk, Secretary)

having considered at a public session in Kyiv the application of Oleksandr Mykhailovych Denysenko, acting in the interests of VEB.RF State Development Corporation, for the recognition and enforcement of the award of the Emergency Arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce of 28 August 2019 in case No 2019/113 concerning the claim of VEB.RF State Development Corporation against the State of Ukraine (in the person of the Ministry of Justice of Ukraine) ordering interim measures,

f i n d s a s f o l l o w s :

The 28 August 2019 award of the Emergency Arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce (Stockholm, Sweden) ordered the State of Ukraine (in the person of the Chief Public Bailiff of the execution section of the State Enforcement Service Department of the Ministry of Justice of Ukraine) to halt the forced sale of shares of Prominvestbank PJSC, which are registered in the name of VEB.RF State Development Corporation, including in order to collect the debt of the Russian Federation under any arbitral or judicial decision, and to refrain from any equivalent actions with respect to the shares of Prominvestbank PJSC pending the Arbitral Tribunal's decision in its final arbitral award on whether such sale is contrary to international law.

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The State of Ukraine was ordered to pay VEB.RF State Development Corporation an application fee of EUR 4,000; the Emergency Arbitrator's fee of EUR 16,000; and the applicant's reasonable costs of legal services in connection with the application, which shall be subject to assessment unless agreed (Vol 1, pp 31-52).

Given that the debtor failed to voluntarily comply with this arbitral award, on 19 September 2019, the applicant applied to the Kyiv Court of Appeal for the recognition and enforcement of the award.

On 20 September 2019, the Kyiv Court of Appeal sent a copy of the application and annexes to the debtor's address and invited the Ministry of Justice of Ukraine to file its objections to the application within one month.

However, the debtor failed to submit any objections within the time limit fixed by the court.

By order of the judge of the Kyiv Court of Appeal of 30 October 2019, the application of VEB.RF State Development Corporation was appointed for hearing at the court's premises.

By order of 18 December 2019, the Kyiv Court of Appeal granted the request of the Ministry of Justice of Ukraine and stayed the proceedings in case No 824/178/19 on the application of Oleksandr Mykhailovych Denysenko (acting in the interests of VEB.RF State Development Corporation) for the recognition and enforcement of the 28 August 2019 award of the Emergency Arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce in case No 2019/113 concerning the claim of VEB.RF State Development Corporation against the State of Ukraine (in the person of the Ministry of Justice of Ukraine) ordering interim measures, pending consideration by the Arbitration Institute of the Chamber of Commerce of Stockholm (Sweden) of the application of the State of Ukraine (Respondent) for the annulment of the 28 August 2019 award of the Emergency Arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce in case No 2019/113.

By order of the Kyiv Court of Appeal of 6 March 2020, the stay of the proceedings was lifted due to the termination of the circumstances on which it was based.

At the hearing, the applicant's representative supported the application and requested that it be upheld.

The debtor's representative objected to the application.

After hearing the views of the hearing participants and examining the case record, the court concludes that the application must be refused for the following reasons.

The court has established that, on 27 November 1998, the Cabinet of Ministers of Ukraine and the Government of the Russian Federation signed the Agreement on encouragement and mutual protection of investments, which was ratified by Law of Ukraine No 1302-XIV On the ratification of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on encouragement and mutual protection of investments of 15 December 1999. Article 9 of the Agreement provides that, in case of any dispute between either Contracting Party and the investor of the other Contracting Party, which may arise in connection with investments, including disputes concerning the amount, conditions of and procedure for payment of compensation provided for in Article 5 of this Agreement, or the procedure for effecting a transfer of payments provided for in Article 7 of this Agreement, shall be notified in writing accompanied with detailed comments, which the investor shall

forward to the Contracting Party involved in the dispute. The parties to the dispute shall endeavour to settle such dispute by way of negotiations. If the dispute cannot be resolved through negotiations within six months from the date of the written notification referred to in paragraph 1 of this Article, the dispute shall be submitted, *inter alia*, to the Arbitration Institute of the Stockholm Chamber of Commerce.

