No. 21-518

IN THE

Supreme Court of the United States

ALIXPARTNERS, LLP, *et al.*,

Petitioners,

v.

THE FUND FOR PROTECTION OF INVESTOR RIGHTS IN FOREIGN STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED OCTOBER 5, 2021
CERTIORARI GRANTED DECEMBER 10, 2021

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APPENDIX A — RELEVANT DOCKET ENTRIES

RELEVANT DOCKET ENTRIES FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, NO. 20-2653

Date Filed	#	Docket Text
08/07/2020	1	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant AlixPartners, LLP and Simon Freakley, FILED. [2905121] [20-2653] [Entered: 08/11/2020 12:07 PM]
08/07/2020	2	DISTRICT COURT ORDER, dated 07/08/2020, RECEIVED.[2905123] [20-2653] [Entered: 08/11/2020 12:09 PM]
08/07/2020	3	PAYMENT OF DOCKETING FEE, on behalf of Appellant AlixPartners, LLP and Simon Freakley, district court receipt # ANYSDC-21049340, FILED.[2905125] [20-2653] [Entered: 08/11/2020 12:10 PM]
08/07/2020	4	ELECTRONIC INDEX, in lieu of record, FILED.[2905126] [20-2653] [Entered: 08/11/2020 12:11 PM]

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09/08/2020	32	AMENDED NOTICE OF APPEAL, with copy of district court docket, on behalf of Appellant AlixPartners, LLP and Simon Freakley, FILED. [2928015] [20-2653] [Entered: 09/10/2020 02:57 PM]
09/08/2020	33	DISTRICT COURT ORDER, dated 08/25/2020, RECEIVED.[2928017] [20-2653] [Entered: 09/10/2020 02:58 PM]
09/08/2020	34	FIRST SUPPLEMENTAL ELECTRONIC INDEX, in lieu of record, FILED.[2928019] [20-2653] [Entered: 09/10/2020 02:59 PM]
		***
10/30/2020	37	BRIEF & SPECIAL APPENDIX, on behalf of Appellant AlixPartners, LLP and Simon Freakley, FILED. Service date 10/30/2020 by CM/ECF. [2964774] [20-2653] [Entered: 10/30/2020 03:37 PM]
10/30/2020	38	JOINT APPENDIX, volume 1 of 2, (pp. 1-144), on behalf of Appellant AlixPartners, LLP and Simon Freakley, FILED. Service date 10/30/2020 by CM/ECF.[2964784] [20-2653] [Entered: 10/30/2020 03:39 PM]

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10/30/2020	39	JOINT APPENDIX, volume 2 of 2, (pp. 145-304), on behalf of Appellant AlixPartners, LLP and Simon Freakley, FILED. Service date 10/30/2020 by CM/ECF.[2964787] [20-2653] [Entered: 10/30/2020 03:41 PM]

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11/30/2020	54	BRIEF, on behalf of Appellee The Application of the Fund for Protection of Investor Rights in Foreign States pursuant to 28 USC 1782 for an Order granting leave to Obtain Discovery for use in a Foreign Proceeding, FILED. Service date 11/30/2020 by CM/ECF. [2983323] [20-2653] [Entered: 11/30/2020 03:51 PM]

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12/21/2020	62	REPLY BRIEF, on behalf of Appellant AlixPartners, LLP and Simon Freakley, FILED. Service date12/21/2020 by CM/ ECF. [2997951] [20-2653] [Entered: 12/21/2020 02:14 PM]

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04/15/2021	75	CASE, before JAC, RSP, JFB, HEARD.[3081825] [20-2653] [Entered: 04/20/2021 03:16 PM]
		***
07/15/2021	77	OPINION, affirming the district court orders, by JAC, RSP, JFB, FILED.[3138142] [20-2653] [Entered: 07/15/2021 09:12 AM]
07/15/2021	82	JUDGMENT, FILED.[3138637] [20-2653] [Entered: 07/15/2021 01:49 PM]
		***
09/17/2021	89	JUDGMENT MANDATE, ISSUED. [3175721] [20-2653] [Entered: 09/17/2021 12:12 PM]
09/17/2021	90	MOTION, to recall mandate, to stay mandate, on behalf of Appellant AlixPartners, LLP and Simon Freakley, FILED. Service date 09/17/2021 by CM/ECF. [3175899] [20-2653] [Entered: 09/17/2021 02:43PM]
09/23/2021	94	MOTION ORDER, granting motion to recall mandate [90] filed by Appellant AlixPartners, LLP and Simon Freakley; granting motion to

		stay mandate [90] filed by Appellant AlixPartners, LLP and Simon Freakley, byJAC, RSP, JFB, FILED. [3178714][94] [20-2653] [Entered: 09/23/2021 09:33 AM]
09/23/2021	95	CERTIFIED ORDER, dated 09/23/2021, to SDNY (NEW YORK CITY), ISSUED.[3178721] [20-2653] [Entered: 09/23/2021 09:37 AM]
		***
10/13/2021	99	U.S. SUPREME COURT NOTICE of writ of certiorari filing, dated 10/07/2021, U.S. Supreme Court docket# 21-518, RECEIVED. [3191162] [20-2653] [Entered: 10/13/2021 11:15 AM]
12/13/2021	100	U.S. SUPREME COURT NOTICE, dated 12/10/2021, U.S. Supreme Court docket # 21-518, stating the petition for writ of certiorari is granted, RECEIVED.[3227303] [20-2653] [Entered: 12/13/2021 03:59 PM]

Appendix A

RELEVANT DOCKET ENTRIES FROM THE U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK (FOLEY SQUARE) CIVIL DOCKET FOR CASE #: 1:19-MC-00401-AT

08/29/2019	1	MISCELLANEOUS CASE INITIATING DOCUMENT – MOTION /Ex Parte Application Pursuant to 28 U.S.C. § 1782 For An Order Granting Leave to Obtain Discovery for Use in a Foreign Proceeding . Document filed by Fund for Protection of Investor Rights in Foreign States.(Yanos, Alexander) (Entered: 08/29/2019)
08/29/2019	2	MEMORANDUM OF LAW in Support re: 1 MISCELLANEOUS CASE INITIATING DOCUMENT – MOTION /Ex Parte Application Pursuant to 28 U.S.C. § 1782 For An Order Granting Leave to Obtain Discovery for Use in a Foreign Proceeding . . Document filed by Fund for Protection of Investor Rights in Foreign States. (Yanos, Alexander) (Entered: 08/29/2019)
08/29/2019	3	DECLARATION of Alexander Yanos in Support re: 1 MISCELLANEOUS

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		CASE INITIATING DOCUMENT – MOTION /Ex Parte Application Pursuant to 28 U.S.C. § 1782 For An Order Granting Leave to Obtain Discovery for Use in a Foreign Proceeding .. Document filed by Fund for Protection of Investor Rights in Foreign States. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15)(Yanos, Alexander) (Entered: 08/29/2019)
08/29/2019	4	PROPOSED ORDER. Document filed by Fund for Protection of Investor Rights in Foreign States. Related Document Number: 1 . (Yanos, Alexander) Proposed Order to be reviewed by Clerk's Office staff. (Entered: 08/29/2019)
08/29/2019	5	MISCELLANEOUS COVER SHEET filed. (Yanos, Alexander) (Entered: 08/29/2019)

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10/01/2019	18	MEMORANDUM OF LAW in Opposition re: 1 MISCELLANEOUS CASE INITIATING DOCUMENT – MOTION /Ex Parte Application Pursuant to 28 U.S.C. § 1782 For An Order Granting Leave to Obtain Discovery for Use in a Foreign Proceeding . . Document filed by AlixPartners, LLP, Simon Freakley. (Baio, Joseph) (Entered: 10/01/2019)
10/01/2019	19	DECLARATION of Joseph T. Baio in Opposition re: 1 MISCELLANEOUS CASE INITIATING DOCUMENT – MOTION /Ex Parte Application Pursuant to 28 U.S.C. § 1782 For An Order Granting Leave to Obtain Discovery for Use in a Foreign Proceeding .. Document filed by AlixPartners, LLP, Simon Freakley. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Baio, Joseph) (Entered: 10/01/2019)
		***
10/15/2019	21	REPLY MEMORANDUM OF LAW in Support re: 1 MISCELLANEOUS CASE INITIATING DOCUMENT – MOTION /Ex Parte Application Pursuant to 28 U.S.C. § 1782 For An Order Granting Leave to Obtain

		Discovery for Use in a Foreign Proceeding . . Document filed by the Application of the Fund for Protection of Investor Rights in Foreign States pursuant to 28 USC 1782 for an Order granting leave to Obtain Discovery for use in a Foreign Proceeding. (Yanos, Alexander) (Entered: 10/15/2019)
10/15/2019	22	DECLARATION of Alexander Yanos in Support re: 1 MISCELLANEOUS CASE INITIATING DOCUMENT – MOTION /Ex Parte Application Pursuant to 28 U.S.C. § 1782 For An Order Granting Leave to Obtain Discovery for Use in a Foreign Proceeding .. Document filed by the Application of the Fund for Protection of Investor Rights in Foreign States pursuant to 28 USC 1782 for an Order granting leave to Obtain Discovery for use in a Foreign Proceeding. (Attachments: # 1 Exhibit 1)(Yanos, Alexander) (Entered: 10/15/2019)
10/15/2019	23	DECLARATION of Ramunas Audzevicius in Support re: 1 MISCELLANEOUS CASE INITIATING DOCUMENT – MOTION /Ex Parte Application

		Pursuant to 28 U.S.C. § 1782 For An Order Granting Leave to Obtain Discovery for Use in a Foreign Proceeding .. Document filed by the Application of the Fund for Protection of Investor Rights in Foreign States pursuant to 28 USC 1782 for an Order granting leave to Obtain Discovery for use in a Foreign Proceeding. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Yanos, Alexander) (Entered: 10/15/2019)
01/13/2020	24	LETTER addressed to Judge Analisa Torres from Alexander A. Yanos dated January 13, 2020 re: Recent Procedural Order. Document filed by the Application of the Fund for Protection of Investor Rights in Foreign States pursuant to 28 USC 1782 for an Order granting leave to Obtain Discovery for use in a Foreign Proceeding.(Yanos, Alexander) (Entered: 01/13/2020)
		***
01/29/2020	26	LETTER addressed to Judge Analisa Torres from Wesley R. Powell dated January 29, 2020 re: Response to Letter dated January 13, 2020 Regarding Recent

		Procedural Order. Document filed by AlixPartners, LLP, Simon Freakley.(Powell, Wesley) (Entered: 01/29/2020)
07/08/2020	27	ORDER granting 1 Motion for / Ex Parte Application Pursuant to 28 U.S.C. § 1782 For An Order Granting Leave to Obtain Discovery for Use in a Foreign Proceeding. For the reasons stated, the application pursuant to § 1782 is GRANTED. It is ORDERED that Applicant may issue subpoenas for documents in substantially the same form as Exhibits 11, 12, 13, and 14 to Alexander Yanos' declaration filed in support of the application. ECF Nos. 3–11, 3–12, 3–13, 3–14. The Clerk of Court is directed to terminate the motion at ECF No. 1, and close the case. SO ORDERED. (Signed by Judge Analisa Torres on 7/8/2020) (kv) (Entered: 07/08/2020)
07/22/2020	28	MOTION for Reconsideration *and a Stay of the Court's July 8, 2020 Order (ECF No. 27)*. Document filed by AlixPartners, LLP, Simon Freakley..(Baio, Joseph) (Entered: 07/22/2020)

07/22/2020	29	MEMORANDUM OF LAW in Support re: 28 MOTION for Reconsideration *and a Stay of the Court's July 8, 2020 Order (ECF No. 27).* . Document filed by AlixPartners, LLP, Simon Freakley.. (Baio, Joseph) (Entered: 07/22/2020)
08/05/2020	30	MEMORANDUM OF LAW in Opposition re: 28 MOTION for Reconsideration *and a Stay of the Court's July 8, 2020 Order (ECF No. 27).* . Document filed by the Application of the Fund for Protection of Investor Rights in Foreign States pursuant to 28 USC 1782 for an Order granting leave to Obtain Discovery for use in a Foreign Proceeding..(Yanos, Alexander) (Entered: 08/05/2020)
08/05/2020	31	DECLARATION of Alexander A. Yanos in Opposition re: 28 MOTION for Reconsideration *and a Stay of the Court's July 8, 2020 Order (ECF No. 27).*.Document filed by the Application of the Fund for Protection of Investor Rights in Foreign States pursuant to 28 USC 1782 for an Order granting leave to Obtain Discovery for use in a Foreign Proceeding. (Attachments: # 1

Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3).(Yanos, Alexander) (Entered: 08/05/2020)

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08/07/2020	33	CORRECTED NOTICE OF APPEAL re: 32 Notice of Appeal, 27 Order on Motion for Miscellaneous Relief,,. Document filed by AlixPartners, LLP, Simon Freakley.. (Baio, Joseph) (Entered: 08/07/2020)

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08/12/2020	34	REPLY MEMORANDUM OF LAW in Support re: 28 MOTION for Reconsideration *and a Stay of the Court's July 8, 2020 Order (ECF No. 27).* . Document filed by AlixPartners, LLP, Simon Freakley.. (Baio, Joseph) (Entered: 08/12/2020)
08/25/2020	35	ORDER denying 28 Motion for Reconsideration re 27 Order on Motion for Miscellaneous Relief. Accordingly, Freakley and AlixPartner's motion for reconsideration is DENIED. The Clerk of Court is directed to terminate the motion at ECF No. 28. SO ORDERED. (Signed by Judge

Analisa Torres on 8/25/2020) (kv) (Entered: 08/25/2020)

09/08/2020	36	AMENDED NOTICE OF APPEAL re: 33 Corrected Notice of Appeal, 27 Order on Motion for Miscellaneous Relief,, 35 Order on Motion for Reconsideration,. Document filed by AlixPartners, LLP, Simon Freakley.. (Baio, Joseph) (Entered: 09/08/2020)

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09/17/2021	37	MANDATE of USCA (Certified Copy) as to 36 Amended Notice of Appeal filed by Simon Freakley, AlixPartners, LLP, 33 Corrected Notice of Appeal, filed by Simon Freakley, AlixPartners, LLP USCA Case Number 20−2653. IT IS HEREBY ORDERED, ADJUDGED and DECREED that the July 8, 2020 order and the August 25, 2020 order of the district court are AFFIRMED.. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 9/17/2021..(nd) (Entered: 09/17/2021)

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09/22/2021	39	STIPULATION AND ORDER EXTENDING TIME TO RESPOND TO SUBPOENAS: IT IS HEREBY STIPULATED AND AGREED, by and among the parties hereto, through their undersigned counsel, and subject to the approval of the Court, that: The time to comply with the Subpoenas shall be fourteen (14) days after the later of (i) the denial of AlixPartners and Mr. Freakley's petition for certiorari or (ii) disposition of the case on the merits by the Supreme Court, provided that the petition for certiorari is filed with the Supreme Court on or before October 7, 2021. SO ORDERED. (Signed by Judge Analisa Torres on 9/22/2021) (ama) (Entered: 09/22/2021)
09/23/2021	40	ORDER of USCA (Certified Copy) as to 36 Amended Notice of Appeal filed by Simon Freakley, AlixPartners, LLP, 33 Corrected Notice of Appeal filed by Simon Freakley, AlixPartners, LLP. USCA Case Number 20−2653. Appellants move to recall the mandate and to stay the issuance of the mandate pending the filing and disposition of a petition for a writ of certiorari.

IT IS HEREBY ORDERED that the motion is GRANTED, absent objection. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 09/23/2021..(nd) (Entered: 09/23/2021)

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APPENDIX B — *EX PARTE* APPLICATION FOR AN ORDER GRANTING LEAVE TO OBTAIN DISCOVERY, FILED AUGUST 29, 2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No.

IN RE THE APPLICATION OF THE FUND FOR PROTECTION OF INVESTOR RIGHTS IN FOREIGN STATES PURSUANT TO 28 U.S.C. § 1782 FOR AN ORDER GRANTING LEAVE TO OBTAIN DISCOVERY FOR USE IN A FOREIGN PROCEEDING

EX PARTE APPLICATION PURSUANT TO 28 U.S.C. § 1782 FOR AN ORDER GRANTING LEAVE TO OBTAIN DISCOVERY FOR USE IN A FOREIGN PROCEEDING

The Fund for Protection of Investor Rights in Foreign States (***the Fund*** or ***the Applicant***), a corporate entity organized under the laws of the Russian Federation, respectfully applies for an order permitting it to obtain discovery pursuant to 28 U.S.C. § 1782 (***Section 1782***) from AlixPartners LLP (***AlixPartners***) which has its principal place of business in the Southern District of New York, and its CEO Mr. Simon Freakley, likewise to be found in the Southern District of New York, in connection with with Mr. Freakley's appointment as temporary receiver and investigation of Bankas Snoras AG (***Snoras***).

