

GML's Energy Charter Treaty Claim against the Russian Federation

GML Ltd.

1. GML Ltd., formerly known as Group Menatep Ltd ("GML"), is a diversified financial holding company, established in 1997 by Mikhail Khodorkovsky – who gave up all his interests in GML and thus in Yukos Oil Company ("YUKOS") in 2005 – and others. GML at one time owned strategic stakes in a number of Russian companies, including a majority shareholding in YUKOS. It is incorporated and exists in accordance with the laws of Gibraltar.
2. GML through wholly owned subsidiaries was the majority shareholder in YUKOS. Prior to its illegal expropriation by the Russian Government, YUKOS was the largest privately owned energy company in Russia.
3. To seek redress, GML's shareholding subsidiaries, in early 2005, commenced arbitral proceedings against the Russian Federation under the terms of the Energy Charter Treaty for the unlawful and discriminatory expropriation without compensation of their investment in YUKOS.

The "YUKOS Affair"

4. YUKOS was once a leader in the field of emerging Russian companies, driving new standards of transparent corporate governance. Prior to its expropriation, it was the largest privately owned energy company in Russia. It was also, at one point, the fourth largest oil company in the world producing in excess of a million barrels of oil per day, or 2% of global oil production.
5. Beginning in 2003, the Russian Government instigated a campaign of expropriation against YUKOS, issuing bogus crippling tax demands by creating entirely new legal theories that were applied solely to YUKOS. No other company was subjected to the same treatment by the Russian authorities.
6. The Tax Ministry, acting in concert with the Russian courts, deliberately hindered the process of payment of tax demands by freezing YUKOS' bank accounts and assets. One of its acts of expropriation was to seize YUKOS' core production asset, Yuganskneftegaz, a process in itself a contravention of Russian law.
7. In December 2004, Yuganskneftegaz was sold at a rigged auction to a front company, BaikalFinanceGroup which was funded by Russian government-owned and -controlled banks, and, shortly after the auction, acquired by state-owned Rosneft. By threatening Yuganskneftegaz's production licenses and manufacturing new tax claims against Yuganskneftegaz itself, the auction price was artificially lowered whilst genuine third party purchasers were discouraged.
8. In March 2006, a consortium of Western banks acting at the behest of Rosneft forced YUKOS into temporary receivership. The receivership was made permanent in August 2006 despite proposals put forward by the management, which clearly showed that YUKOS' assets exceeded its liabilities and that it could survive.
9. Throughout 2007, the Russian court-appointed receiver sold YUKOS' assets at a series of auctions with major oil producing assets sold at prices substantially below market-value to state-owned Rosneft. The auctions were widely perceived as rigged.
10. The proceeds from the forced sales of YUKOS assets were taken by the Russian Government to pay the manufactured tax bills. YUKOS' shareholders received no compensation.

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11. GML's shareholding subsidiaries commenced arbitral proceedings against the Russian Federation in early 2005 for the unlawful and discriminatory expropriation without compensation of their investment in YUKOS. It is the largest investment arbitration claim ever filed. Damages were claimed in excess of US\$100 billion.
12. Their claims were launched under the Energy Charter Treaty ("ECT") and were heard by an independent Arbitral Tribunal sitting in The Hague under the auspices of the Permanent Court of Arbitration. The Russian Federation played a full and active part in the proceedings. In particular, representatives and counsel of the Russian Federation attended and participated fully in the hearings, submitted evidence in a timely manner and cross-examined witnesses.
13. In November 2009, the Arbitral Tribunal issued interim awards unanimously confirming that GML's subsidiaries are protected Investors under the ECT and that the claim for damages could proceed on its merits. Crucially, the

Tribunal also ruled, again unanimously, that Russia was fully bound by the ECT, until its formal withdrawal from provisional application of the Treaty took effect on 19 October 2009 for new investments in Russia.

14. GML's shareholding subsidiaries were required to prove their case at hearings on the merits which took place in October and November 2012. The Final Award was rendered in July 2014.
15. GML expects Russia to accept the Final Award and meet its legal obligations under the award. It is not expected that Russia will default on the Final Award, given its full engagement with the arbitration process. However, should it do so, the Award will be enforceable under the terms of the New York Convention against any non-sovereign Russian Federation assets in any of the 150 Convention countries – effectively anywhere in the world – that GML can identify and attach.

The Importance of a Rule-of-Law Based Energy Relationship with Russia

16. The experience of YUKOS' shareholders demonstrates the importance of a legally binding framework with a neutral and enforceable dispute resolution mechanism to govern energy relations with Russia. Since Russia's withdrawal from the ECT, no multilateral legally binding investment protection mechanism for investments into the Russian energy sector exists for investments made after October 2009. Without the ECT, GML would never have been able to confront Russia over the expropriation of YUKOS' assets with any hope of success.
17. This is highlighted by the experience of minority shareholders of YUKOS in the United States who have not been able to pursue compensation in an independent forum because the US is not a signatory to the ECT, has no binding BIT with Russia and its courts cannot hear a claim because of sovereign immunity. Their sole remedy was to request the State Department to "espouse" the claim to their Russian counterparts.
18. The US "Russia and Moldova Jackson-Vanik Repeal and Magnitsky Rule of Law Accountability Act of 2012" requires the US Trade Representative and the Secretary of State to report annually on what measures they have taken during the relevant year "advocating for US investors in the Russian Federation, including by promoting the claims of the US investors in Yukos Oil Company". This is a de facto recognition by the US Government that the Russian Federation expropriated YUKOS.
19. The Russian Federation is the largest global producer of gas and holds the world's largest gas reserves. Approximately 35% of EU gas supplies and approximately 34% of EU crude oil supplies originate from Russia¹. However, Russia needs significant foreign investment and expertise to develop new and existing fields in order to compete on the global energy market.
20. In order to stimulate trade ties and attract investment, Russia must demonstrate it is fully committed to international treaties aimed at protecting foreign investments from arbitrary nationalisation and sudden termination. Western governments should insist that the Russian Federation sign up to a legally binding multilateral investment protection mechanism such as the ECT to ensure investment reciprocity.
21. Russia is a member of the World Trade Organisation ("WTO") and is looking to join other rules-based organisations such as the Organisation for Economic Co-operation and Development ("OECD"). It is therefore increasingly important that Russia demonstrates a willingness to accept and abide by international decisions and thus embrace the rule of law, at least at the international level.

¹ European Commission, DG TREN, Energy Pocket Book, 2012