On 14 September 2018, VEB.RF State Development Corporation sent a notice of dispute to Ukraine, in accordance with Article 9 of the Agreement.

On 21 August 2019, VEB.RF State Development Corporation applied to the Arbitration Institute of the Stockholm Chamber of Commerce for the appointment of an Emergency Arbitrator and a request for provisional measures before the submission of the dispute to an Arbitral Tribunal.

The 28 August 2019 decision of the Emergency Arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce ordered the State of Ukraine (in the person of the Chief Public Bailiff of the execution section of the Department of the State Enforcement Service of the Ministry of Justice of Ukraine) to halt the forced sale of shares of Prominvestbank PJSC registered in the name of VEB.RF State Development Corporation, including in order to collect the debt of the Russian Federation under any arbitral or judicial decision, and to refrain from any equivalent actions with respect to the shares of Prominvestbank PJSC pending the Arbitral Tribunal's decision in its final arbitral award on whether such sale is contrary to international law. The State of Ukraine was ordered to pay VEB.RF State Development Corporation an application fee of EUR 4,000; the Emergency Arbitrator's fee of EUR 16,000; and the applicant's reasonable costs of legal services in connection with the application, which shall be subject to assessment unless agreed (Vol 1 pp 31-52).

According to Article 9(1) of Appendix II to the SCC Arbitration Rules, the award shall remain unchanged and shall be binding on the parties, except as provided in Article 9(4) of Appendix II to the SCC Arbitration Rules (paragraph 1.6 of the award).

It is established that the debtor has failed to comply with the award voluntarily.

In view of this, the applicant requested the court to enforce the said foreign arbitral award.

The disputed legal relations in this dispute are regulated by the 1958 New York Convention on the Recognition and Enforcement of Foreign [Arbitral] Awards ratified by Ukraine on 10 August 1960, the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce which entered into force for Ukraine on 7 June 1959, the Agreement on encouragement and mutual protection of investments, which was ratified by Law of Ukraine No 1302-XIV On the ratification of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on encouragement and mutual protection of investments of 15 December 1999.

According to Article V(1) of the 1958 New York Convention on the Recognition and Enforcement of Foreign [Arbitral] Awards, recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

- The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

- The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.

Furthermore, in accordance with paragraph 2 of the same Convention Article, recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that the recognition or enforcement of the award would be contrary to the public policy of that country.

In accordance with Article 478 of the Civil Procedure Code of Ukraine the court shall refuse to recognise and enforce an international arbitral award if: 1) at the request of the party against whom the award was issued, if [*sic*] that party furnishes to the court proof that: a) one of the parties to the arbitration agreement was under some incapacity; or such agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or b) the party against whom the award was made was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was, for other valid reasons, unable to present its position; or c) the award deals with a dispute not contemplated by the arbitration agreement or a dispute not falling within its terms, or contains decisions on matters outside the scope of the arbitration agreement; provided that, if the decisions on matters covered by the arbitration agreement can be separated from those not covered by the agreement, that part of the award which contains decisions on matters covered by the arbitration agreement may be recognised and enforced; or d) the composition of the international commercial arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, absent such agreement, was not in accordance with the law of the country where the arbitration took place; or e) the award has not yet become binding on the parties, or has been set aside, or its execution has been suspended by a court of the country in which, or under the law of which, that award was made; or 2) if the court finds that: a) the law provides that the dispute may not be referred to international commercial arbitration in view of its subject matter; or b) the recognition and enforcement of such award would be contrary to the public order of Ukraine.

Specifically, the Ministry of Justice of Ukraine, which represents the State of Ukraine in the dispute, objected to the application of VEB.RF State Development Corporation, alleging grounds for it as laid down in Article 478 of the Civil Procedure Code of Ukraine.