Appendix B

Applicant seeks this discovery in connection with a pending arbitration pursuant to the Lithuania-Russia Bilateral Investment Treaty of 2004 (***the Treaty***) and governed by the United Nations Commission on International Trade Law Arbitration Rules (***UNCITRAL Arbitration Rules***) in which, as detailed in the supporting Memorandum of Law, Applicant, as the assignee of Snoras's then-controlling shareholder, Mr. Vladimir Antonov (***Mr. Antonov***), will prove that Lithuania committed multiple breaches of the Treaty, including by expropriating Mr. Antonov's investment in Snoras through commissioning a pretextual investigation of the bank's finances, the outcome of which was predetermined and which was conducted without affording Mr. Antonov due process.

In support of its Application, the Fund relies on: (i) the Memorandum of Law and (ii) supporting Declaration of Alexander Yanos (***Yanos Declaration***) filled concurrently with this Application, together with its supporting exhibits.

This Court should enter the Proposed Order attached hereto, authorizing the requested discovery to be conducted in accordance with the Federal Rules of Civil Procedure, and the issuance of the subpoenas attached in draft form as Exhibits 11-14 to the Yanos Declaration submitted herewith.

Dated: August 29, 2019
New York, New York

Appendix B

Respectfully submitted,

/s/ Alexander Yanos
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Attorneys for Applicant, Fund for the Protection of Investor Rights in Foreign States

APPENDIX C — YANOS DECLARATION IN SUPPORT OF *EX PARTE* APPLICATION, WITH EXHIBITS, FILED AUGUST 29, 2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No.

IN RE THE APPLICATION OF THE FUND FOR PROTECTION OF INVESTOR RIGHTS IN FOREIGN STATES PURSUANT TO 28 U.S.C. § 1782 FOR AN ORDER GRANTING LEAVE TO OBTAIN DISCOVERY FOR USE IN A FOREIGN PROCEEDING

DECLARATION OF ALEXANDER YANOS IN SUPPORT OF EX PARTE APPLICATION PURSUANT TO 28 U.S.C. §1782 FOR AN ORDER GRANTING LEAVE TO OBTAIN DISCOVERY FOR USE IN A FOREIGN PROCEEEDING

ALEXANDER YANOS declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner at Alston & Bird LLP, attorneys for Applicant the Fund for Protection of Investor Rights in Foreign States (***Applicant*** or ***the Fund***). I make this Declaration in support of the Fund's Application pursuant to 28 U.S.C. § 1782 for an Order Granting Leave to Obtain Discovery for Use in a Foreign Proceeding.

2. I attach as Exhibit 1 a true and correct copy of the April 29, 2019 Notice of Arbitration that Applicant served

on the Republic of Lithuania under the Lithuania-Russia Bilateral Investment Treaty of 2004.

3. I attach as Exhibit 2 a true and correct copy of a print out of the AlixPartners website stating that AlixPartners' "Headquarters" is located at 909 Third Avenue, New York, New York, 10022.

4. I attach as Exhibit 3 a true and correct copy of a February 23, 2015 AlixPartners Press Release entitled "AlixPartners completes acquisition of Zolfo Cooper Europe."

5. I attach as Exhibit 4 a true and correct copy of Jim Armitage, "Simon Freakley: The Suave Restructuring Whiz Putting Out Corporate Fires and Picking Up Millions" *The Evening Standard* (March 3, 2017).

6. I attach as Exhibit 5 a true and correct copy of an August 2015 AlixPartners Press Release titled "AlixPartners announces CEO succession."

7. I attach as Exhibit 6 a true and correct copy of a November 17, 2011 Thomson Reuters Update titled "4-Lithuania Insists Banks Safe After Snoras Takeover."

8. I attach as Exhibit 7 a true and correct copy of the Notice of Dispute, served upon Lithuania on May 4, 2012.

9. I attach as Exhibit 8 a true and correct copy of the Lithuania-Russia Bilateral Investment Treaty of 2004.

10. I attach as Exhibit 9 a true and correct copy of Lithuania's June 7, 2012 acknowledgement of receipt of the Notice of Dispute (attached as Exhibit 7).

11. I attach as Exhibit 10 a true and correct copy of a May 24, 2012 article from the news website "15min. lt" entitled "Parliamentary panel rules Snoras bank nationalization was hasty and based on shaky evidence."

12. I attach as Exhibits 11 through 14 true and correct copies of proposed subpoenas for the production of documents and to appear for deposition to be served on Mr. Freakley and AlixPartners.

13. I attach as Exhibit 15 a true and correct copy of the United Nations Commission on International Trade Law (***UNCITRAL***) Arbitration Rules (1976).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 29, 2019 in New York, New York.

/s/ Alexander Yanos
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Attorney for Applicant, The Fund for Protection of Investor Rights in Foreign States

IN THE ARBITRATION UNDER THE
AGREEMENT BETWEEN THE GOVERNMENT
OF THE RUSSIAN FEDERATION AND THE
GOVERNMENT OF THE REPUBLIC OF
LITHUANIA ON THE PROMOTION AND
RECIPROCAL PROTECTION
OF THE INVESTMENTS
BETWEEN

FUND FOR PROTECTION OF INVESTORS'
RIGHTS IN FOREIGN STATES,

Claimant

–and–

THE REPUBLIC OF LITHUANIA,

Respondent

NOTICE OF ARBITRATION

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–and–

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Appendix C

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Counsel for Claimant

I. INTRODUCTION

1. Fund for Protection of Investors' Rights in Foreign States (***the Fund***), a Russian investment fund, hereby requests the institution of arbitration proceedings against the Republic of Lithuania (***Lithuania*** or ***the State***) in accordance with Article 3 of the UNCITRAL Arbitration Rules 1976 (***UNCITRAL Arbitration Rules***).

2. The Fund submits this Notice of Arbitration (the ***Notice***) pursuant to Article 10(2)(d) of the Agreement Between the Government of the Russian Federation and the Government of the Republic of Lithuania on the Promotion and Reciprocal Protection of the Investments signed on 29 June 1999 and entered into force on 24 May 2004 (***the Treaty***).[1]

3. The Fund acquired this claim against Lithuania from Vladimir Antonov (***Mr. Antonov***),[2] a Russian national, after Mr. Antonov notified Lithuania of his intent to

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1. Agreement between the Government of the Russian Federation and the Government of the Republic of Lithuania on the Promotion and Reciprocal Protection of the Investments, **C-01**. The Treaty entered into force on 24 May 2004.

2. Additional Agreement No. 2 dated 7 March 2019 to the Cession Agreement on the Assignment of Rights (claims) dated 23 January 2017, **C-02**.

submit the present claims to arbitration on 4 May 2012 (the ***Notice of Dispute***).[3]

4. The Fund has duly authorized the undersigned to institute and pursue arbitration proceedings on its behalf against Lithuania pursuant to the Treaty and UNCITRAL Arbitration Rules.[4] Furthermore, the Fund has waived its right to initiate or continue proceedings with respect to the impugned measures before any administrative tribunal or court in Lithuania in accordance with Article 1 of the Protocol to the Treaty.

5. The Fund brings this claim in relation to Lithuania's measures that had destroyed the value of Mr. Antonov's controlling shareholding in AB bankas SNORAS (***Snoras*** *or* ***the Bank***), a bank based in Lithuania.

6. Mr. Antonov invested in Lithuania's banking sector by acquiring 68.1% of Snoras' shares. Since then, Snoras grew from the seventh largest bank in Lithuania by capital and sixth by assets to become the fifth largest bank in Lithuania, holding more than USD 3 billion in assets and USD 2.5 billion in deposits.

7. Snoras' continuous growth in Lithuania and its Baltic neighbors, however, alarmed the Lithuanian government that came to power in 2008. The new government made its antipathy to Russian

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3. Notice of Dispute dated 4 May 2012, **C-03**.

4. Power of Attorney dated 25 April 2019, **C-04**.

investments in Lithuania public. Subsequently, the Lithuanian government expressed increasing concern in Mr. Antonov's controlling shareholding in Snoras for at least two reasons:

a) Mr. Antonov's control over Snoras meant that a Russian investor controlled Lithuania's fifth largest bank at a time of political tensions between Russia and its Baltic neighbors;

b) Mr. Antonov, through Snoras' wholly owned subsidiary, Snoras Media, acquired control of Lietuvos Rytas, a Lithuanian liberal media holding, in 2009. Lietuvos Rytas' editorial slant critical of Lithuania's government and, in particular, President Dalia Grybauskaite. In fact, Lithuanian officials repeatedly warned Mr. Antonov that continued negative coverage of the government by Lietuvos Rytas would lead to the government taking steps to punish Snoras.

8. When Mr. Antonov failed to heed these warnings from the State, Snoras became the target of a series of escalating governmental measures that culminated in its total expropriation.

9. On 16 November 2011, the Bank of Lithuania announced, without any factual basis, that Snoras' assets were insufficient to meet its liabilities, suspended its operations, and appointed a temporary administrator. That same day, the Government announced in Parliament that Snoras' shares were to be seized in the public interest.

10. The temporary administrator appointed by the Bank of Lithuania had originally been mandated to issue a report on Snoras' status in two months. However, on 20 November 2011, the Lithuanian authorities ordered the administrator to complete his report within 3 days or by 23 November 2011. The Bank of Lithuania thereupon cancelled Snoras' operating license on 24 November 2011.

11. Through these unlawful measures Lithuania deprived Mr. Antonov of his controlling stake in Snoras without any compensation in violation of due process.

12. Mr. Antonov notified Lithuania of his intent to submit the present claims to arbitration through a Notice of Dispute dated 4 May 2012. Mr. Antonov subsequently unconditionally and fully assigned his claims against Lithuania to the Fund.

13. In this Notice, the Fund will establish the jurisdictional and substantive bases of these treaty claims. Specifically, the Fund will show that:

    a) Lithuania's measures interfered with Mr. Antonov's investment and ultimately deprived Mr. Antonov of his investment unlawfully and without compensation (**Section II** below);

    b) Lithuania's measures breached Lithuania's obligations under the Treaty and under international law (**Section III** below);

c) Mr. Antonov is a Russian investor whose investment in Lithuania was protected by the Treaty (**Section IV** below); and

d) The Fund is entitled to initiate these arbitration proceedings because both Lithuania and the Fund have consented to arbitration under the UNCITRAL Arbitration Rules and because all of the conditions to access the arbitration under the Treaty have been fulfilled (**Section V** below).

14. In **Section VI** below, the Fund proposes a method to constitute the three-member Tribunal to adjudicate this dispute, along with other procedural matters. The names and addresses of the parties are set out in **Section VII**. The Fund sets out its request for relief in **Section VIII.**

15. This Notice of Arbitration is accompanied by a bundle of exhibits numbered **C-01** to **C-34**.

16. The Fund reserves its right to specify, supplement or amend the factual or legal claims and arguments herein.

II. THE FACTS RELEVANT TO THE DISPUTE

A. Mr. Antonov's Investment in Lithuania

17. In 2006, Mr. Antonov acquired a majority of Snoras' shares with the approval of the Bank of Lithuania.[5]

5. Resolution of the Board of the Bank of Lithuania No. 143 dated 9 November 2006, **C-05.**

Subsequently, Mr. Antonov purchased additional newly issued shares. As a result, Mr. Antonov became the owner of 68.1% of the Bank's outstanding shares.[6]

18. Snoras grew in the years following Mr. Antonov's investment. By 2011, Snoras became the fifth largest bank in Lithuania in terms of asset value,[7] holding more than USD 3 billion in assets and USD 2.5 billion in deposits,[8] while providing a diverse array of corporate and retail banking services to customers in Lithuania and other Baltic countries.

19. By 2011, the Bank had the largest network of banking services in Lithuania and had 12 branches in Lithuania, Estonia, Latvia, and 256 operating outlets. Snoras' assets included:

    (i) the largest banking network in Lithuania with 1130 employees and nearly 1.135 million clients;[9]

    (ii) Finasta, another Lithuanian bank; and

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6. Prospectus of shares, approved by the Securities Commission of the Republic of Lithuania on 3 February 2011, section 1.9, **C-06**.

7. Based on the unaudited financial statements dated 30 September 2010 (see Prospectus of shares, approved by the Securities Commission of the Republic of Lithuania on 3 February 2011, section 1.7.1, **C-06**).

8. Bank's balance sheet dated 15 November 2011, **C-07**.

9. Prospectus of shares, approved by the Securities Commission of the Republic of Lithuania on 3 February 2011, section 4.5.1, **C-06.**

(iii) a majority stake in Latvijas Krajbanka, a Latvian bank.

20. Notably, Snoras: (*i*) was solvent and compliant with International Financial Reporting Standards adopted by the European Union; and (*ii*) received a long-term issuer default rating of B+ with a stable outlook from Fitch[10] as well as Ba3 Long-term Obligations Rating with a stable outlook from international rating agency Moody's.[11]

21. At the same time, the Bank developed a significant customer network. Among the Bank's clients were: the Ministry of Internal Affairs of Lithuania, the Police Department of Lithuania, the State Social Insurance Fund of Lithuania, the State Property Fund of Lithuania, Lithuanian Railways, Lithuanian National Olympic Committee, the State Sea Port of Klaipeda (Lithuania's largest), Lithuanian Radio and Television Center, Vilnius University, Klaipeda University and others.[12]

22. Between 2007-2011, Snoras showed positive dynamics in all key financial indicators. In 2009, the price of the

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10. See a press release on the Bank's website "International rating agency Fitch Ratings affirmed AB Bank SNORAS ratings" dated 15 April 2010, **C-08**.

11. See a press release on the Bank's website "International rating agency Moody's has assigned a new Long-term Obligations Rating with a stable outlook to SNORAS Bank" dated 29 September 2006, **C-09.**

12. Form No. 7004 dated 1 November 2011, **C-10**.

Bank's registered ordinary shares grew by more than 250%;[13] the Bank attracted over 2400 new corporate clients;[14] the deposit portfolio of the Bank increased by 25.8 per cent or 3.5 times faster than the entire deposit market of Lithuania.[15] The Bank's shares listed on the NASDAQ OMX Vilnius Stock Exchange starting on 1 July 2011, and were included in the "OMX Baltic 10" index.[16]

23. Due to the expansion of its activities and growth of the main economic parameters, Snoras received international recognition on multiple occasions. In 2009, one of the world's largest banks, German "Commerzbank AG" granted a special award to the Bank for high quality of international money transfers.[17] "The Banker", a prestigious world

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13. See a press release on the Bank's website "In 2009 the price of Bank SNORAS shares grew by 163 per cent" dated 5 January 2010, **C-11.**

14. See a press release on the Bank's website "In 2009 Bank SNORAS attracted 2400 new corporate clients" dated 12 January 2010, **C-12**.

15. See a press release on the Bank's website "Bank SNORAS deposit portfolio increased almost by LTL 1 billion within a year" dated 19 February 2010, **C-13.**

16. See a press release on the Bank's website "Bank SNORAS shares are included in the composition of the trading index "OMX Baltic 10", dated 16 June 2011, **C-14.**

17. See a press release on the Bank's website "AB Bank SNORAS plans to provide financial services in Germany" dated 20 April 2010, **C-15.**

banking and finance magazine published by the British newspaper "Financial Times", awarded Snoras with the title – the best bank in Lithuania in 2010.[18] In 2010, the Bank Snoras group was recognized as the best financial group in the Baltic States.[19]

B. The Lithuanian State's Attack on the Bank

24. Notwithstanding the above, Lithuania took arbitrary, non-transparent, and discriminatory measures that deprived Mr. Antonov of his investment in Snoras and destroyed the value of the investment. Lithuania's measures included: (*i*) forcing Snoras to significantly reduce its business with Russian borrowers; (*ii*) obstruction of the increase of Snoras' authorized capital and appropriation of Mr. Antonov's payment for the newly issued shares; (*iii*) a highly disruptive, unlawful, and adversarial inspection of Snoras in 2011; (*iv*) suspension of Snoras' activities and the highly irregular appointment of a temporary administrator, Simon Freakley of the international restructuring firm AlixPartners (***Mr. Freakley***); (*v*) unlawful seizure of Snoras' shares; (*vi*) revocation of Snoras' license; and (vii) commencement of criminal investigation against Mr. Antonov.

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18. See a press release on the Bank's website "The Banker" international magazine published by "Financial Times" recognized Bank SNORAS as "The best bank in Lithuania in 2010" dated 7 December 2010, **C-16.**

19. See a press release on the Bank's website "World Finance" magazine recognized Bank SNORAS group as the best banking group in the Baltic States" dated 22 July 2010, **C-17.**

Appendix C

(i) Lithuania Forced Snoras to Reduce Business with Russian Borrowers

25. In January 2011, the Bank of Lithuania forced Snoras to significantly reduce its business with Russian borrowers, imposing a cap by which the Bank's total Russian loans could not exceed 50% of its capital.[20] To comply with the Bank of Lithuania's requirement, Snoras had to sell part of the loan portfolio to Eagulus Peak Investment Ltd and Virmanius Holdings Ltd. As the result of these transactions, the Bank suffered losses amounting to more than LTL 20 million (around USD 8 million), which adversely impacted the Bank's operations for the next 6 months of 2011.[21]

26. Lithuania did not require any other bank in Lithuania to reduce its business with non- Lithuanian entities.[22] When Snoras complained to the Bank of Lithuania, it was advised that the decision to restrict its business in this manner had come from President Grybauskaite herself.[23]

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20. Resolution of the Bank of Lithuania No. 03-2 dated 18 January 2011, clause 3.2, **C-18.**

21. Letter from Snoras to the Bank of Lithuania No. C 06 – 08601/11 dated 11 July 2011, clause 12.2, **C-19.**

22. Notice of Dispute dated 4 May 2012, ¶ 3(5), **C-03**.

23. Notice of Dispute dated 4 May 2012, ¶ 3(5), **C-03**.

(ii) Lithuania Obstructed the Increase of Snoras' Authorized Capital and Appropriated Mr. Antonov's Payment for the Newly Issued Shares

27. During the general meeting which took place in December 2010, Snoras' shareholders decided to increase the authorized capital of the Bank by LTL 380,082,893.[24] The contribution was to be made through the issuance of 380,082,893 ordinary registered shares of LTL 1 nominal value.[25] The Bank's new share emission prospectus was approved by the Securities Commission of Lithuania on 3 February 2011.[26]

28. A large part of this share issuance was acquired *inter alia* by Mr. Antonov for approximately LTL 200,483,000 (USD 77 million).[27] The money paid for the newly issued shares was put on a savings account in another bank (***"Finasta" Bank***) pending the Bank of Lithuania's approval and registration of the corresponding amendments to Snoras' Articles

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24. Prospectus of shares, approved by the Securities Commission of the Republic of Lithuania on 3 February 2011, section 3.4, **C-06**.

25. *Ibid.*

26. Statement of the Securities Commission of the Republic of Lithuania on the approval of the prospectus No. 4R -1 dated 3 February 2011, **C-20**.

27. See a press release on the Bank's website "Bank SNORAS during the first stage of distributing the shares attracted LTL 368 million" dated 29 March 2011, **C-21**.

of Association. However, the Bank of Lithuania repeatedly shifted the date of response to the Snoras' application for the approval of the mentioned amendments until finally, in November 2011, it simply refused to approve such amendments. Sums paid for the new shares and held in "Finasta" Bank, including Mr. Antonov's payment of approximately USD 77 million, were subsequently expropriated by Lithuania.

(iii) Lithuania's Highly Disruptive and Adversarial Annual Inspection of Snoras

29. Lithuania's measures against Snoras became even more aggressive after Mr. Vitas Vasiliauskas, an ally of President Grybauskaite, was named Chairman of the Bank of Lithuania in April of 2011. There was a perceptible change in the tenor of the Bank of Lithuania's annual regulatory inspection of Snoras.

30. In contrast to prior years, the annual inspection by the Bank of Lithuania was conducted in a manner that deprived Snoras of its right to comment on the inspection's findings. Standard procedure under the Bank of Lithuania's own regulations called for a regulated bank's management to be invited to provide comments on the Bank of Lithuania's findings within 15 days after the completion of the inspection and to be provided with a signed written inspection report within 20 days after the completion of the annual inspection.[28]

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28. Regulations on the Inspection of the Banks approved by Resolution No. 157 of the Board of the Bank of Lithuania dated 23 September 2004, **C-22**.

31. However, Snoras' 2011 inspection concluded very differently. The Bank of Lithuania refused to provide Snoras with any official document as to the outcome of the inspection. Instead, on 16 November 2011, the Bank of Lithuania's officials faxed a memo to Snoras demanding that its officers report to the Bank of Lithuania to respond to the alleged defects uncovered by its inspectors and affording them no more than 30 minutes to consider their response. It was of course impossible for Snoras to make an effective response in such a short time – as was the intention.

(iv) Lithuania Suspended Snoras' Activities and Appointed a Temporary Administrator

32. That same day, the Bank of Lithuania publicly announced that Snoras was unable to meet its obligations, imposed a moratorium on its activities,[29] and announced the appointment of Mr. Freakley as a temporary administrator (***Resolution No. 03-186***).[30]

33. Mr. Freakley's public mandate was to take control of Snoras and to issue a report on Snoras' financial condition in two months.[31] The Bank of Lithuania

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29. Resolution of the Bank of Lithuania No. 03-186 dated 16 November 2011, **C-23.**

30. Mr. Freakley is now the CEO of Alix Partners, based in New York. We understand that Swedish bank regulators recommended Mr. Freakley to the Bank of Lithuania.

31. Resolution of the Bank of Lithuania No. 03-186 dated 16 November 2011, clause 6.1, **C-23**.

explicitly justified its appointment of a temporary administrator with reference to the results of the recently concluded inspection, alleging that "*there is a real threat that the bank is insolvent*".[32]

(v) Lithuania's Seizure of Snoras' Shares

34. That same day, on 16 November 2011, the Government adopted Resolution No. 1329 "On Seizure of AB Snoras Bank Shares for Public Needs" (***Resolution No. 1329***) whereby all shares in Snoras were to be seized by the Lithuanian State "for public needs" upon payment of compensation to the shareholders.[33]

35. The Lithuanian Government simultaneously carried out a physical taking of Snoras on 16 November 2011, when several police officers arrived together with about ten representatives of the Bank of Lithuania and took over the Bank's operations. Among other things, these agents of the Lithuanian State deactivated Snoras' connection to the SWIFT settlement system.[34] It goes almost without saying that this extreme measure damaged the Bank's financial position by impairing its ability to provide banking services.

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32. *Id.*, clause 3, **C-23.**

33. Resolution of the Government of the Republic of Lithuania No. 1329 "On Seizure of AB Snoras Bank Shares for Public Needs" dated 16 November 2011, **C-24.**

34. *See:* Expert Report of Malcolm Cohen & Andrew Caldwell dated 19 March 2012 (The First BDO Report), p. 17, **C-25.**

36. Mr. Antonov never received any compensation for the expropriation of his investment in Lithuania.

(vi) Revocation of Snoras' License and Bankruptcy Proceedings

37. On 20 November 2011 (a Sunday), the Bank of Lithuania directed Mr. Freakley to prepare and submit his final report within *three days*, by 23 November 2011, rather than in the two months originally allocated.[35] It was also decided to change the terms of the moratorium to 5 working days (instead of 2 months).[36]

38. Three days later, on 24 November 2011, Mr. Freakley submitted a report on the financial status of Snoras to the Bank of Lithuania purporting to find that the net asset value of the Bank was lower than the value of its liabilities.[37] Mr. Freakley's report is not publicly available and has been classified as a State secret by the Lithuanian special services.

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35. Decision of the Bank of Lithuania Board No. 03-193 "On Instructions to the Temporary Administrator of Snoras Bank Public Company and Partial Revocation of Restrictions on the Activities of the Bank" dated 20 November 2011, **C-26.**

36. *Ibid*, **C-26**.

37. Decision of the Bank of Lithuania Board No. 03-196 "On the Insolvency of Bank Snoras, a Joint Stock Company, on Withdrawal of its Banking License and Appealing to Court for Institution of Bankruptcy Proceedings" dated 24 November 2011, **C-27.**

39. On the same day, the Bank of Lithuania, having considered the conclusions and proposals made by Mr. Freakley, revoked Snoras' license and asked the District Court of Vilnius to institute bankruptcy proceedings in respect of Snoras.[38]

40. Mr. Antonov and the Bank were not afforded any opportunity to defend themselves in these proceedings. On 29 November 2011, the District Court of Vilnius declared that the bankruptcy proceedings instituted in respect of Snoras were to take place behind closed doors without participation of Mr. Antonov.[39] On 7 December 2011, the District Court of Vilnius declared Snoras bankrupt.[40]

(vii) Lithuania Commenced Criminal Investigation Against Mr. Antonov

41. While these steps were being taken against Snoras, the Lithuanian Prosecutor General's office simultaneously acted against Mr. Antonov personally by launching a criminal investigation alleging that he had precipitated Snoras' collapse by siphoning some USD 366 million in bank funds into personal Swiss accounts.[41]

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38. *Ibid,* **C-27.**

39. Ruling of the District Court of Vilnius dated 29 November 2011, civil case No. B2-7791-611/2011, **C-28.**

40. Ruling of the District Court of Vilnius dated 7 December 2011, civil case No B2-7791-611/2011, **C-29**.

41. Part 1 Certificate Issued Pursuant to Section 2(7) of the Extradition Act 2003 dated 24 November 2011, **C-30**.

C. Notification Of The Dispute

42. On 4 May 2012, Mr. Antonov submitted a Notice of Dispute advising Lithuanian authorities of his intent to submit the present dispute to arbitration pursuant to Article 10 of the Treaty.[42]

43. Lithuania received Mr. Antonov's Notice of Dispute on 7 June 2012.[43]

44. In the Notice of Dispute Mr. Antonov formally requested amicable resolution, triggering the consultation period under Article 10 of the Treaty. Despite Mr. Antonov's efforts to seek an amicable resolution, seven years later, no agreement has been reached and Lithuania has made no effort to reach one.

D. Mr. Antonov's Assignment of Claims to the Fund

45. On 23 January 2017, Mr. Antonov unconditionally assigned all his rights, claims and remedies arising out of Lithuania's measures that destroyed the value of his investments in Snoras to the Fund.[44]

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42. In particular, Mr Antonov notified the President, the Prime Minister, the Minister of Justice, the Minister of Foreign Affairs, the Minister of Finance and Chairman of the Board of the Bank of Lithuania of. *See* Notice of Dispute dated 4 May 2012, **C-03**.

43. Letter of Ministry of Finance of the Republic of Lithuania dated 17 July 2012 No. ((7.63-02)-5L-1210202)-6K-1206187, **C-31**.

44. Additional Agreement No. 2 dated 7 March 2019 to the Cession Agreement on the Assignment of Rights (claims) of 23 January 2017, **C-02**.

46. Therefore, the Fund, as an assignee of Mr. Antonov's claim against Lithuania, is pursuing this arbitration against Lithuania.

III. LITHUANIA'S VIOLATIONS OF THE TREATY

47. Lithuania's conduct violates the Treaty and international law and triggers Lithuania's State responsibility as explained below. The Fund will submit detailed evidence at the appropriate stage of the proceedings to quantify the losses suffered.

48. In the case at hand, Lithuania breached its obligations under the following provisions of the Treaty:

    (A) Article 6: Expropriation and Compensation;

    (B) Article 3.1: Fair and Equitable Treatment;

    (C) Articles 3.2: National Treatment and Most Favoured Nation Treatment;

    (D) Article 2.2: Full Protection and Security.

A. Lithuania Unlawfully Expropriated Mr. Antonov's Investment without Prompt, Adequate and Effective Compensation

49. Article 6 of the Treaty prohibits expropriation except for (*i*) "*in the public interest*;" (*ii*) "*under due process of law*;" (*iii*) "*without discrimination*;" and (*iv*)

"*accompanied by the payment of prompt, adequate and effective compensation*."[45]

50. Lithuania has breached its obligation under Article 6 of the Treaty by unlawfully expropriating Mr. Antonov's investment – his controlling shareholding in Snoras (¶ 34). Lithuania deprived Mr. Antonov of the control, use, enjoyment and economic value of its investment in Lithuania. The expropriation was illegal for the following reasons.

    a) *First*, there was no legitimate public policy purpose whatsoever – rather a political animus – for the expropriation of Mr. Antonov's investment.

    b) *Second*, Lithuania acted without due process. The Bank of Lithuania conducted the 2011 inspection of Snoras in breach of the applicable law and procedure, in particular, by failing to provide Snoras with the documents or a meaningful opportunity to comment on the outcome of the inspection (¶¶ 29-31). Subsequently, Lithuania's appointed administrator, Mr.

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45. *See* Treaty, Article 6(1) ("The investments of the investors of one Contracting Party made in the territory of the other Contracting Party shall not be subject to expropriation, nationalisation or other measures equivalent to expropriation or nationalisation (hereinafter referred to as 'expropriation') unless these measures are carried out in the public interest and under due process of law, are carried out without discrimination and are accompanied by the payment of prompt, adequate and effective compensation."), **C-01**.

Freakley, hastily and erroneously appraised the financial conditions of Snoras (¶ 38). Finally, Lithuania began winding up Snoras in closed-door court proceedings that resulted in a judgment of bankruptcy within less than a month (on 7 December 2011) (¶ 40).

c) *Third*, Lithuania's seizure of Snoras' shares was discriminatory as no other Lithuanian or foreign bank was subjected to alike measures (¶ 26).

d) *Fourth and finally*, Lithuania has never offered Mr. Antonov any compensation for the seizure of his shares in Snoras (¶ 35). Lithuania's expropriation of Mr. Antonov's investment was accordingly unlawful and breached Article 6 of the Treaty.

51. Notably, the unlawfulness of the State's actions is vividly demonstrated by the conclusions of the Provisional Investigation Commission of the Seimas formed on 30 January 2012 specifically to investigate the situation in the Bank (***the Commission***). In particular, the Commission in its preliminary findings stated, among other things:

a. No documents or any other evidence proving that the Bank's assets decreased in value were submitted to the Commission;[46]

46. Conclusions of the Provisional Investigation Commission of the Seimas dated 30 May 2012, para. 12, **C-32**.

b. The State's decisions to take over the Bank's shares for public needs and to initiate a bankruptcy case against the bank were taken in haste and without sufficient consideration;[47]

c. The State did not consider all the circumstances and possible consequences when taking a decision to nationalize the Bank.[48]

B. Lithuania Failed to Accord Fair And Equitable Treatment to Mr. Antonov's Investment

52. Article 3(1) of the Treaty obliges Lithuania to accord "*investments made by investors of the other Contracting Party and activities related to such investments fair and equal treatment*".[49]

53. Lithuania has breached its obligation under Article 3(1) of the Treaty by taking unfair and inequitable measures with respect to Mr. Antonov's investments, including, without limitation, the Bank of Lithuania's discriminatory limitations on Snoras' lending capacity to

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47. *Id.*, para. 13, **C-32**.

48. *Id.*, para. 14. **C-32**.

49. Treaty, Article 3(1) ("*Each Contracting Party shall accord in its territory to the investors, investments made by investors of the other Contracting Party and activities related to such investments fair and equal treatment, which excludes the application of discriminatory measures impeding management, maintenance, use, enjoyment and disposal of the investment.*"), **C-01**.

Russian customers (¶ 25) and lack of due process in the course of its seizure of Snoras' shares (¶ 36). Lithuania is accordingly in breach of Article 3(1) of the Treaty.

C. Lithuania Failed to Guarantee National and Most Favoured Nation Treatment to Mr. Antonov 's Investment

54. Article 3(2) of the Treaty obliges Lithuania to guarantee "*at least no less favourable than the treatment accorded by the Contracting Party to the investments and activities related to such investments of its own investors or the investors of the third state*".[50] This article encompasses two types of guarantees provided to foreign investment: national treatment and most favoured nation treatment.

55. Lithuania specifically targeted its measures only at Mr. Antonov's investment, whilst no other Lithuanian or foreign banks have been subjected to similar approach (¶ 26). Lithuania is accordingly in breach of Article 3(2) of the Treaty.

D. Lithuania Failed to Guarantee Full Protection And Security for Mr. Antonov's Investment

56. Article 2(2) of the Treaty obliges Lithuania to guarantee "*full protection and security*" for Russian

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50. Treaty, Article 3(2) ("*The treatment, set forth in the paragraph 1 of this Article, shall be at least no less favourable than the treatment accorded by the Contracting Party to the investments and activities related to such investments of its own investors or the investors of third state.*"), **C-01**.

investments in Lithuania.[51] This standard guarantees the Investor not only physical protection by the State, but also the maintenance of an investment environment governed by the apolitical rule of law.

57. Lithuania breached its obligation under Article 2(2) of the Treaty by failing to maintain a secure investment environment for Mr. Antonov's investment. Snoras was nationalized amid geopolitical tensions between Russia and Lithuania for reasons that reflected Lithuania's internal politics and not the impartial application of the rule of law. Rather than comply with its obligation to maintain a secure investment environment, Lithuania harmed and ultimately expropriated Mr. Antonov's investment for reasons rooted in politics rather than legitimate regulatory procedures. Lithuania is accordingly in breach of Article 2(2) of the Treaty.

IV. MR. ANTONOV'S INVESTMENTS ARE PROTECTED UNDER THE TREATY

A. The Fund is a Protected Investor Under the Treaty

58. Article 1(1) of the Treaty defines, in relevant part, an "*investor*" as follows:

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51. Treaty, Article 2(2) ("*Each Contracting Party in accordance with its legislation shall guarantee to the investors of the other Contracting Party full protection and security of the investments made by the investors of the other Contracting Party.*"), **C-01**.

> "*a) any natural person who is a national of the state of this Contracting Party according to the legislation of this Contracting Party and authorized to invest in the territory of the other Contracting Party according to the legislation of the latter Contracting Party*
>
> *b) in respect of the Russian Federation:*
>
> *any legal person, constituted or established according to the legislation in force in the territory of the Russian Federation provided this legal person is authorized according to the legislation of the Russian Federation to invest in the territory of the Republic of Lithuania*."

59. As a Russian national,[52] Mr. Antonov qualifies as a protected investor under the Treaty. Likewise, as an assignee of Mr. Antonov's claims against Lithuania under the Treaty, the Fund, a Russian legal person,[53] equally qualifies as an investor under the Treaty.

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52. Mr. Antonov's Passport of the Citizen of the Russian Federation dated 25 December 2001 No. 45 01 495273, **C-33**.

53. Certificate of the Federal Tax Service of the Russian Federation on State Registration of the Fund dated 28 March 2016, **C-34**.