Specifically, as a ground to refuse the application, the Ministry of Justice of Ukraine indicated that the Emergency Arbitrator award was made in a dispute that does not fall within the terms of the arbitration agreement (lack of jurisdiction of the Emergency Arbitrator).

In examining these arguments, the Court notes the following.

The arbitration agreement in investor-State arbitration proceedings consists of:

- the provisions of a bilateral or multilateral international agreement on the promotion and mutual protection of foreign investment, the terms of which contain a public offer of a contracting (host)

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State addressed to an indefinite number of foreign investors of another contracting State to submit to an arbitral tribunal disputes arising out of the provisions of such international agreement between the (host) Contracting State and an investor of another Contracting State concerning the protection of its investments in the territory of the host State: - the acceptance of that offer by an investor of the other Contracting State, which crystallises in the request for arbitration submitted to the arbitral tribunal.

According to this rule, the offer of the State of Ukraine to submit the dispute with an investor of the Russian Federation concerning its investments in Ukraine is limited by the conditions set out in the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on encouragement and mutual protection of investments of 12 December 1999 ratified by the Law of Ukraine No 1302-XIV of 15 December 1999 (hereinafter - the BIT).

By ratifying the BIT, the State of Ukraine agreed to resolve disputes with Russian investors under the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (hereinafter - the Arbitration Rules).

The version of the Arbitration Rules, in force at the time when the BIT was concluded (Arbitration Rules 1999) did not provide for a procedure for appointing an emergency arbitrator. By contrast, the procedure for appointing an emergency arbitrator was only provided in the 2010 version of the Arbitration Rules, i.e., 10 years after Ukraine gave its consent to resolve disputes in accordance with the said Arbitration Rules.

Since 1999, the State of Ukraine has agreed to apply the Arbitration Rules in only four instances of concluding bilateral and multilateral agreements on the promotion and mutual protection of foreign investments, namely: the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on encouragement and mutual protection of investments of 1999 December, ratified by Law of Ukraine No 1302-XIV of 15 December 1999; the Agreement between the Government of Ukraine and the Belgian-Luxembourg Economic Union on mutual promotion and protection of investments ratified by Law of Ukraine No 118/97-VR of 26 February 1997; the Agreement between the Government of Ukraine and the Government of the People's Republic of China on the promotion and mutual protection of investments, entered into force on 30 May 1993; The Energy Charter Treaty and Final Act, ratified by Law of Ukraine No 89/98-VR (89/98-VR) of 6 February 1998.

Ukraine did not, however, agree to the application of the 2017 version of the Arbitration Rules in disputes to which it is party.

Thus, the emergency arbitrator did not have jurisdiction to rule against the State of Ukraine in this case.

Therefore, the court agrees with the arguments of the Ministry of Justice of Ukraine that the Emergency Arbitrator award was made in a dispute that does not fall within the terms of the arbitration agreement (lack of jurisdiction of the Emergency Arbitrator).

In addition, the norms of international legal acts must be applied in the versions in force at the time of their ratification and recognition by Ukraine.

However, the emergency arbitration procedure and appointment of the emergency arbitrator was governed by the 2017 Arbitration Rules, even though Law of Ukraine No 1302-XIV On the ratification of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the

Russian Federation on encouragement and mutual protection of investments was adopted on 15 December 1999.

As another ground to refuse the application, the Ministry of Justice of Ukraine pointed out that the State of Ukraine (against which the decision was made) was, for good reasons, unable to provide its comments (violation of due process). The court considers that in the course of the review of the application for the recognition and enforcement of the Emergency Arbitrator Award, such arguments have been confirmed for the following reasons.

It follows from the Emergency Arbitrator award that the claimant applied for an Emergency Arbitrator appointment on 21 August 2019. On the same day, the SCC Secretariat confirmed in writing to the applicant the receipt of the application and the payment of the costs of the Emergency Arbitrator Proceedings. The SCC Secretariat informed the Respondent that it had received the Application. Both Parties were informed that the SCC Board would endeavour to appoint an Emergency Arbitrator within 24 hours. By letter dated 22 August 2019, received by e-mail at 09:23 (London time), the SCC Board appointed Joe Tirado as Emergency Arbitrator in the above-mentioned emergency proceedings.