B. Mr. Antonov's Investments are Protected Under the Treaty

60. Article 1(2)(b) of the Treaty defines an "*investment*" as "*shares, stocks, bonds and other forms of participation in the enterprises and companies*."

61. Mr. Antonov's controlling shareholding in Snoras, thus, qualifies as an investment under the Treaty.

V. THE PARTIES' CONSENT TO ARBITRATION UNDER THE TREATY

62. The Fund has fulfilled all the requirements for access to arbitration under the Treaty, as explained below.

63. Lithuania's consent to submit investment disputes with foreign investors to UNCITRAL arbitration is provided in the Treaty under Article 10 of the Treaty, which reads as follows:

> «*1. In a case of any dispute between one Contracting Party and the investor of the other Contracting Party concerning the investments, including the disputes regarding amount, conditions or procedure of payment of the compensation, and the procedure of transfers, referred to respectively in the Articles 6 and 8 of this Agreement, a written notification, which includes detailed explanation, is submitted by the investor to the Contracting Party, which is a party of the dispute. The parties of the*

dispute shall endeavour to settle such dispute, if possible, by the way of negotiations.

2. If such dispute cannot be settled amicably within six months from the date of the written notification referred to in paragraph 1 of this Article, the dispute, at the request of either party and at the choice of an investor, shall be submitted to:

a) competent court or court of arbitration of the Contracting Party in which territory the investments are made;

b) the Arbitration Institute of the Stockholm Chamber of Commerce;

c) the Court of Arbitration of the International Chamber of Commerce;

d) an ad hoc arbitration in accordance with Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).»

64. The requirements of the Treaty to submit the dispute to arbitration have been satisfied in this case:

a) Mr. Antonov accepted Lithuania's offer to submit the present dispute to arbitration by serving a written Notice of Dispute on Lithuania on 4 May 2012;

b) more than six months have elapsed since Lithuania received Mr. Antonov's Notice of Dispute on 7 June 2012; and

c) the parties have failed to amicably settle the dispute.

65. In light of the above, the conditions precedent to submission of a claim to arbitration under the Treaty are satisfied.

VI. METHOD OF APPOINTMENT OF THE ARBITRAL TRIBUNAL AND OTHER PROCEDURAL MATTERS

66. Given that the parties have not reached an agreement on the number of arbitrators, the Fund proposes Lithuania that the Tribunal to be appointed in this case shall be composed of three arbitrators.

67. The Fund will notify Lithuania of its party-appointed arbitrator in due course. Under Article 7(2) of the UNCITRAL Arbitration Rules Lithuania shall notify the Fund of the appointment of its party-appointed arbitrator within thirty days after the receipt of the Fund's notification of the appointment of the arbitrator. Thereafter, the two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the Tribunal (Article 7(1) of the UNCITRAL Arbitration Rules).

68. For the purpose of the determinations to be made, in due course, pursuant to Articles 15 – 17 of the

UNCITRAL Arbitration Rules, the Fund respectfully proposes that the:

1. the appointing authority, if so required, shall be the Secretary-General of the Permanent Court of Arbitration;

2. language of the arbitration be English; and

3. the place and legal seat of arbitration be Paris, France.

VII. THE PARTIES TO THE DISPUTE

A. Claimant

69. The Fund is a Russian investment fund with its registered address at:

Kashtanovaya Alley, 143И

Office 7

Kaliningrad

Russia

70. The following shall serve as counsel for Claimant:

Appendix C

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71. For purposes of these proceedings, Claimant's address of record shall be deemed to be those of its counsel of record and all communications shall be served on it through counsel.

B. Respondent

72. Lithuania is a sovereign State which is a Party to the Treaty.

73. The Ministry of Finance of the Republic of Lithuania was appointed and authorized to represent the Republic of Lithuania in this dispute according to the Decree of the Government of Lithuania No. 698 of 13 June 2012. Absent any information on appointment of any other representative, we consider the Ministry of Finance the principal point of contact with Lithuania:

Vilius Šapoka

Minister of Finance

Ministry of Finance of the Republic of Lithuania

Lukiškių Str. 2

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Lithuania

Appendix C

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VIII. RELIEF REQUESTED

74. On the basis of the foregoing, without limitation and reserving the Fund's right to supplement these prayers for relief, the Fund respectfully requests that the Tribunal:

a) DECLARE that Lithuania has breached Articles 2(2), 3(1). 3(2) and 6 of the Treaty;

b) ORDER Lithuania to provide the Fund full reparation for all loss and damages inflicted by Lithuania's breached of the Treaty and international law, plus interest until the date of payment;

c) AWARD such other relief as the Tribunal considers appropriate; and

d) ORDER Lithuania to pay all of the costs and expenses of this arbitration, including the Fund's legal and expert fees, the fees and expenses of any experts appointed by the Tribunal, the fees and expenses of the Tribunal and other costs and fees.

Appendix C

Respectfully submitted on 29 April 2019

Egorov Puginsky Afanasiev & Partners

/s/_____

ALSTON & BIRD LLP

/s/_____

NOTICE OF AN INVESTMENT DISPUTE PURSUANT TO ARTICLE 10 OF THE TREATY BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE GOVERNMENT OF THE REPUBLIC OF LITHUAINA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

MR. VLADIMIR ANTONOV,

Investor,

v.

THE REPUBLIC OF LITHUANIA,

Party.

[•] April 2012

1

1. Mr Vladimir Antonov (the "**Investor**") is a well-known European banker and businessman who, as one of the Convers Group owners, directly and indirectly owned and continues to own several very substantial businesses in the Baltic states such as Latvia's national airline Air Baltic, the largest Latvian railway company RVR, a Latvian media holding telegraph LV which owns newspapers and radio stations in Latvia, the "Lietuvos Rytas", a Lithuanian media group

comprising of a publishing house, an internet portal, a TV station and Lithuania's largest newspaper **("Lietuvos Rytas")** by circulation.

2. Within the meaning of Article 1a of the Treaty between the Government of the Republic of Lithuania and the Government of the Russian Federation concerning the encouragement and reciprocal protection of investment dated 29 June 1999 (the **"BIT")**, '*investor*' means any individual being a citizen either of the Russian Federation or of the Republic of Lithuania and eligible to invest in the territory of other contracting party pursuant to the legislation of such party. The Investor as a citizen of the Russian Federation and as an individual investing in the Republic of Lithuania is an investor under the BIT. According to Article 2 of the BIT '*investment*' means any types of assets invested by an investor of one contracting party in the territory of the other contracting party pursuant to the legislation of such party and includes, *inter alia*, but not limited to:

   a. movable and immovable property and related interests;

   b. shares, contributions, bonds and other forms of participation in enterprises and companies; and

   c. any other assets.

3. This means that all shares of AB Snoras Bank ("**Snoras**") owned by the Investor shall be considered investments under the BIT.

Appendix C

2.

1. In 2004 on the request of the Bank of Lithuania the Investor acquired 68.1 per cent of the issued and fully paid up ordinary shares in Snoras from Convers Group which held a controlling stake in Snoras since 2003. At the time of the acquisition by the Investor, Snoras being one the oldest banks in the country was ranked 7th in Lithuania by capital and 6th by asset. The then Chairman of the Management Board and President of Snoras, Mr. Raimondas Baranauskas acquired 25.31 percent of Snoras, leaving 6.59 percent of the issued and fully paid up share capital in the free float on the Lithuanian Stock Exchange. The Investor and Mr. Raimondas Baranauskas had intended to grow Snoras into a substantial European bank and the principal financing vehicle for the Convers Group. Shortly after completion of the acquisition, Snoras moved its headquarters to Vilnius and obtained a permission to set up its retail chain.

2. Together with Mr. Raimondas Baranauskas the Investor has embarked on the exercise of growing Snoras and developing new, often innovative and unique to Convers Group products. By 2011 Snoras banking group was comprised of Snoras, Latvijas Krajbanka (the oldest bank in Latvia), and nine other subsidiary companies: UAB "SNORAS leasing", UAB "SNORAS Investment Management," AB "Finasta Holding," UAB "SNORAS Media", UAB "SNORAS Development", UAB "SNORO valda", OU "Real Estate Investment Management" and UAB "Dieveris". Snoras lead group companies provided

funding, leasing services, asset management, corporate and retail banking services, real estate management, construction and renovation services, custody, brokerage and settlement services for Lithuanian and Baltic countries' market participants. Snoras in 2011 became fifth bank in Lithuania size-wise along with such banks as Swedbank, SEB bank, DNB bank, and Nordea bank Finland, with over 2350 employees, who provided services to more than 1.2 million clients. Snoras has the largest and the most modern retail network in the Republic of Lithuania: 257 banking outlets, 12 regional branches existing in each Lithuanian district, Estonia and Latvia, 15 branches and 230 saving units functioning across the country. Snoras operated 339 cash machines, had representative offices in the United Kingdoms, the Kingdom of Belgium, Czech Republic, Ukraine, the Republic of Belarus and was the holder of the entire issued and paid up share capital in "Pointon York Limited", a credit institution based and authorized to conduct investment business in the United Kingdom. Snoras had an unlimited banking license No.8 which allowed Snoras to engage in any type of banking business in Lithuania.

3. The assets of Snoras (excluding Snoras group) between 2003 and 2011 grew from c. US$400 million (980 million Litas) in assets to c. US$3,3 billion (8,09 Billion Litas) with deposits reaching a record US$2,5 Billion (6,13 Billion Litas). To ensure such rapid growth the Investor and Convers Group provided shareholder loans and additional equity on a regular basis. In

2005 the Investor has provided Snoras with a €20 million subordinated loan, in 2009 he subscribed to another subordinated loan of €7,5 million. In addition to these financings the Investor in 2009 subscribed to the indefinite term bonds on 10,5 million aggregate nominal value.

4. In 2011 the Investor has successfully negotiated an equity investment of US$155 million (380 million Litas) into Snoras by an alternative investment fund "JFP Emerging Europe Momentum Fund". If the Bank of Lithuania were to allow registration of the new share issue, the issued and fully paid up capital of Snoras would have increased by 1,8 times – from 494,2 million Litas to 874,3 million Litas. The demand for the new shares twice exceeded the supply. The investors' interest in new Snoras shares showed that Snoras business was positively valued by investor community. If the 2011 share issue would not have been blocked by the Bank of Lithuania, Snoras would have become the third largest bank in the country by capital.

5. Fitch, a leading international ratings agency, independently rated Snoras as of 1 April 2011, as follows: Long-term B+; Short-term B; Individual 0/E; Support 4; Rating outlook stable. In summary, Snoras was solvent with no liquidity problems at all material times in the lead up to intervention by the Bank of Lithuania.

6. Following the acquisition of 68.1 per cent of ordinary issued shares in Snoras the Investor legitimately and reasonably worked to develop this enterprise and to profit as a shareholder and as a creditor. Since the Investor's acquisition of the shares the Republic of Lithuania assumed a duty to protect the Investor's title to and rights in the ordinary shares acquired by the Investor under international obligations binding the Republic of Lithuania and national laws and regulations, such as Article 23 of the Constitution of the Republic of Lithuania.

3.

1. Until 2008 the Social Democratic Party (the **"SDP")** was in power in Lithuania and both the Investor and Mr. Raimondas Baranauskas were close to the SOP leader, Mr. Algirdas Mykolas Brazauskas.

2. In 2008, the Conservative Party came to power, exhibiting much greater anti-Russian rhetoric than had been evident under the SDP.

3. In 2009, Snoras, through its wholly owned subsidiary Snoras Media, acquired a 34 per cent stake in Lietuvos Rytas. As well as a 34 per cent shareholding in Lietuvos Rytas, Snoras Media acquired Lietuvos Rytas's debt and thus had effective operational control over it with editorial control remaining with the Chief Editor. Lietuvos Rytas has the largest circulation in the country and as a result has the potential to wield great political influence. It has always been

strongly critical of the Conservative government and of the President Ms. Dalia Grybauskaite who, whilst ostensibly a member of the Independent Party, was elected with the strong support of the ruling Conservative Party on 12 July 2009.

4. From around 2009 onwards, Snoras was subjected to disproportionate, discriminatory and financially damaging intervention by the state, led by the Bank of Lithuania.

5. In January 2011, the Bank of Lithuania prohibited Snoras from making loans to foreign nationals and non-residents in general, and Russian companies and individuals in particular. The prohibition extended to existing loans, with Snoras being forced to reduce loans to Russian nationals to below 50 percent of its total capital. No other banks in Lithuania were put under so much pressure. In particular, no other banks were compelled to reduce and recall loans to foreigners. When the management of Snoras asked the Bank of Lithuania why they were imposing such severe restriction and setting impossible targets for Snoras, the former responded that it was not their decision. They said that the decision came from the top and was made by the President of the Republic of Lithuania.

6. In April 2011 Mr. Vitas Vasiliauskas, a close ally of the incumbent President Ms. Dalia Grybauskaite, was appointed the new governor of the Bank of Lithuania. Following his appointment the punitive restrictions

on Snoras intensified, culminating in the seizure of Snoras, its nationalization and commencement of insolvency.

7. The Investor and Mr. Raimondas Baranauskas were repeatedly warned about likely consequences to their business caused by Lietuvos Rytas criticism of the incumbent Present, Ms. Dalia Grybauskaite.

8. On 19 July 2011, a meeting was held at the Bank of Lithuania. The board of the Bank of Lithuania attended in full together with the Investor and Mr. Raimondas Baranauskas. Snoras's financial position was discussed but the governor of the Bank of Lithuania appeared more interested in discussing the ownership of Lietuvos Rytas.

9. On Friday 11 November 2011, Snoras was granted a two-month extension to finalize a previously-agreed plan, sanctioned by the Bank of Lithuania, for the sale of approximately 30 per cent of the Snoras's shares to a group of three UK investor. This followed an earlier agreed capital injection of US $30 million by the Investor. On the same date the Bank of Lithuania sent Snoras a formal invitation to a meeting to be held on 18 November 2011 to discuss its approval of this capital injection. However, it is now apparent that on 9 November 2011, prior to the grant of this extension and the setting up of this meeting, the Bank of Lithuania has already asked the Prosecutor General's Office to commence an investigation into Snoras.

10. On 14 November 2011 the Prosecutor General's Office of the Republic of Lithuania initiated a pre trial investigation into allegations of embezzlement of property of substantial value belonging to Snoras, money laundering, fraudulent accounting and other activities defined by the Criminal Code of the Republic of Lithuania as serious offences in particular, the allegedly fraudulent transfer of 897 million Litas (US$366 million) to Swiss bank account in the name of the Investor.

    On 16 November 2011, by Resolution of the Board of the Bank of Lithuania, restriction on activities of Snoras was imposed until 16 January 2012 and a temporary administrator was appointed. It is indicated in the conclusion of the Bank of Lithuania regarding the insolvency of Snoras that according to the balance-sheet statement of Snoras as of 16 November 2011, the net asset value of Snoras was lower than its liabilities. As of 16 November 2011, Snoras's net asset value was 4416,255 million Litas and Snoras's liabilities amounted to 7171,921 million Litas. Thus, it was alleged that the net asset value of Snoras is lower that Snoras's liabilities by the amount of 2755,666 Litas. Following suspension of the activities of Snoras which has no liquidity problems at that time, the Bank of Lithuania and the Government of the Republic of Lithuania passed the decision to liquidate the bank *de facto*, without even waiting for the conclusions of the temporary administrator on solvency of Snoras. The Government of Lithuania made public its intentions to split Snoras assets

into two groups. As such split its impossible without closing Snoras, it was decided on the same day to nationalize 100% of ordinary shares in Snoras and place Snoras into temporary administration.

12. In the immediate aftermath of the seizure several officials issued contradicting statements about the true solvency position of Snoras, with some claiming that Snoras was solvent.

13. Thus, by seizing Snoras the Government of Lithuania of Snoras ignored the results of the Bank's of Lithuania several inspections of Snoras, the last of which was completed on 16 November 2011. There was no public need to nationalise Snoras and no fair compensation was offered or paid to Snoras shareholders in breach of Art.23 of the Constitution of the Republic of Lithuania, Art. 5 of the Law of the Republic of Lithuania "On compensation for the damage caused by unlawful actions of the authorities" and Constitutional Court rulings as of 27 May 1994, 22 December 1995 and 18 June 1998. Furthermore, Snoras group was actively financing other parts of Convers Group and the unlawful seizure of Snoras from its rightful and diligent owners resulted in a very substantial loss and damage to other parts of Convers Group, such as Saab Cars AB, Convers Sports Initiatives, Spyker Cars AB, Air Baltic, Latvijas Krajbanka, and others. The Investor estimates the quantum of this loss and damage other parts of Convers Group to be c. US$2,4 billion (6 billion Litas) in addition to the loss and damage caused to him by unlawful

seizure of his shares in Snoras, the value of which was on the 16 November 2011 7,756,671,040 Litas (c. US$3, 17 billion). Furthermore, actions of the Lithuanian Government and, particularly, criminal prosecution of the Investor on unsubstantiated charges and issue of a European Arrest Warrant for him, precluded the Investor from taking steps to mitigate the loss and damage to him personally and Convers Group of which he is the Chief Executive Offiver.

4.

1. According to **part 2 of Article 2** ('Promotion and protection of investments') of the BIT each contracting party guarantees the investors from the other contracting party full protection and safety for their investments. It follows from this provision that the Investor's shares in Snoras should have been protected by the Government of Lithuania against any hostile actions, including illegal seizures and nationalisation without proper compensation.

2. In accordance with **Article 6** ('Expropriation and compensation') of the BIT investments shall not be subject to expropriation, nationalization or other actions of this nature except for when such actions are taken in public interests according to the law without discrimination and supported by payment of prompt, adequate and effective compensation. The compensation shall correspond with the market value of expropriated investments directly before the

moment when the information on actual or planned expropriation of such investments becomes known to the public. The compensation shall be paid without unreasonable delay in freely convertible currency and shall be freely transferred from one county to the other. Before the payment date the amount of the compensation shall be added with interest calculated with reference to LIBOR interest rate.

3. In breach of **Article 2** the Lithuanian Government was actively engaged in various actions which resulted in the unlawful seizure of Snoras from its shareholders on the direct order of the Bank of Lithuania which is an emanation of the Republic of Lithuania. The Republic of Lithuania has failed to demonstrate the public need for nationalisation and subsequent bankruptcy of Snoras, thus breaching not only its domestic legislation in force at the time of the seizure, but also the relevant provisions of the BIT, its own international obligations and basic principles of international law.

4. In breach of **Article 6** of the BIT the Lithuanian Government at no time prior to or following the completion of the unlawful seizure of Snoras from its shareholders has made any offers of, entered into negotiations about or made any approaches to the Investor in relation to payment to him of the adequate and effective compensation.

5. This letter constitutes notice to the Republic of Lithuania of an investment dispute within the meaning

of **part 1 of Article 10** of the BIT. The Investor invites the Republic of Lithuania to resolve the investment dispute amicably within six (6) months from the date of this letter. If the amicable resolution cannot be reached within six (6) months, the Investor reserves his right to commence binding arbitration under **part 2 of Article 10** of the BIT and the Investor will submit a Request for Arbitration to the International Chamber of Commerce in Paris, France.

For and on behalf of Mr. Vladimir Antonov

_____

Mr. Andrei Liakhov Ph.D.
Partner

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Tel.: +380 44 499 6000
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E-mail: ALiakhov@sk.ua

[•] April2012

Appendix C

AGREEMENT

BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF THE INVESTMENTS

The Government of the Russian Federation and the Government of the Republic of Lithuania, hereinafter referred to as the "Contracting Parties",

- desiring to establish favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party,

- recognising that the promotion and reciprocal protection of investments, based on the present Agreement, will be conducive to the development of mutually beneficial trade and economic, scientific and technical co-operation,

have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement:

1. The term "investor" in respect of each Contracting Party shall mean:

a) any natural person who is a national of the state of this Contracting Party according to the legislation of this Contracting Party and authorised to invest in the territory of the other Contracting Party according to the legislation of the latter Contracting Party;

b) in respect of the Russian Federation:

any legal person, constituted or established according to the legislation in force in the territory of the Russian Federation provided this legal person is authorised according to the legislation of the Russian Federation to invest in the territory of the Republic of Lithuania; in respect of the Republic of Lithuania: any entity constituted and registered in the territory of the Republic of Lithuania in conformity with its legislation;

2. The term "investment" shall mean all kinds of assets, invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with legislation of the latter Contracting Party, and shall include in particular, though not exclusively:

a) movable and immovable property as well as respective property rights;

b) shares, stocks, bonds and other forms of participation in the enterprises and companies;

c) claims to money, invested to create economic value, and claims to any performance having an economic value and connected with investments;

d) exclusive rights to the objects of the intellectual property (copyrights, patents, industrial designs and models, trade marks, service marks, goodwill and know-how);

e) rights to conduct economic activities conferred by law or under contract, including, in particular, concessions to search for, cultivate, extract and exploit natural resources. Any change of form in which assets are invested or reinvested shall not affect their character as investment provided such change does not contradict the legislation of the Contracting Party in which territory the investments are made.

3. The term "returns" shall mean all amounts produced by an investment in accordance with paragraph 2 of this Article and in particular, though not exclusively, includes profits, capital gains, dividends, interest, licence remunerations, royalties and other fees.

4. The term "territory" shall mean the territory of the Russian Federation or the territory of the Republic of Lithuania, including their respective exclusive economic zone and continental shelf, in which the respective state may exercise sovereign rights and jurisdiction in accordance with international law.

5. The term "legislation of the Contracting Party" shall mean the laws and regulations of the state of the Contracting Party in respect of both Contracting Parties.

Appendix C

Article 2
Promotion and protection of investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its legislation.

2. Each Contracting Party in accordance with its legislation shall guarantee to the investors of the other Contracting Party full protection and security of the investments made by the investors of the other Contracting Party.

Article 3
Treatment of Investments

1. Each Contracting Party shall accord in its territory to the investors, investments made by investors of the other Contracting Party and activities related to such investments fair and equal treatment, which excludes the application of discriminatory measures impeding management, maintenance, use, enjoyment and disposal of the investment.

2. The treatment, set forth in the paragraph 1 of this Article, shall be at least no less favourable than the treatment accorded by the Contracting Party to the investments and activities related to such investments of its own investors or the investors of third state.

3. Each Contracting Party in accordance with its laws and regulations reserves a right to determine the branches of

the national economy and the spheres of activities where the activities of foreign investors are restricted or limited.

4. The most favoured nation treatment, provided in accordance with paragraph 2 of this Article, is not extended to the benefits which are provided or will be provided in the future by the Contracting Party:

a) by virtue of any existing or future customs, monetary and payment union, free trade and common tariff areas, common market or other forms of regional economic integration agreements, to which the Contracting Party is a party or may become a party in the future;

b) on the basis of the treaties on the avoidance of double taxation or other agreements on taxation.

Article 4
Key personnel

1. The Contracting Party in accordance with its legislation regarding entry, temporary stay and work of natural persons non-citizens, shall permit natural persons, who are the investors of the other Contracting Party and key personnel (executives, managers as well as specialists, who are essential to the functioning of the enterprise), employed by the investor of this Contracting Party, to enter and remain in its territory for the purpose of engaging in activities, related to investments.

2. The Contracting Party, in accordance with its legislation, shall permit the investors of the other Contracting Party,

who have made investments in the territory of the first Contracting Party, to employ any employee of the category of key personnel of their choice regardless of citizenship, provided this employee of the category of key personnel was granted permit to enter, temporary stay and work in the territory of the first Contracting Party, and this work meets the conditions and temporary limitations set forth in the permit issued to this employee of the category of key personnel.

Article 5
Transparency of legislation

Each Contracting Party shall, with a view to promoting the understanding of its legislation that pertain to or affect investments made in its territory by the investors of other Contracting Party, make such legislation public and accessible.

The Contracting Parties, if necessary, shall exchange information on the legislation, pertaining to the field of application of this Agreement.

Article 6
Expropriation and compensation

1. The investments of the investors of one Contracting Party made in the territory of the other Contracting Party shall not be subject to expropriation, nationalisation or other measures equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") unless these measures are carried out in the public interest and under

due process of law, are carried out without discrimination and are accompanied by the payment of prompt, adequate and effective compensation.

2. The compensation shall be equivalent to the market value of the expropriated investments immediately before the expropriation in fact occurred or the impending expropriation became public knowledge. The compensation shall be paid without undue delay in a convertible currency and shall be freely transferable from the territory of one Contracting Party to the territory of the other Contracting Party. The compensation shall include interest calculated until the date of payment of the compensation at the LIBOR rate.

Article 7
Compensation of losses

Investors of one Contracting Party, who suffer losses in respect of their investments in the territory of the other Contracting Party due to war, civil disturbance, a state of national emergency, insurrection, riot or other similar events, shall be accorded the treatment no less favourable than that accorded by the latter Contracting Party to its own investors or to investors of any third State in respect of any measures taken by it in accordance with such loss.

Article 8
Transfers of payments

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after the completion of

all tax obligations, free transfer abroad of payments in connection with the investments, in particular:

a) the initial capital and additional amounts for the maintenance or increase of the investment;

b) returns;

c) funds in repayment of loans, directly related to the investment;

d) the proceeds from the total or partial liquidation or sale of the investments;

e) compensation referred to in the Article 6 of this Agreement;

f) the earnings and other remuneration of the investor of the other Contracting Party and key personnel authorised to work in connection with investments in the territory of the first Contracting Party.

2. Transfers shall be made without undue delay in a freely convertible currency at the exchange rate applying on the date of transfer in accordance with currency regulations in force of the Contracting Party in whose territory the investment was made.

Article 9
Subrogation

The Contracting Party or its designated Agency which made a payment to an investor under an indemnity against

non-commercial risks given in, respect of an investment in the territory of the other Contracting Party, shall exercise by the virtue of subrogation the rights of the investor to the same extent as the investor. The rights are exercised in accordance with legislation of the latter Contracting Party.

Article 10
Settlement of Disputes between one Contracting Party and an Investor of the other Contracting Party

1. In a case of any dispute between one Contracting Party and the investor of the other Contracting Party concerning the investments, including the disputes regarding amount, conditions or procedure of payment of the compensation, and the procedure of transfers, referred to respectively in the Articles 6 and 8 of this Agreement, a written notification, which includes detailed explanation, is submitted by the investor to the Contracting Party, which is a party of the dispute. The parties of the dispute shall endeavour to settle such dispute, if possible, by the way of negotiations.

2. If such dispute can not be settled amicably within six months from the date of the written notification referred to in paragraph 1 of this Article, the dispute, at the request of either party and at the choice of an investor, shall be submitted to:

a) competent court or court of arbitration of the Contracting Party in which territory the investments are made;

b) the Arbitration Institute of the Stockholm Chamber of Commerce;

c) the Court of Arbitration of the International Chamber of Commerce;

d) an ad hoc arbitration in accordance with Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The arbitral decision shall be final and binding on both parties of the dispute. Each Contracting Party shall undertake to execute such decision in accordance with its legislation.

Article 11
Settlement of disputes between the Contracting Parties

1. The disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled by negotiations, if possible, through diplomatic channels.

2. If the dispute is not settled in such way within six months from the beginning of the negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an Arbitral Tribunal.

3. Such an Arbitral Tribunal shall be constituted for each case in the following way. Within two months from the date on which either Contracting Party receives a notification

of arbitration each Contracting Party shall appoint one arbitrator. These two arbitrators, within two months period from the appointment of these arbitrators, shall select the national of the third state, who, upon approval of both Contracting Parties, shall be elected the Chairman of the Arbitral Tribunal.

4. If the necessary appointments were not made in the periods, referred to in the paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make such appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or is otherwise unable to carry out the specified request, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of one of the Contracting Parties or is otherwise unable to carry out the specified request, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall reach its decision award by the majority of votes. Such decision award of the Arbitral Tribunal is final and binding upon each Contracting Party. The Arbitral Tribunal shall determine the procedures of its work independently.

6. Each Contracting Party shall bear the costs connected with the activities the member of the Arbitral

Tribunal, appointed by this Contracting Party, and of its representation in the arbitration proceedings; the cost of the Chairman of the Arbitral Tribunal and remaining costs shall be borne in equal parts by the Contracting Parties. The Arbitral Tribunal may, however, decide that a higher proportion of costs shall be borne by one of the two Contracting Parties, and such award shall be binding on both Contracting Parties.

Article 12
Consultations

The Contracting Parties shall consult at the, request of either of them on matters concerning the interpretation and application of this Agreement.

Article 13
Application of the Agreement

This Agreement shall apply to investments made in the territory of one Contracting Party by the investors of the other Contracting Party as from January 1, 1992.

The provisions of this Agreement shall apply to the disputes, referred to in the Articles 10 and 11 of this Agreement, from the date of its entry into force.

Article 14
Entry into force and Duration of the Agreement

1. Each Contracting Party shall notify the other Contracting Party in a written form that all internal

procedures for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force from the date of the latter of the two notifications.

2. The Agreement shall remain in force for the period of fifteen years. It shall continue to be in force thereafter until the expiration of twelve months from the date on which, either Contracting Party shall have given the other Contracting Party written notice concerning the termination of this Agreement.

3. The Protocol, annexed hereto, shall form an integral part of the Agreement.

4. This Agreement may be amended by the mutual written consent of the both Contracting Parties. Any such amendment shall enter into force when each Contracting Party have notified the other Contracting Party that all internal procedures for the entry into force of such amendment have been fulfilled.

5. The provisions of the other Articles of this Agreement shall continue to be effective for a further period of ten-years from the date of its termination in respect of investments made before the termination of and covered by this Agreement.

Done in duplicate in Moscow on the 29th of June, 1999, in the Russian, Lithuanian and English languages, all texts being equally authentic. In case of divergence, the English text shall be operative.

Appendix C

For the Government of the Russian Federation	For the Government of the Republic of Lithuania

PROTOCOL

At the signing of the Agreement between the Government of the Russian Federation and the Government of the Republic of Lithuania on the promotion and reciprocal protection of investments (hereinafter referred to as "the Agreement"), the Contracting Parties have agreed upon the following provisions, that shall form the integral part of the Agreement:

1. Notwithstanding the provisions of the Article 10 of the Agreement, the investors, whose investments are being expropriated, shall have a right to prompt review of their case by the appropriate judicial or administrative authorities of the expropriating Contracting Party to determine whether such expropriation, and any compensation therefore, conforms to the principles set forth in the Article 6 of the Agreement and the legislation of the expropriating Contracting Party.

2. Notwithstanding the provisions of the Article 13 of the Agreement, in respect of the Republic of Lithuania:

a) the provisions of the Agreement shall not apply to the matters relating to acquisition, possession, use, disposal and other rights to land plots;

b) the matters referred to in subparagraph a) of the paragraph 2 of this Protocol shall be regulated by the legislation of the Republic of Lithuania.

Appendix C

Done in duplicate in Moscow on the 29th of June 1999, in the Russian, Lithuanian and English languages, all texts being equally authentic. In case of divergence, the English text shall be operative.

For the Government of the Russian Federation

For the Government of the Republic of Lithuania

Appendix C

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Case No.

IN RE THE APPLICATION OF THE FUND
FOR PROTECTION OF INVESTOR RIGHTS IN
FOREIGN STATES PURSUANT TO 28 U.S.C. § 1782
FOR AN ORDER GRANTING LEAVE TO
OBTAIN DISCOVERY FOR USE IN
A FOREIGN PROCEEDING

**SUBPOENA TO PRODUCE DOCUMENTS,
INFORMATION, OR OBJECT**

To: AlixPartners, LLP 909 Third Avenue, New York, New York, 10022

[x] *Production*: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Document Requests in attached Subpoena Schedule

Place:	Date and Time:
Alston & Bird, LLP 90 Park Avenue New York, New York 10016	

Appendix C

[ ] Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

_____ OR _____

Signature of Clerk or Deputy Clerk *Attorney's Signature*

The name, address, e-mail address, and telephone number of the attorney representing (*name of party*) *the Fund for Protection of Investor Rights in Foreign States*, who issues or requests this subpoena are: *Alexander Yanos, Alston & Bird, LLP. 90 Park Avenue, New York, New York, 10016. Alex.Yanos@alston.com. (212) 210 9400.*

Appendix C

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Appendix C

Civil Action No.

PROOF OF SERVICE
(This section should not be filed with the courts unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any)* _____on (*date*) _____.

[] I served the subpoena by delivering a copy to the named individual as follows: _____ on (*date*) _____; or

[] I returned the subpoena unexecuted because: _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____.

My fees are $_____ for travel and $____ for services, for a total of $_____.

I declare under penalty of perjury that this information is true.

Date: _____

Appendix C

_____
Server's Signature

_____
Printed Name and Title

_____
Server's Address

Additional Information regarding attempting service, etc.:

Appendix C

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g)
(Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

Appendix C

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Appendix C

SCHEDULE TO SUBPOENA

DEFINITIONS

Each undefined word shall have its usual and generally accepted meaning. Each defined word, and all variations thereof, shall have the meanings set forth below:

1. "The Fund" means the Fund for Protection of Investor Rights in Foreign States as well as any subsidiaries, divisions, affiliates, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

2. "Mr. Antonov" refers to Mr. Vladimir Antonov.

3. "Snoras" means AB Bankas Snoras, as well as any former subsidiaries, divisions, affiliates, or persons, and any person acting or purporting to act on its behalf, as well as its former officers, directors, employees, representatives and agents.

4. "Lithuania" means the Republic of Lithuania, as well as any government entities, divisions, affiliates, or persons, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

5. "The Treaty" means the Lithuania-Russia Bilateral Investment Treaty of 2004.

6. "AlixPartners" means AlixPartners LLP, as well as any subsidiaries, divisions, affiliates, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

7. "Mr. Freakley" refers to Mr. Simon Freakley.

8. "The Investigation" means the investigation directed by Mr. Freakley at the instruction of the Bank of Lithuania into the financial state of Snoras.

9. "Communication" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(1), and means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

10. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(2), including, without limitation, "documents or electronically stored information." A draft or non-identical copy is a separate document within the meaning of this term.

11. "Identify" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(3) and Local Rule 26.3 (c)(4), and:

a. When used in reference to a person, means to give, to the extent known, the person's

full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

b. When used in reference to a document means to give, to the extent known the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addresses(s) and recipient(s).