The above shows that the emergency arbitrator received the application on Thursday, 22 August 2019; pursuant to the Arbitration Rules, the award was thus to be issued within five days, by 27 August 2019.

In accordance with due legal process, the State of Ukraine is entitled to provide its comments concerning the issue brought for decision before the Emergency Arbitrator.

However, Saturday 24 August 2019 fell on a national holiday in Ukraine (Independence Day). As a result, Monday 26 August 2019 was a non-working day.

Thus, of the five days that the State had available to prepare its legal position, three fell on non-working days in Ukraine.

In view of the above, the *court concludes that* ***the State of Ukraine was deprived of the opportunity to state its detailed position in the case for reasons that in no way depended on it and could not be eliminated by it.***

Furthermore, when considering the application for the recognition and enforcement of the Emergency Arbitrator award, the court established that the recognition and enforcement of such award would be contrary to the public order (public policy) of Ukraine.

According to the explanations set out in paragraph 12 of Resolution No 12 of the Plenum of the Supreme Court of Ukraine of 24 December 1999 On judicial practice with respect to applications for recognition and enforcement of foreign arbitral and judicial decisions and annulment of decisions rendered by way of international commercial arbitration in the territory of Ukraine, “public order” means the legal order of a State, and the defining principles and foundations which form the basis of the system that exists in the State (in particular, concerning its independence, integrity, sovereignty and inviolability, basic constitutional rights, freedoms, guarantees, etc.).

Furthermore, in accordance with Article 12 of the Law of Ukraine On Private International Law, a rule of

law of a foreign State shall not be applied when its application leads to consequences that are manifestly incompatible with the foundations of the legal order (public policy) of Ukraine.

In defining the content of this concept, account should be taken of the recommendations of the International Law Association on Public Policy adopted in 2002 in New Delhi, which states that the finality of awards rendered in the context of international commercial arbitration should be respected save in exceptional circumstances

Such exceptional circumstances may in particular be found to exist if recognition or enforcement of the international arbitral award would contravene international public policy. According to paragraph 1(d) of these recommendations, international public policy of any State includes: (i) fundamental principles, pertaining to justice or morality that the State wishes to protect even when it is not directly concerned (ii) rules designed to serve the essential political, social or economic interests of the State, these being known as “lois de police” or “public policy rules” and (iii) the duty of the State to respect its obligations towards other States or international organisations.

Public order will be violated if the recognition and enforcement of a decision of a foreign arbitral tribunal in a specific case conflicts with national norms to an extent that would be unacceptable under the national principles of the legal order.

The Emergency Arbitrator Award, which orders the state to suspend enforcement actions in enforcement proceedings under enforcement order No 796/165/2018 issued on 19 February 2019 by the Kyiv Court of Appeal concerning the execution of the award of the Arbitral Tribunal (The Hague, Kingdom of the Netherlands) dated 2 May 2018 in PCA Case No 2015-36 concerning the claim of Everest Estate LLC and others contradicts the public order of Ukraine.

Specifically, the court has established that the award of the Arbitral Tribunal (The Hague, Kingdom of the Netherlands) of 2 May 2018 in PCA case No 2015-36 concerning the recovery from the debtor – the Russian Federation in the person of the Ministry of Finance of the Russian Federation – as compensation for the relevant immovable property established that the respondent had unlawfully expropriated the claimants’ property contrary to Article 5 of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on the promotion and mutual protection of investments of 27 November 1998. According to para b) of the Award, the Claimants were awarded as compensation for their respective immovables the amounts listed below:

i. Everest Estate LLC: USD 8,454,596, with interest accrued from 3 September 2014;