12. "Person" is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

13. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

14. The terms "any," "all," and "each" shall be construed as encompassing any and all.

15. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. The present tense of any word used herein shall be deemed to include the past tense, and the past tense shall include the present tense.

Appendix C

INSTRUCTIONS

1. Unless otherwise specified in a particular request, each request herein seeks: (i) all responsive Documents that were dated, prepared, modified, sent, or received in a period from January 1, 2011 through the present, and (ii) any Documents related to that period whenever generated.

2. Produce all Documents in the manner in which they are maintained in the usual course of your business or organize and label the Documents to correspond with the categories in this Schedule. A request for a Document shall be deemed to include a request for any and all file folders within which the Document was contained, transmittal sheets, cover letters, exhibits, enclosures, or attachments to the Document, in addition to the Document itself.

3. If and to the extent Documents are maintained in a database or other electronic format, produce, along with the Document(s), software that will enable access to the electronic Document(s) or database as you would access such electronic Document(s) or database in the ordinary course of your business.

4. Produce Documents in such fashion as to identify the department, branch or office in which they were located and, where applicable, the natural person in whose possession it was found and the business address of each Document's custodian(s).

5. Any Document withheld from production based on a claim of privilege or any similar claim shall be identified by (1) the type of Document, (2) the general subject matter of the Document, (3) the date of the Document, and (4) such other information as is sufficient to identify the Document including the author of the Document, the addressee of the Document, and, where not apparent, the relationship of the author and the addressee to each other. The nature of each claim of privilege shall be set forth.

6. Documents attached to each other should not be separated.

7. Documents not otherwise responsive to this discovery request shall be produced if such Documents mention, discuss, refer to, or explain the Documents which are called for by this subpoena.

8. In producing Documents and other materials, you shall furnish all Documents or things in your possession, custody or control, regardless of whether such Documents or materials are or are also possessed directly by you or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, accountants, investigators, or by your attorneys or their agents, employees, representatives or investigators.

9. In collecting material in response to this discovery request, you shall search the electronic, e-mail, and hard copy files of all individuals, groups, or departments likely to have possessed responsive materials.

10. If you object to any part of any request, state fully in writing the nature of the objection. Notwithstanding any objections, nonetheless comply fully with the other parts of the request to which you are not objecting.

11. Each Document Request shall be construed independently and without reference to any other Document Request for the purpose of limitation. The use of the singular form of any word includes the plural and vice versa. The past tense shall include the present and vice versa.

DOCUMENTS REQUESTED

1. Any and all documents or communications concerning Mr. Freakley's appointment and work as Temporary Administrator of Snoras.

2. Any and all documents or communications concerning formal or informal instructions received by Mr. Freakley or Zolfo Cooper or individuals acting under the direction or supervision of Mr. Freakley in connection with Mr. Freakley's role as Temporary Administrator of Snoras and the Investigation.

3. Any and all documents or communications (including without limitation, financial analyses and interview notes) concerning the nature, scope, conduct, and findings of Mr. Freakley's Investigation and administration of Snoras.

4. Any and all documents or communications, between Mr. Freakley or individuals acting under the direction or

supervision of Mr. Freakley and the Bank of Lithuania or other Lithuanian government officials concerning Mr. Freakley's Investigation and administration of Snoras.

5. Any and all reports (including drafts) prepared by Mr. Freakley or individuals acting under the direction or supervision of Mr. Freakley concerning his administration and Investigation of Snoras.

Appendix C

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Case No.

IN RE THE APPLICATION OF THE FUND
FOR PROTECTION OF INVESTOR RIGHTS IN
FOREIGN STATES PURSUANT TO 28 U.S.C. § 1782
FOR AN ORDER GRANTING LEAVE TO
OBTAIN DISCOVERY FOR USE IN
A FOREIGN PROCEEDING

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISIS IN A CIVIL ACTION

To: Simon Freakley 909 Third Avenue, New York, New York, 10022

[x] *Production*: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Document Requests in attached Subpoena Schedule

Place:	Date and Time:
Alston & Bird, LLP 90 Park Avenue New York, New York 10016	

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[ ] Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

_____ OR _____

Signature of Clerk or Deputy Clerk *Attorney's Signature*

The name, address, e-mail address, and telephone number of the attorney representing (*name of party*) *the Fund for Protection of Investor Rights in Foreign States*, who issues or requests this subpoena are: *Alexander Yanos, Alston & Bird, LLP. 90 Park Avenue, New York, New York, 10016. Alex.Yanos@alston.com. (212) 210 9400.*

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Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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Civil Action No.

PROOF OF SERVICE
(This section should not be filed with the courts unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any)* _____on (*date*) _____.

[] I served the subpoena by delivering a copy to the named individual as follows: _____ on (*date*) _____; or

[] I returned the subpoena unexecuted because: _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____.

My fees are $_____ for travel and $____ for services, for a total of $_____.

I declare under penalty of perjury that this information is true.

Date: _____

Appendix C

_____
Server's Signature

_____
Printed Name and Title

_____
Server's Address

Additional Information regarding attempting service, etc.:

Appendix C

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g)
(Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

Appendix C

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

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(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Appendix C

SCHEDULE TO SUBPOENA

DEFINITIONS

Each undefined word shall have its usual and generally accepted meaning. Each defined word, and all variations thereof, shall have the meanings set forth below:

1. "The Fund" means the Fund for Protection of Investor Rights in Foreign States as well as any subsidiaries, divisions, affiliates, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

2. "Mr. Antonov" refers to Mr. Vladimir Antonov.

3. "Snoras" means AB Bankas Snoras, as well as any former subsidiaries, divisions, affiliates, or persons, and any person acting or purporting to act on its behalf, as well as its former officers, directors, employees, representatives and agents.

4. "Lithuania" means the Republic of Lithuania, as well as any government entities, divisions, affiliates, or persons, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

5. "The Treaty" means the Lithuania-Russia Bilateral Investment Treaty of 2004.

6. "AlixPartners" means AlixPartners LLP, as well as any subsidiaries, divisions, affiliates, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

7. "Mr. Freakley" refers to Mr. Simon Freakley.

8. "The Investigation" means the investigation directed by Mr. Freakley at the instruction of the Bank of Lithuania into the financial state of Snoras.

9. "Communication" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(1), and means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

10. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(2), including, without limitation, "documents or electronically stored information." A draft or non-identical copy is a separate document within the meaning of this term.

11. "Identify" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(3) and Local Rule 26.3 (c)(4), and:

a. When used in reference to a person, means to give, to the extent known, the person's

full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

b. When used in reference to a document means to give, to the extent known the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addresses(s) and recipient(s).

12. "Person" is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

13. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

14. The terms "any," "all," and "each" shall be construed as encompassing any and all.

15. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. The present tense of any word used herein shall be deemed to include the past tense, and the past tense shall include the present tense.

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1. Unless otherwise specified in a particular request, each request herein seeks: (i) all responsive Documents that were dated, prepared, modified, sent, or received in a period from January 1, 2011 through the present, and (ii) any Documents related to that period whenever generated.

2. Produce all Documents in the manner in which they are maintained in the usual course of your business or organize and label the Documents to correspond with the categories in this Schedule. A request for a Document shall be deemed to include a request for any and all file folders within which the Document was contained, transmittal sheets, cover letters, exhibits, enclosures, or attachments to the Document, in addition to the Document itself.

3. If and to the extent Documents are maintained in a database or other electronic format, produce, along with the Document(s), software that will enable access to the electronic Document(s) or database as you would access such electronic Document(s) or database in the ordinary course of your business.

4. Produce Documents in such fashion as to identify the department, branch or office in which they were located and, where applicable, the natural person in whose possession it was found and the business address of each Document's custodian(s).

5. Any Document withheld from production based on a claim of privilege or any similar claim shall be identified by (1) the type of Document, (2) the general subject matter of the Document, (3) the date of the Document, and (4) such other information as is sufficient to identify the Document including the author of the Document, the addressee of the Document, and, where not apparent, the relationship of the author and the addressee to each other. The nature of each claim of privilege shall be set forth.

6. Documents attached to each other should not be separated.

7. Documents not otherwise responsive to this discovery request shall be produced if such Documents mention, discuss, refer to, or explain the Documents which are called for by this subpoena.

8. In producing Documents and other materials, you shall furnish all Documents or things in your possession, custody or control, regardless of whether such Documents or materials are or are also possessed directly by you or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, accountants, investigators, or by your attorneys or their agents, employees, representatives or investigators.

9. In collecting material in response to this discovery request, you shall search the electronic, e-mail, and hard copy files of all individuals, groups, or departments likely to have possessed responsive materials.

10. If you object to any part of any request, state fully in writing the nature of the objection. Notwithstanding any objections, nonetheless comply fully with the other parts of the request to which you are not objecting.

11. Each Document Request shall be construed independently and without reference to any other Document Request for the purpose of limitation. The use of the singular form of any word includes the plural and vice versa. The past tense shall include the present and vice versa.

DOCUMENTS REQUESTED

1. Any and all documents or communications concerning Mr. Freakley's appointment and work as Temporary Administrator of Snoras.

2. Any and all documents or communications concerning formal or informal instructions received by Mr. Freakley or Zolfo Cooper or individuals acting under the direction or supervision of Mr. Freakley in connection with Mr. Freakley's role as Temporary Administrator of Snoras and the Investigation.

3. Any and all documents or communications (including without limitation, financial analyses and interview notes) concerning the nature, scope, conduct, and findings of Mr. Freakley's Investigation and administration of Snoras.

4. Any and all documents or communications, between Mr. Freakley or individuals acting under the direction or

supervision of Mr. Freakley and the Bank of Lithuania or other Lithuanian government officials concerning Mr. Freakley's Investigation and administration of Snoras.

5. Any and all reports (including drafts) prepared by Mr. Freakley or individuals acting under the direction or supervision of Mr. Freakley concerning his administration and Investigation of Snoras.

Appendix C

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Case No.

IN RE THE APPLICATION OF THE FUND
FOR PROTECTION OF INVESTOR RIGHTS IN
FOREIGN STATES PURSUANT TO 28 U.S.C. § 1782
FOR AN ORDER GRANTING LEAVE TO
OBTAIN DISCOVERY FOR USE IN
A FOREIGN PROCEEDING

**SUBPOENA TO TESTIFY AT A DEPOSITION
IN A CIVIL ACTION**

To: AlixPartners, LLP 909 Third Avenue, New York, New York, 10022

[x] *Testimony*: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment::

See Deposition Topics in attached Subpoena Schedule

Place:	Date and Time:
Alston & Bird, LLP 90 Park Avenue New York, New York 10016	

Appendix C

The deposition will be recorded by this method: stenographic and video recording

[ ] *Production*: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

_____ OR _____

Signature of Clerk or Deputy Clerk *Attorney's Signature*

The name, address, e-mail address, and telephone number of the attorney representing (*name of party*) *the Fund for Protection of Investor Rights in Foreign States*, who issues or requests this subpoena are: *Alexander Yanos, Alston & Bird, LLP. 90 Park Avenue, New York, New York, 10016. Alex.Yanos@alston.com. (212) 210 9400.*

Appendix C

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Appendix C

Civil Action No.

PROOF OF SERVICE
(This section should not be filed with the courts unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any)* _____on (*date*) _____.

[] I served the subpoena by delivering a copy to the named individual as follows: _____ on (*date*) _____; or

[] I returned the subpoena unexecuted because: _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____.

My fees are $_____ for travel and $____ for services, for a total of $_____.

I declare under penalty of perjury that this information is true.

Date: _____

Appendix C

_____
Server's Signature

_____
Printed Name and Title

_____
Server's Address

Additional Information regarding attempting service, etc.:

Appendix C

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g)
(Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

Appendix C

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Appendix C

SCHEDULE TO SUBPOENA

DEFINITIONS

Each undefined word shall have its usual and generally accepted meaning. Each defined word, and all variations thereof, shall have the meanings set forth below:

1. "The Fund" means the Fund for Protection of Investor Rights in Foreign States as well as any subsidiaries, divisions, affiliates, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

2. "Mr. Antonov" refers to Mr. Vladimir Antonov.

3. "Snoras" means AB Bankas Snoras, as well as any former subsidiaries, divisions, affiliates, or persons, and any person acting or purporting to act on its behalf, as well as its former officers, directors, employees, representatives and agents.

4. "Lithuania" means the Republic of Lithuania, as well as any government entities, divisions, affiliates, or persons, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

5. "The Treaty" means the Lithuania-Russia Bilateral Investment Treaty of 2004.

6. "AlixPartners" means AlixPartners LLP, as well as any subsidiaries, divisions, affiliates, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

7. "Mr. Freakley" refers to Mr. Simon Freakley.

8. "The Investigation" means the investigation directed by Mr. Freakley at the instruction of the Bank of Lithuania into the financial state of Snoras.

9. "Communication" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(1), and means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

10. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(2), including, without limitation, "documents or electronically stored information." A draft or non-identical copy is a separate document within the meaning of this term.

11. "Identify" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(3) and Local Rule 26.3 (c)(4), and:

a. When used in reference to a person, means to give, to the extent known, the person's

full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

b. When used in reference to a document means to give, to the extent known the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addresses(s) and recipient(s).

12. "Person" is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

13. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

14. The terms "any," "all," and "each" shall be construed as encompassing any and all.

15. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. The present tense of any word used herein shall be deemed to include the past tense, and the past tense shall include the present tense.

Appendix C

INSTRUCTIONS

You are hereby instructed to designate one or more officers, directors, or managing agents who can testify on AlixPartners' behalf regarding knowledge of matters known or reasonably available to AlixPartners regarding the Deposition Topics.

DEPOSITION TOPICS

1. Lithuania's appointment of Mr. Freakley as the temporary administrator of Snoras.

2. Any instructions given by Lithuania concerning Mr. Freakley's investigation into Snoras.

3. The investigation conducted by Mr. Freakley at the behest of the Lithuanian authorities concerning Snoras and the findings of that investigation.

4. Any discussions between Lithuania and Mr. Freakley during the investigation into Snoras.

5. The report(s) created by Mr. Freakley submitted to Lithuania relating to his investigation of Snoras.

6. Any payment(s) made to Mr. Freakley, Zolfo Cooper, or AlixPartners relating to the investigation of Snoras.

Appendix C

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Case No.

IN RE THE APPLICATION OF THE FUND
FOR PROTECTION OF INVESTOR RIGHTS IN
FOREIGN STATES PURSUANT TO 28 U.S.C. § 1782
FOR AN ORDER GRANTING LEAVE TO
OBTAIN DISCOVERY FOR USE IN
A FOREIGN PROCEEDING

**SUBPOENA TO TESTIFY AT A DEPOSITION
IN A CIVIL ACTION**

To: Simon Freakley 909 Third Avenue, New York, New York, 10022

[x] *Testimony*: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment::

See Deposition Topics in attached Subpoena Schedule

Place:	Date and Time:
Alston & Bird, LLP 90 Park Avenue New York, New York 10016	

Appendix C

The deposition will be recorded by this method: stenographic and video recording

[ ] *Production*: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

_____ OR _____

Signature of Clerk or Deputy Clerk *Attorney's Signature*

The name, address, e-mail address, and telephone number of the attorney representing (*name of party*) *the Fund for Protection of Investor Rights in Foreign States*, who issues or requests this subpoena are: *Alexander Yanos, Alston & Bird, LLP. 90 Park Avenue, New York, New York, 10016. Alex.Yanos@alston.com. (212) 210 9400.*

Appendix C

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Appendix C

Civil Action No.

PROOF OF SERVICE
(This section should not be filed with the courts unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any)* _____on (*date*) _____.

[] I served the subpoena by delivering a copy to the named individual as follows: _____ on (*date*) _____; or

[] I returned the subpoena unexecuted because: _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____.

My fees are $_____ for travel and $____ for services, for a total of $_____.

I declare under penalty of perjury that this information is true.

Date: _____

Appendix C

_____
Server's Signature

_____
Printed Name and Title

_____
Server's Address

Additional Information regarding attempting service, etc.:

Appendix C

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g)
(Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

Appendix C

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Appendix C

SCHEDULE TO SUBPOENA

DEFINITIONS

Each undefined word shall have its usual and generally accepted meaning. Each defined word, and all variations thereof, shall have the meanings set forth below:

1. "The Fund" means the Fund for Protection of Investor Rights in Foreign States as well as any subsidiaries, divisions, affiliates, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

2. "Mr. Antonov" refers to Mr. Vladimir Antonov.

3. "Snoras" means AB Bankas Snoras, as well as any former subsidiaries, divisions, affiliates, or persons, and any person acting or purporting to act on its behalf, as well as its former officers, directors, employees, representatives and agents.

4. "Lithuania" means the Republic of Lithuania, as well as any government entities, divisions, affiliates, or persons, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

5. "The Treaty" means the Lithuania-Russia Bilateral Investment Treaty of 2004.

6. "AlixPartners" means AlixPartners LLP, as well as any subsidiaries, divisions, affiliates, and any person acting or purporting to act on its behalf, as well as its present and former officers, directors, employees, representatives and agents.

7. "Mr. Freakley" refers to Mr. Simon Freakley.