ii. Edelweiss-2000 PE: USD 35,767,393, with interest accrued from 3 September 2014;

iii. Fortuna PJSC: USD 16,980,281, with interest accrued from 3 September 2014;

iv. UBK-Invest PJSC: USD 5,248,483, with interest accrued from 3 September 2014;

v. Niva-Tour LLC: USD 12,127,235, with interest accrued from 3 September 2014;

vi. Imme LLC: USD 356,070, with interest accrued from 3 September 2014;

vii. Planeta PE: USD 272,555, with interest accrued from 3 September 2014;

viii Krim Development LLC: USD 319,319, with interest accrued from 3 September 2014;

ix. Aerobud PJSC: (a) USD 817,150, with interest accrued from 3 September 2014; and (a) USD 257,999, with interest accrued from 9 September 2014;

x. Privatoffice LLC: USD 3,768,461, with interest accrued from 3 September 2014;

xi. Dayris LLC and Privatland LLC jointly: USD 5,062,435, with interest accrued from 3 September 2014;

xii. Diline Ltd LLC: (a) USD 2,165,754, with interest accrued from 3 September 2014; and(b) USD 1,176,219, with interest accrued from 27 February 2015;

xiii. Zhisa TRC LLC: USD 368,576, with interest accrued from 3 September 2014;

xiv. Dan-Panorama LLC: USD 5,715,827, with interest accrued from 24 September 2014;

xv. Sanatorium Energetic LLC: USD 10,920,929, with interest accrued from 24 September 2014;

xvi. Financial Capital AMC LLC: USD 15,463,757 (for Capital Investments MVIF) and 226,311 (For the New Fund MVIF),, with interest accrued from 3 September 2014;

xvii. FINANCIAL VECTOR AMC LLC (for D-Capital Plus MVIF): USD 3,967,724, with interest accrued from 3 September 2014; and

xviii. Mr PERSON_2: USD 1,049,288, with interest accrued from 3 September 2014;

(c) Each of the claimants was awarded a corresponding share of the claimants' costs totalling USD 8,583,110.02.

d) Each of the claimants was awarded a corresponding share of the Tribunal and SCC costs totalling EUR 650,000.

(e) The claimants were awarded: (i) interest on all amounts awarded at the annual 12-month LIBOR rate plus one percent compounded annually; (ii) the initial rate shall be the 12-month LIBOR rate in effect on the last business day of the month preceding the date of this Arbitral Award plus one percent, this rate to be reviewed annually until full payment of the amounts awarded; (iii) for the amounts awarded as compensation for expropriation, interest shall accrue from the date of the expropriation (as referred to in paragraph (b) above); and (iv) for amounts awarded in paragraphs (c) and (d) above, interest shall accrue from the date of this Arbitration Award.

All other claims were dismissed.

In July 2018, Everest Estate Limited Liability Company, Edelweiss-2000 Private enterprise, Fortuna Private Joint Stock Company, UKB Invest Private Joint Stock Company, Niva-Tour Limited Liability Company, Imme Limited Liability Company, Planeta Private enterprise, Krim Development Limited Liability Company, Aerobud Private Joint Stock Company, Privatoffice Limited Liability Company, Dayris Limited Liability Company, Diline LTD Liability Company, Zhisa TV and Radio Company

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Limited Liability Company, Privatland Limited Liability Company, Dan-Panorama Limited Liability Company with Foreign Investment Share, Sanatorium Energetic Limited Liability Company, FINANCIAL CAPITAL Asset Management Company Limited Liability Company, FINANCIAL VECTOR Asset Management Company Limited Liability Company and PERSON_1 applied to the Kyiv Court of Appeal for the recognition and enforcement of the award of the Arbitral Tribunal (The Hague, Kingdom of the Netherlands) of 2 May 2018 in PCA case No 2015-36 concerning the recovery from the debtor – the Russian Federation in the person of the Ministry of Finance of the Russian Federation – of amounts in compensation for the relevant immovable property.

In August 2018, the applicants in the above matter submitted an application for interim measures pursuant to Article 477(3) of the Civil Procedure Code of Ukraine.

On 5 September 2018, the Kyiv Court of Appeal granted to the application of Everest Estate LLC, Edelweiss-2000 PE, Fortuna PJSC, UBK-Invest PJSC, Niva-Tour LLC, Imme LLC, Planeta PE, Krim Development LLC, Aerobud PJSC, Privatoffice LLC, Dayris LLC, Diline Ltd LLC, Zhisa TV and Radio Company Limited Liability Company, Privatland LLC, Dan-Panorama LLC with Foreign Investment Share, Sanatorium Energetic LLC, FINANCIAL CAPITAL Asset Management Company LLC, FINANCIAL VECTOR Asset Management Company LLC, and PERSON_1 for interim measures in the matter of the application of Everest Estate LLC, Edelweiss-2000 PE, Fortuna PJSC, UBK-Invest PJSC, Niva-Tour LLC, Imme LLC, Planeta PE, Krim Development LLC, Aerobud PJSC, Privatoffice LLC, Dayris LLC, Diline Ltd LLC, Zhisa TV and Radio Company LLC, Privatland LLC, Dan-Panorama LLC with Foreign Investment Share, Sanatorium Energetic LLC, FINANCIAL CAPITAL Asset Management Company LLC, FINANCIAL VECTOR Asset Management Company LLC, and PERSON_1 for the recognition and enforcement of the award of the Arbitral Tribunal (The Hague, Kingdom of the Netherlands) of 2 May 2018 in PCA case No 2015-36 concerning the recovery from the debtor – the Russian Federation in the person of the Ministry of Finance of the Russian Federation – of amounts in compensation for the relevant immovable property.

In particular, the court attached the ordinary registered shares of Prominvestbank PJSC (EDRPOU[1] code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) owned by the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN[2] 1077711000102).

INVINTUM LLC (EDRPOU code 38511128, address: 01133, Kyiv, Kutuzova st, bldg 18/7-B, room 79) was ordered to amend the depository accounting system with respect to the attachment of securities of PJSC Prominvestbank (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) owned by the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102) and registered on a securities account with a depository institution.

INVINTUM LLC (EDRPOU code 38511128, address: 01133, Kyiv, Kutuzova st, bldg 18/7-B, room 79) was prohibited from performing any accounting transactions on the securities account of the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102) opened in a depository

[1] Translator's note: Ukrainian legal entities identification code
[2] Translator's note: Russian legal entities identification code

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institution entailing a change in the number of securities of Prominvestbank PJSC (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) registered on a securities account and/or changes in title to securities registered on the securities account of the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102) including, but not limited to, securities write-off, transfer, and assignment operations on securities of Prominvestbank PJSC (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) for the purpose of crediting such securities to a securities account with the same depositor with a different depository institution, etc.

The depository institution holding the securities account of depositor Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102), containing the entries for the ordinary registered shares of Prominvestbank PJSC (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) was ordered to amend the depository accounting system with respect to the attachment of securities of Prominvestbank PJSC (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) owned by the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102) and registered on the securities account of the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102), and prohibited from performing any accounting transactions on the securities account of the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102), leading to a change in the number of securities of Prominvestbank Public Joint-Stock Company (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) on the securities account of the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102), and/or changes in title to securities of Prominvestbank PJSC (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) on the securities account of the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102), including, but not limited to, securities write-off, transfer, and assignment operations of Prominvestbank Public Joint-Stock Company (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) and registered on the securities account of the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102), from the securities account of the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102), for the purpose of such securities to the securities account of the same depositor in another depository institution.