8. "The Investigation" means the investigation directed by Mr. Freakley at the instruction of the Bank of Lithuania into the financial state of Snoras.

9. "Communication" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(1), and means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

10. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(2), including, without limitation, "documents or electronically stored information." A draft or non-identical copy is a separate document within the meaning of this term.

11. "Identify" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) and SDNY Local Rule 26.3 (c)(3) and Local Rule 26.3 (c)(4), and:

a. When used in reference to a person, means to give, to the extent known, the person's

full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

b. When used in reference to a document means to give, to the extent known the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addresses(s) and recipient(s).

12. "Person" is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

13. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

14. The terms "any," "all," and "each" shall be construed as encompassing any and all.

15. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. The present tense of any word used herein shall be deemed to include the past tense, and the past tense shall include the present tense.

Appendix C

DEPOSITION TOPICS

1. Lithuania's appointment of Mr. Freakley as the temporary administrator of Snoras.

2. Any instructions given by Lithuania concerning Mr. Freakley's investigation into Snoras.

3. The investigation conducted by Mr. Freakley at the behest of the Lithuanian authorities concerning Snoras and the findings of that investigation.

4. Any discussions between Lithuania and Mr. Freakley during the investigation into Snoras.

5. The report(s) created by Mr. Freakley submitted to Lithuania relating to his investigation of Snoras.

6. Any payment(s) made to Mr. Freakley, Zolfo Cooper, or AlixPartners relating to the investigation of Snoras.

Appendix C

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW (UNCITRAL)

UNCITRAL Arbitration Rules

GENERAL ASSEMBLY RESOLUTION 31/98

Section I. Introductory rules

Section II. Composition of the arbitral tribunal

Section III. Arbitral proceedings

RESOLUTION 31/98 ADOPTED BY THE GENERAL ASSEMBLY ON 15 DECEMBER 1976

31/98. Arbitration Rules of the United Nations Commission on International Trade Law

Appendix C

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Being convinced that the establishment of rules for ad hoc arbitration that are acceptable in countries with different legal, social and economic systems would significantly contribute to the development of harmonious international economic relations,

Bearing in mind that the Arbitration Rules of the United Nations Commission on International Trade Law have been prepared after extensive consultation with arbitral institutions and centres of international commercial arbitration,

Noting that the Arbitration Rules were adopted by the United Nations Commission on International Trade Law at its ninth session[1] after due deliberation,

1. ***Recommends*** the use of the Arbitration Rules of the United Nations Commission on International Trade Law in the settlement of disputes arising in the context of international commercial relations, particularly by reference to the Arbitration Rules in commercial contracts;

2. ***Requests*** the Secretary-General to arrange for the

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1. *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), chap. V, sect. C.

widest possible distribution of the Arbitration Rules.

UNCITRAL ARBITRATION RULES

Section I. Introductory rules

SCOPE OF APPLICATION

Article 1

1. Where the parties to a contract have agreed in writing* that disputes in relation to that contract shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing.

2. These Rules shall govern the arbitration except that

---

* *MODEL ARBITRATION CLAUSE*

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

Note - Parties may wish to consider adding:

(a) The appointing authority shall be ... (name of institution or person);
(b) The number of arbitrators shall be ... (one or three);
(c) The place of arbitration shall be ... (town or country);
(d) The language(s) to be used in the arbitral proceedings shall be ...

where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

NOTICE, CALCULATION OF PERIODS OF TIME

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

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NOTICE OF ARBITRATION

Article 3

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the "respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

(a) A demand that the dispute be referred to arbitration;

(b) The names and addresses of the parties;

(c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;

(d) A reference to the contract out of or in relation to which the dispute arises;

(e) The general nature of the claim and an indication of the amount involved, if any;

(f) The relief or remedy sought;

(g) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

(a) The proposals for the appointments of a sole arbitrator and an appointing authority referred to in article 6, paragraph 1;

(b) The notification of the appointment of an arbitrator referred to in article 7;

(c) The statement of claim referred to in article 18.

REPRESENTATION AND ASSISTANCE

Article 4

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

Section II. Composition of the arbitral tribunal

NUMBER OF ARBITRATORS

Article 5

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within fifteen days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitraors shall be appointed.

Appendix C

APPOINTMENT OF ARBITRATORS (Articles 6 to 8)

Article 6

1. If a sole arbitrator is to be appointed, either party may propose to the other:

(a) The names of one or more persons, one of whom would serve as the sole arbitrator; and

(b) If no appointing authority has been agreed upon by the parties, the name or names of one or more institutions or persons, one of whom would serve as appointing authority.

2. If within thirty days after receipt by a party of a proposal made in accordance with paragraph 1 the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the appointing authority agreed upon by the parties. If no appointing authority has been agreed upon by the parties, or if the appointing authority agreed upon refuses to act or fails to appoint the arbitrator within sixty days of the receipt of a party's request therefor, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority.

3. The appointing authority shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible. In making the appointment the appointing authority shall use the following list-procedure, unless

both parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

> *(a)* At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;
>
> *(b)* Within fifteen days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;
>
> *(c)* After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
>
> *(d)* If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

4. In making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the

advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Article 7

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

2. If within thirty days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed:

> *(a)* The first party may request the appointing authority previously designated by the parties to appoint the second arbitrator; or
>
> *(b)* If no such authority has been previously designated by the parties, or if the appointing authority previously designated refuses to act or fails to appoint the arbitrator within thirty days after receipt of a party's request therefor, the first party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator. In either case, the appointing authority may exercise its discretion in appointing the arbitrator.

3. If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by an appointing authority in the same way as a sole arbitrator would be appointed under article 6.

Article 8

1. When an appointing authority is requested to appoint an arbitrator pursuant to article 6 or article 7, the party which makes the request shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority may require from either party such information as it deems necessary to fulfil its function.

2. Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

CHALLENGE OF ARBITRATORS (Articles 9 to 12)

Article 9

A prospective arbitrator shall disclose to those who approach him in connexion with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once

appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

Article 10

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrators impartiality or independence.

2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article 11

1. A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in articles 9 and 10 became known to that party.

2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.

3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure

provided in article 6 or 7 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

Article 12

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made:

> *(a)* When the initial appointment was made by an appointing authority, by that authority;
>
> *(b)* When the initial appointment was not made by an appointing authority, but an appointing authority has been previously designated, by that authority;
>
> *(c)* In all other cases, by the appointing authority to be designated in accordance with the procedure for designating an appointing authority as provided for in article 6.

2. If the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in articles 6 to 9 except that, when this procedure would call for the designation of an appointing authority, the appointment of the arbitrator shall be made by the appointing authority which decided on the challenge.

Appendix C

REPLACEMENT OF AN ARBITRATOR

Article 13

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 6 to 9 that was applicable to the appointment or choice of the arbitrator being replaced.

2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply.

REPETITION OF HEARINGS IN THE EVENT OF THE REPLACEMENT OF AN ARBITRATOR

Article 14

If under articles 11 to 13 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

Appendix C

Section III. Arbitral proceedings

GENERAL PROVISIONS

Article 15

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, povided that the parties are treatedwithequality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

PLACE OF ARBITRATION

Article 16

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

2. The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

4. The award shall be made at the place of arbitration.

LANGUAGE

Article 17

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Appendix C

STATEMENT OF CLAIM

Article 18

1. Unless the statement of claim was contained in the notice of arbitration, within a period of time to be determined by the arbitral tribunal, the claimant shall communicate his statement of claim in writing to the respondent and to each of the arbitrators. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

2. The statement of claim shall include the following particulars:

(a) The names and addresses of the parties;

(b) A statement of the facts supporting the claim;

(c) The points at issue;

(d) The relief or remedy sought.

The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

Appendix C

STATEMENT OF DEFENCE

Article 19

1. Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate his statement of defence in writing to the claimant and to each of the arbitrators.

2. The statement of defence shall reply to the particulars *(b)*, *(c)* and *(d)* of the statement of claim (article 18, para. 2). The respondent may annex to his statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.

3. In his statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.

4. The provisions of article 18, paragraph 2, shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

AMENDMENTS TO THE CLAIM OR DEFENCE

Article 20

During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the

arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL

Article 21

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of article 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counterclaim.

4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

FURTHER WRITTEN STATEMENTS

Article 22

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

PERIODS OF TIME

Article 23

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed forty-five days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

EVIDENCE AND HEARINGS (ARTICLES 24 AND 25)

Article 24

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.

2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.

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

Article 25

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.

3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.

4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

INTERIM MEASURES OF PROTECTION

Article 26

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.

2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.

3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Appendix C

EXPERTS

Article 27

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the abitral tribunal, shall be communicated to the parties.

2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.

4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of article 25 shall be applicable to such proceedings.

Appendix C

DEFAULT

Article 28

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

CLOSURE OF HEARINGS

Article 29

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

WAIVER OF RULES

Article 30

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

Section IV. The award

DECISIONS

Article 31

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

Appendix C

FORM AND EFFECT OF THE AWARD

Article 32

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.

2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

5. The award may be made public only with the consent of both parties.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by law.

Appendix C

APPLICABLE LAW, AMIABLE COMPOSITEUR

Article 33

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determinedby the conflict of laws rules which it consders applicable.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

Article 34

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 32, paragraphs 2 and 4 to 7, shall apply.

INTERPRETATION OF THE AWARD

Article 35

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply.

Appendix C

CORRECTION OF THE AWARD

Article 36

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

ADDITIONAL AWARD

Article 37

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

Appendix C

COSTS (Articles 38 to 40)

Article 38

The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 39;

(b) The travel and other expenses incurred by the arbitrators;

(c) The costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague.

Appendix C

Article 39

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and if that authority has issued a schedule of feesforarbitraors ininternational cases which it administers, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.

3. If such appointing authority has not issued a schedule of fees for arbitrators in international cases, any party may at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the arbitral tribunal in fixing its fees shall take such information into account to the extent that it considers appropriate in the circumstances of the case.

4. In cases referred to in paragraphs 2 and 3, when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority

which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

Article 40

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph *(e)*, the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 38 and article 39, paragraph 1, in the text of that order or award.

4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 35 to 37.

Appendix C

DEPOSIT OF COSTS

Article 41

1. The arbitral tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in article 38, paragraphs *(a), (b)* and *(c)*.

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority which may make any comments to the arbitral tribunal which it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within thirty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After the award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits

received and return any unexpended balance to the parties.

Further information may be obtained from:

UNCITRAL Secretariat
Vienna International Centre
P.O. Box 500
A-1400 Vienna, Austria
Telephone: (+43 1) 26060-4060
Telefax: (+43 1) 26060-5813
Internet: http://www.uncitral.org
E-mail: uncitral@uncitral.org

APPENDIX D — FUND'S LETTER ATTACHING ORDER ON THE RESPONDENT'S REQUEST REGARDING THE CLAIMANT'S APPLICATION PURSUANT TO SECTION 1782 OF 28 U.S.C., FILED JANUARY 13, 2020

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VIA ELECTRONIC COURT FILING

January 13, 2020

The Honorable Analisa Torres
United States District Judge
United States District Court for the Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *In re the Application of the Fund for Protection of Investor Rights in Foreign States*, No. 1:19-mc-00401 (S.D.N.Y.) (AT)

Dear Judge Torres:

On behalf of the Fund for Protection of Investor Rights in Foreign States (the "Fund" or "the Applicant"),

Appendix D

I write respectfully to bring to the Court's attention a recent Procedural Order issued by the Tribunal in the investment treaty arbitration against Lithuania underlying the Applicant's pending application for leave to obtain third-party discovery pursuant to 28 U.S.C. § 1782 ("Section 1782").[1] A copy of the Tribunal's December 18, 2019 Procedural Order (the "Order") is attached as Annex A.

In August 2019, the Fund filed an *ex parte* Application pursuant to Section 1782 to obtain third-party discovery from Mr. Simon Freakley and AlixPartners LLP, for use in an investment treaty arbitration against Lithuania. Mr. Freakley and AlixPartners subsequently opposed the Application, arguing, among other things, that the Tribunal would not be receptive to this Court's assistance pursuant to Section 1782. Shortly thereafter, Lithuania asked the fully-constituted arbitral Tribunal to order the Applicant to withdraw this proceeding.[2] The Applicant opposed Lithuania's request.

On December 18, 2019, the Tribunal rejected Lithuania's request and ruled that it would "not prevent

1. Capitalized terms that are use but not defined herein shall have the same meaning as ascribed to them in the Reply in Further Support of *Ex Parte* Application Pursuant to 28 U.S.C. § 1782 For an Order Compelling Discovery For Use In A Foreign Proceeding (ECF No. 21).

2. The Tribunal was constituted on December 9, 2019. It consists of three arbitrators: Professor William W. Park, appointed by the Fund; Christopher Thomas QC, appointed by Lithuania; and Mr. Laurent Lévy, appointed by agreement of the parties as presiding arbitrator.

the continuation of [the New York] proceedings that importantly preceded the constitution of the present Tribunal and do not appear to create a risk for this arbitration," and noted that the Fund's Application is "a matter for the NY Court to decide." *See* Order, ¶ 26.

With respect to the factors set out by the Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004), the Order provides no reason for this Court to depart from the Second Circuit's controlling presumption that a foreign tribunal will be receptive to assistance pursuant to Section 1782. *See In re Application of Euromepa S.A.*, 51 F.3d 1095, 1100 (2d Cir. 1995) (requiring "authoritative proof" that a foreign tribunal would reject evidence obtained pursuant to Section 1782). At the same time, the Tribunal's Order reflects no concern on the Tribunal's part about the Fund's Application falling afoul of any "proof-gathering restrictions" and instead notes the Tribunal's own authority in due course to pass upon the admissibility of evidence presented to it.

For the reasons set out in the Fund's prior submissions, the Fund's Application for third-party discovery from Mr. Freakley and AlixPartners should be granted.

Respectfully submitted,

/s/ Alexander A. Yanos
Alexander A. Yanos

Counsel for Applicant, Fund for the Protection of Investor Rights in Foreign States

Appendix D

ANNEX A

UNCITRAL Investment Arbitration under the Agreement between the Government of the Russian Federation and the Government of the Republic of Lithuania on the Promotion and Reciprocal Protection of the Investments

BETWEEN

FUND FOR PROTECTION OF INVESTORS' RIGHTS IN FOREIGN STATES

Claimant

V.

THE REPUBLIC OF LITHUANIA

Respondent

Order on the Respondent's Request regarding the Claimant's application pursuant to Section 1782 of 28 U.S.C.

The Arbitral Tribunal:
Dr. Laurent Lévy (Presiding Arbitrator)
Christopher Thomas QC
Prof. William Park

Appendix D

[TABLE INTENTIONALLY OMITTED]

I. PROCEDURAL BACKGROUND

A. THE PARTIES AND THE TRIBUNAL

1. The Claimant, Fund for Protection of Investors' Rights in Foreign States, is a Russian investment fund (the "**Claimant**") incorporated in accordance with the laws of the Russian Federation with its registered address at:

   Kashtanovaya Alley, 143И, Office 7
   Kaliningrad, Russia

2. The Claimant is represented by:

   Mr. Alexander Yanos
   Mr. Carlos Ramos-Mrosovsky
   Mr. Rajat Rana
   Alston & Bird
   90 Park Avenue
   New York, NY 10016
   Tel: 212-210-9400

   Mr. Dmitry Dyakin
   Mr. Vladimir Pestrikov
   Mr. Vsevolod Taraskin
   Ms. Veronika Burachevskaya
   Ms. Olga Kuprenkova
   Ms. Veronika Lakhno
   Egorov Puginsky Afanasiev & Partners
   21, 1st Tverskaya-Yamskaya Str.

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veronika_burachevskaya@epam.ru
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veronika_lakhno@epam.ru

3. The Respondent is the Republic of Lithuania (the "**Respondent**", "**Lithuania**" or "the **Republic**").

4. The Respondent is represented in this arbitration by:

Ms. Mariana Lozza
DLA Piper (Argentina)
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Appendix D

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B. THE PROCEDURAL HISTORY

6. On 29 April 2019, the Claimant filed the Notice of Arbitration against the Respondent, pursuant to Article 10 of the Agreement between the Government of the Russian Federation and the Government of the Republic of Lithuania on the Promotion and Reciprocal Protection of the Investments signed on 29 June 1999 and entered into force on 24 May 2004 and Article 3 of the UNCITRAL Arbitration Rules 1976 (the "**UNCITRAL Rules**").

7. On 29 August 2019, the Claimant filed an *Ex Parte* Application Pursuant to 28 U.S.C. § 1782 for an Order

Granting Leave to Obtain Discovery for Use in a Foreign Proceeding (the "**1782 Application**") before the U.S. District Court in the Southern District of New York (the "**NY Court**"). The 1782 Application seeks an order granting leave to obtain third-party discovery from Mr. Simon Freakley ("**Mr. Freakley**") and AlixPartners LLP ("**AlixPartners**") for the use in this arbitration.

8. On 1 October 2019, AlixPartners and Mr. Freakley filed a Response in Opposition to the 1782 Application. On 15 October 2019, the Claimant filed its Reply in Further Support of the 1782 Application.

9. On 23 October 2019, Dr. Laurent Lévy accepted his appointment as the President of the Tribunal, following the joint proposal of Prof. William Park and Christopher Thomas QC appointed by the Parties on 20 August 2019 and 19 September 2019 respectively.