National Depository of Ukraine PJSC (EDRPOU code 30370711, location 04107, Kyiv, Tropinina st, bldg 7-D) was ordered to send to the depository institutions that hold accounts registering the ordinary registered shares of Prominvestbank PJSC (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko

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Lane) notifications concerning the attachment of the ordinary registered shares on the securities account of the depositor of the Bank for Development and Foreign Economic Affairs State Corporation (Vnesheconombank), 9 Akademika Sakharova Ave, Moscow, 107996, Russian Federation, OGRN 1077711000102) accompanied by the court decision, and prohibited from undertaking any actions in relation to those securities.

The Joint-Stock Commercial Industrial and Investment Bank Public Joint-Stock Company (Prominvestbank PJSC) (EDRPOU code 00039002, registered address: Ukraine, 01001, Kyiv-I, 12 Shevchenko Lane) was prohibited from conducting a liquidation or reorganisation of the legal entity.

The Joint-Stock Commercial Industrial and Investment Bank Public Joint-Stock Company (Prominvestbank PJSC) (01001, Kyiv-1, 12, Shevchenko lane, EDRPOU code 00039002) was prohibited from carrying out any actions aimed at alienating the movable and immovable property in its ownership and or alienating any movable and immovable property in its ownership in any way, including, but not limited to, under contracts of sale, exchange, gift, etc.

By judgment of 25 January 2019, the Supreme Court amended the decision of the Kyiv Court of Appeal of 5 September 2018. The applications of Everest Estate LLC, Edelweiss-2000 PE, Fortuna PJSC, UBK-Invest PJSC, Niva-Tour LLC, Imme LLC, Planeta PE, Krim Development LLC, Aerobud PJSC, Privatoffice LLC, Dayris LLC, Diline Ltd LLC, Zhisa TV and Radio Company LLC, Privatland LLC, Dan-Panorama LLC with Foreign Investment Share, Sanatorium Energetic LLC, Financial Capital Asset Management Company LLC, Financial Vector Asset Management Company LLC, and PERSON_1 for interim measures were granted in part.

In particular, attachment was imposed on the ordinary registered shares of the Joint-Stock Commercial Industrial and Investment Bank Public Joint-Stock Company (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: 01001, Kyiv-1, 12 Shevchenko lane), belonging to the debtor, the Russian Federation.

The Joint-Stock Commercial Industrial and Investment Bank Public Joint-Stock Company (EDRPOU code 00039002, International Securities Identification Number UA 4000136329, registered address: 01001, Kyiv-1, 12 Shevchenko lane) was prohibited from carrying out any actions aimed at alienating the movable and immovable property belonging to the debtor, the Russian Federation, or alienating such property in any way.

Attachment was imposed on the ordinary registered shares of Sberbank Joint-Stock Company (EDRPOU code 25959784, International Securities Identification Number UA 1004171005, registered address: Ukraine, 01601, Kyiv, 46 Volodymyrska st) which belong to the debtor, the Russian Federation.

The decision of the Supreme Court is final and not subject to appeal.

In addition, the decision of the Kyiv Court of Appeal of 25 September 2019, granted the application of Everest Estate LLC, Edelweiss-2000 PE, Fortuna PJSC, UBK-Invest PJSC, Niva-Tour LLC, Imme LLC, Planeta PE, Krim Development LLC, Aerobud PJSC, Privatoffice LLC, Dayris LLC, Diline Ltd LLC, Zhisa TV and Radio Company Limited Liability Company, Privatland LLC, Dan-Panorama LLC with Foreign Investment Share, Sanatorium Energetic LLC, Asset Management Company FINANCIAL CAPITAL LLC, Asset Management Company FINANCIAL VECTOR LLC, and

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PERSON_1 for the recognition and enforcement of the award of the Arbitral Tribunal (The Hague, Kingdom of the Netherlands) of 2 May 2018 in PCA case No 2015-36.