10. On 8 November 2019, the Respondent filed a Letter in connection with the 1782 Application (the "**Request**") asking the Tribunal to order the Claimant to withdraw the 1782 Application. On 4 December 2019, the Claimant responded to the Request (the "**Response to the Request**").

II. THE PARTIES' POSITIONS AND THE TRIBUNAL'S ANALYSIS

Appendix D

A. RESPONDENT

11. The Respondent requests that the Claimant be restrained from further pursuing its 1782 Application before the NY Court for the following three main reasons.

12. First, the Tribunal is better placed than the NY Court to decide on evidentiary matters. For the Respondent, the appropriate procedure for obtaining the evidence that the Claimant seeks to obtain before the NY Court would be "to make a request for production of such evidence, at the appropriate time, before this Tribunal".[1] According to the Respondent, the Tribunal would be able to assess the relevance and materiality of the evidence sought by the Claimant and evaluate any objections or defences that the Respondent might raise, which is an issue not yet before the Tribunal. The Respondent contends that the Claimant failed to assert that the evidence sought though the 1782 Application is not in the possession, custody or control of the Respondent. Thus, it would be possible for the Claimant to request the documents at issue in this arbitration.[2]

13. Second, the Respondent does not participate or is otherwise a party to the 1782 Application proceedings. This puts the Respondent at a severe disadvantage, because it cannot raise objections with respect to

1. Request, p. 3.

2. *Ibid.*

the evidence sought by the Claimant before the NY Court.[3] Moreover, with its 1782 Application the Claimant seeks to benefit from evidentiary practices that are not usually permitted in international arbitration, namely, to depose Mr. Freakley. If the NY Court were to grant such a request, the Respondent, in turn, would not be able to depose the Claimant's witnesses for the purposes of this arbitration.[4] The Claimant may also make it impossible to call Mr. Freakley as a witness for the Respondent's defence.[5]

14. Third, the evidence sought by the Claimant is protected by the banking law of the Republic of Lithuania.[6]

15. In light of the above, in order to safeguard the integrity of the proceedings, due process, and equality of arms, the Respondent asks the Tribunal to exercise its power under Article 24(3) of the UNCITRAL Rules and order the Claimant:

> (i) to withdraw the Claimant's 1782 Application;
>
> (ii) to refrain from initiating any parallel proceedings that may interfere with the power of this Arbitral

3. *Ibid.*

4. *Ibid.*, p. 4.

5. *Ibid.*

6. *Ibid.*, p. 3.

> Tribunal pursuant to Article 24(3) of the 1976 UNCITRAL Arbitration Rules to control the taking of evidence in this case and generate additional and unnecessary costs; and,
>
> (iii) to bear any cost incurred by the Republic in connection with the Claimant's 1782 Application, and with this present request.[7]

B. CLAIMANT

16. In the Response to the Request, the Claimant contests the Respondent's arguments as follows.

17. First, the success of the 1782 Application does not prejudice the Respondent's rights in this arbitration. The Respondent has the opportunity at the appropriate later stage to object to the admissibility of any evidence obtained pursuant to the 1782 Application. The Request is thus premature.[8] Regardless, contrary to the Respondent's submissions, not only the Respondent had the opportunity to participate directly in the proceedings before the NY Court and chose not to,[9] but is currently participating indirectly. Indeed, Lithuania's counsel in this arbitration and

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7. *Ibid.*, p. 5.

8. Response to the Request, pp. 2, 7-8.

9. *Ibid.*, pp. 2, 8.

a lawyer employed by the Bank of Lithuania each provided a sworn statement to Mr. Freakley and AlixPartners concerning Lithuanian banking law.[10]

18. Second, the filing of the 1782 Application was appropriate because: (i) it occurred prior to the Tribunal's constitution;[11] (ii) the Tribunal would not be able to compel Mr. Freakley and AlixPartners to produce evidence for this arbitration as that would exceed the Tribunal's jurisdiction.[12] Moreover, there are good reasons to believe that the Respondent is not in the possession, custody or control of the information subject of the 1782 Application, as it is at the disposal of Mr. Freakley and AlixPartners.[13] Furthermore, the proceedings before the NY Court would not affect the ability of Mr. Freakley to appear as a witness for the Respondent's defence in this arbitration.

19. Finally, arbitral tribunals have consistently allowed the evidence obtained pursuant to Section 1782 of Title 28 U.S.C. The Claimant refers to *Glencore Finance*

10. *Ibid.*, p. 9.

11. *Ibid.*, p. 5.

12. *Ibid.*, pp. 6-7.

13. *Ibid.*, p. 7.

v. Bolivia,[14] *Mesa Power Group v. Canada*,[15] and *Methanex v. USA* in this respect.[16]

20. For the reasons set out above, the Claimant "*requests that the Tribunal reject Lithuania's request and reserves all rights to seek related costs*".[17]

C. THE TRIBUNAL'S ANALYSIS

21. From the outset, the Tribunal considers that, even though it mostly deals with evidentiary matters, the Respondent's Request qualifies as a request for provisional measures. Indeed, the Respondent asks the Tribunal to compel the Claimant to pursue a particular conduct, *i.e.* to withdraw its 1782 Application. The Tribunal will therefore assess whether the Respondent's Request satisfies the legal standard applicable to requests for provisional measures.

22. It is widely accepted that a request for provisional

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14. *Glencore Finance (Bermuda) Limited v. Plurinational State of Bolivia*, PCA Case No. 2016-39, Procedural Order No. 3 of 31 January 2018 (**CL-01**).

15. *Mesa Power Group, LLC v. Government of Canada,* PCA Case No. 2012-17, Procedural Order No. 3 of 28 March 2013 (**CL-02**).

16. *Methanex Corp. v. United States*, Letter from Tribunal to the Disputing Parties of 16 March 2004 (**CL-03**).

17. Response to the Request, p. 10.

measures should meet at least the following requirements:

i. the tribunal must have a *prima facie* jurisdiction over the dispute;

ii. the party requesting provisional measures must demonstrate the risk of irreparable harm; and

iii. the party requesting provisional measures must demonstrate that the harm is imminent.

23. The foregoing requirements are cumulative. Therefore, should the Respondent fail to meet its burden under any of the requirements, the request must be dismissed. In this regard, the Tribunal considers that the Respondent fails to demonstrate that the 1782 Application entails a risk of irreparable harm.

24. Indeed, the Respondent has not shown convincingly that the handing down of the NY Court's decision possibly granting the 1782 Application would in itself be prejudicial to its rights in this arbitration. Likewise, the Respondent fails to prove that it would suffer a procedural harm if the Claimant would have access to the evidence sought in the NY court earlier than the Respondent would in this arbitration. Nor has the Respondent discharged its burden of proving that the Claimant's conduct would discourage Mr. Freakley from participating in this arbitration as a witness.

25. Notably, the Respondent will be able to contest any evidence that might be obtained pursuant to the Claimant's 1782 Application, if granted, before the Tribunal. In particular, as argued by the Claimant, the Respondent will have the opportunity in due course to object to the admissibility of any such evidence at issue - if the Claimant introduces it into the record - on the basis of privilege allegedly accorded to this evidence by Lithuanian banking law. The Tribunal, however, does not intend to decide any admissibility issues at this stage, even though the Respondent argued that the Tribunal should not be receptive to allowing the evidence that the Claimant could obtain pursuant to the 1782 Application.[18] It would be premature to do so.

26. In sum, the Tribunal will not make any determination on the merits of the Claimant's action in the NY Court, a matter for the NY Court to decide. The Tribunal will therefore not prevent the continuation of those proceedings that importantly preceded the constitution of the present Tribunal and do not appear to create a real risk for this arbitration. This, however, does not imply that the Claimant could not obtain the evidence it is seeking before the NY Court within the course of this arbitration.

27. The Tribunal considers it appropriate to reserve costs for subsequent determination.

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18. Request, p. 4.

Appendix D

III. ORDER

28. In light of the above, the Tribunal

i. Dismisses the Respondent's request to order the Claimant to withdraw the 1782 Application;

ii. Dismisses the Respondent's request to restrain the Claimant from initiating any parallel proceedings that may interfere with the power of this Tribunal pursuant to Article 24(3) of the UNCITRAL Rules to control the taking of evidence in this case and generate additional and unnecessary costs; and

iii. Dismisses the Respondent's request to order the Claimant to bear any costs incurred by the Respondent in connection with the 1782 Application and the Respondent's Request of 8 November 2019.

Date: 18.12.2019

/s/ Dr. Laurent Lévy
Dr. Laurent Lévy
Presiding Arbitrator

Appendix D

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January 29, 2020

VIA ELECTRONIC COURT FILING

The Honorable Analisa Torres
United States District Judge
The United States District Court
for the Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *In re the Application of the Fund for Protection of Investor Rights in Foreign States*, No. l:19-mc-00401-AT (S.D.N.Y.)

Dear Judge Torres:

We write on behalf of AlixPartners LLP and Simon Freakley (together, "Respondents") in response to the letter submitted by the Fund for Protection of Investor Rights in Foreign States (the "Fund") on January 13, 2020

(the "January 13 Letter").[1] The January 13 Letter attaches a copy of what the Fund represents to be a "Procedural Order" (the "Procedural Order" or "PO") issued on December 18, 2019 by the arbitral tribunal ("Tribunal") constituted in the underlying private arbitration between the Fund and the Republic of Lithuania (the "Republic"). For the reasons set forth below, Respondents respectfully submit that the Procedural Order confirms that this Court should deny in its entirety the Fund's application for Section 1782 discovery of Respondents (the "Application").

First, the Procedural Order makes even clearer that, under *Intel,* the Court should exercise its discretion to deny the Application. Contrary to the Fund's representation that the Procedural Order provides "no reason" to depart from the supposed presumption that the Tribunal will be receptive to Section 1782 discovery, the order does not alter the conclusion that the Tribunal is unlikely to be receptive to the taking and use of depositions and certain other discovery the Fund seeks via the Application. While the Tribunal declined to enjoin the Fund from pursuing the Application, the Procedural Order nowhere states that it would be "receptive" to the discovery materials sought via the Application. To the contrary, the Tribunal states that it will not "decide any admissibility issues at this stage," and

1. Capitalized terms used herein but not otherwise defined shall have the same meaning as such identical terms found in the Memorandum of Law In Support Of AlixPartners LLP And Simon Freakley's Opposition To Ex Parte Application Pursuant To 28 U.S.C. § 1782 For An Order Granting Leave To Obtain Discovery For Use In A Foreign Proceeding (the "Opposition"), filed with this Court on October I, 2019 (ECF No. 18).

that the Republic "will be able to contest any evidence that might be obtained pursuant to the [Fund's] 1782 Application."

The Fund also misconstrues the Tribunal's statement regarding "proof-gathering restrictions." The Procedural Order does not rule on proof-gathering restrictions. Instead, it simply confirms that the Republic will have an opportunity in the arbitration to challenge the admissibility of any evidence. (PO ¶ 25.) But long before the Tribunal decides admissibility, Section 1782(a) and *Intel* require *this Court* to enforce "proof-gathering restrictions," as Respondents "may not be compelled ... to produce a document or other thing in violation of any legally applicable privilege." (Opposition 16.)

Further, under *Intel,* the availability of the discovery sought in the underlying proceeding *weighs against* granting an application under Section 1782. The Tribunal expressly notes in the Procedural Order that while it declines to bar the Fund from pursuing the Application, this "does not imply that the Claimant could not obtain the evidence it is seeking before the NY Court within the course of this arbitration." (PO ¶ 26.) As set forth in Respondents' Opposition, the discovery sought from Respondents here can be obtained as readily from the Republic as from Respondents.

Additionally, the Procedural Order does nothing to alter the conclusion that the discovery sought from Respondents is unduly intrusive and burdensome.[2]

2. As previously noted, in the event the Application is granted, Respondents reserve the right to move to quash the subpoenas or seek a protective order on any ground, including burden, cost,

Second, the Procedural Order confirms that the underlying proceeding is a ***private arbitration,*** and therefore not a proceeding before a "foreign tribunal" as required to obtain discovery under Section 1782. *See NBC v. Bear Stearns & Co.,* 165 F.3d 184, 191 (2d. Cir. 1999) ("[W]hen Congress in 1964 enacted the modern version of § 1782, it intended to cover governmental or intergovernmental arbitral tribunals and conventional courts and other state-sponsored adjudicatory bodies. The legislative history's silence with respect to private tribunals is especially telling ...."[3] Among other indicia of the private nature of the underlying matter, Paragraph 9 of the Procedural Order states that two of the three arbitrators - Professor William Park and Christopher Thomas, QC - were "appointed by the Parties," *i.e.,* the Fund and the Republic, and Professor Park and Mr. Thomas in turn appointed the Presiding Arbitrator, Dr. Laurent Levy. As set forth in Respondents' Opposition to the Application, Courts have found the party appointment of arbitrators to be an indicia that a proceeding is private, not public, for purposes of a Section 1782 application. (Opposition 10-12.) Moreover, none of these arbitrators is a judge or other government actor: Professor Park is a law

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exposure, access to information located in a foreign jurisdiction, and other legal protections. (Opposition 19 n.8.)

3. As noted in Respondents' Opposition, there is an appeal pending before the U.S. Court of Appeals for the Second Circuit in *In re Hanwei Guo,* Docket No. 19-0781-cv (2d Cir. Mar. 29, 2019), on, among other issues, whether a private arbitral tribunal constitutes a "foreign or international tribunal" under Section 1782. (Opposition 11 n.6.) Argument in that appeal is currently proposed for the week of February 24, 2020. (ECF No. 90.)

professor at Boston University; Mr. Thomas is a lawyer and arbitrator in private practice in Vancouver, Canada; and Dr. Levy is a lawyer and arbitrator in private practice in Geneva, Switzerland.

For these reasons, and those set out in Respondents' Opposition, the Fund's Application for Section 1782 discovery of AlixPartners and Mr. Freakley should be denied in its entirety.

Respectfully submitted,

/s/ Wesley R. Powell
Wesley R. Powell

Counsel for AlixPartners LLP and Simon Freakley

APPENDIX E — STIPULATION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED SEPTEMBER 22, 2021

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

1:19-mc-00401-AT

IN RE THE APPLICATION OF THE FUND FOR PROTECTION OF INVESTOR RIGHTS IN FOREIGN STATES PURSUANT TO 28 U.S.C. § 1782 FOR AN ORDER GRANTING LEAVE TO OBTAIN DISCOVERY FOR USE IN A FOREIGN PROCEEDING

STIPULATION AND ORDER EXTENDING TIME TO RESPOND TO SUBPOENAS

WHEREAS, on August 29, 2019, the Fund for Protection of Investor Rights in Foreign States (the "Fund") filed an application for an order granting "leave to issue subpoenas" to AlixPartners LLP and Mr. Simon Freakley pursuant to 28 U.S.C. § 1782 (the "Application");

WHEREAS, on July 8, 2020, this Court issued an order (the "Order") granting the Application and authorizing the Fund to "issue subpoenas for documents" on AlixPa1iners and Mr. Freakley;

WHEREAS, on August 7, 2020, AlixPartners and Mr. Freakley filed a Notice of Appeal of the Order;

WHEREAS, on July 15, 2021, the United States Court of Appeals for the Second Circuit affirmed the District Court's Order;

WHEREAS, on July 20, 2021, counsel to AlixPartners and Mr. Freakley agreed to accept service of four subpoenas (the "Subpoenas") on the condition, *inter alia,* that "[t]he time to object to, move with respect to, or otherwise respond to the subpoenas shall be the later of August 19, 2021 or 14 days after issuance of the Second Circuit's mandate";

WHEREAS, on September 16, 2021, the Fund consented to stay the mandate provided that AlixPartners and Mr. Freakley file a petition for certiorari with the United States Supreme Court by October 7, 2021;

WHEREAS, on September 17, 2021, approximately one hour before the motion to stay the mandate was to be filed, the Second Circuit issued the mandate;

WHEREAS, on September 17, 2021, AlixPartners and Mr. Freakley filed an Emergency Motion to Recall the Mandate and Unopposed Motion to Stay Issuance of the Mandate Pending the Filing and Disposition of a Petition for Writ of Certiorari;

WHEREAS, on September 17, 2021, the Fund did not consent to AlixPartners and Mr. Freakley's Emergency Motion to Recall the Mandate;

Appendix E

IT IS HEREBY STIPULATED AND AGREED, by and among the parties hereto, through their undersigned counsel, and subject to the approval of the Court, that:

1. The time to comply with the Subpoenas shall be fourteen (14) days after the later of (i) the denial of AlixPartners and Mr. Freakley's petition for certiorari or (ii) disposition of the case on the merits by the Supreme Court, provided that the petition for certiorari is filed with the Supreme Court on or before October 7, 2021.

WILLKIE FARR & GALLAGHER LLP

Dated: September 21, 2021

By: */s/ Joseph T. Baio*
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Attorneys for AlixPartners LLP and Mr. Freakley

Appendix E

Dated: September 21, 2021

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Attorneys for the Fund

SO ORDERED.

Dated: September 22, 2021
New York, New York

/s/
ANALISA TORRES
United States District Judge