There was issued an enforcement order for the execution of the award of the Arbitral Tribunal (The Hague, Kingdom of the Netherlands) of 2 May 2018 in PCA case No 2015-36 concerning the claim of Everest Estate LLC, Edelweiss-2000 PE, Fortuna PJSC, UBK-Invest PJSC, Niva-Tour LLC, Imme LLC, Planeta PE, Krim Development LLC, Aerobud PJSC, Privatoffice LLC, Dayris LLC, Diline Ltd LLC, Zhisa TV and Radio Company Limited Liability Company, Privatland LLC, Dan-Panorama LLC with Foreign Investment Share, Sanatorium Energetic LLC, Asset Management Company FINANCIAL CAPITAL LLC, Asset Management Company FINANCIAL VECTOR LLC, and PERSON_1 against the Russian Federation (in the person of the Ministry of Finance of the Russian Federation) for damages in compensation for the relevant immovable property.

Enforcement orders were issued to collect from the Russian Federation (in the person of the Ministry of Finance of the Russian Federation) in favour of the claimants the following amounts in accordance with the award of the Arbitral Tribunal (The Hague, Kingdom of the Netherlands) of 2 May 2018 in PCA case No 2015-36.

The Russian Federation (in the person of the Ministry of Finance of the Russian Federation) was ordered to pay to each claimant UAH 881.00 in court fees.

By judgment of 25 January 2019, the Supreme Court upheld the decision of the Kyiv Court of Appeal of 25 September 2018.

The decision of the Supreme Court is final and not subject to appeal.

Consequently, the recognition and enforcement of the Emergency Arbitrator award would jeopardise the rule of law and legal certainty by preventing the State from implementing the execution of the arbitral award of the Arbitral Tribunal (The Hague, Kingdom of the Netherlands) of 2 May 05 in PCA case No 2018-2015 concerning the claim of Everest Estate LLC and others against the Russian Federation in accordance with the obligations imposed on the State under the New York Convention.

At the same time, the binding force of a court decision was enshrined in the Constitution of Ukraine, specifically in Article 129, which stipulates that the binding nature of a court decision constitutes one of the principles of judicial proceedings.

In view of the above, the recognition and enforcement of the Arbitral Award is contrary to the public policy of the State of Ukraine, and these circumstances constitute grounds provided in Article V of the New York Convention to refuse the application.

Pursuant to subparagraph Article 478(1)(2)(b) of the Civil Procedure Code of Ukraine, the application for enforcement of an international commercial arbitration decision may be refused if the enforcement of the decision is contrary to the public order of Ukraine.

In summary, the court concludes that there are grounds as provided in Article 478 of the Civil Procedure Code of Ukraine to refuse the application of VEB.RF State Development Corporation for the recognition and enforcement of the award of the Emergency Arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce dated 28 August 2019 in Case No 2019/113.

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In accordance with Article 479(1) of the Civil Procedure Code of Ukraine, having considered the application for the recognition and enforcement of an international commercial arbitral award the court shall decide on the recognition and enforcement of an international commercial arbitral award or on a refusal to recognise and enforce an international commercial arbitral award pursuant to the rules laid down in the Code for the adoption of a decision.

For the above reasons, and based on Articles 35 and 36 of the Law of Ukraine On International Commercial Arbitration" and Articles 474-479 of the Civil Procedure Code of Ukraine, the court

d e c i d e s a s f o l l o w s:

the application of Oleksandr Mykhailovych Denysenko, acting in the interests of VEB.RF State Development Corporation, for the recognition and enforcement of the arbitral award of the Emergency Arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce dated 28 August 2019 in Case No 2019/113 concerning the claim of VEB.RF State Development Corporation against the State of Ukraine, in the person of the Ministry of Justice of Ukraine, ordering interim measures is refused.

The court's decision may be appealed to the Supreme Court within thirty days from the date of its issuance.

If only the introduction and dispositif of the decision were pronounced at the court's session, the above time period shall run from the date when the full text of the decision was drawn up.

If not challenged by way of appeal, the court's decision shall become final upon the expiry of the time limit for appeal.

If appealed, the decision shall become final after consideration by the appellate court.

The full text of the decision was drawn up on 14 September 2020.

Judge: