Summary of the Statement of Appeal of the former majority shareholders of Yukos Oil Company

On 13th March 2017, Hulley Enterprises Limited, Yukos Universal Limited and Veteran Petroleum Limited, the former majority shareholders of Yukos Oil Company (together the "Majority Shareholders") filed a Statement of Appeal at the Court of Appeal of The Hague (the "Court of Appeal").

By way of background, in November 2014, the Russian Federation commenced proceedings before the District Court of The Hague (the "District Court") to have the awards issued in favour of the Majority Shareholders set aside.

On 20th April 2016, the District Court ruled that the awards should be set aside. The District Court reached the conclusion that the arbitral tribunal did not have jurisdiction to hear the claims of the Majority Shareholders as (a) the Russian Federation had not ratified the Energy Charter Treaty ("ECT") and (b) the dispute resolution provisions of the ECT could not apply to the Russian Federation as analogous dispute resolution provisions were not found in Russian domestic law. In its judgment, the District Court did not deal with any of the other arguments raised by the Russian Federation in support of its set aside application.

In their Statement of Appeal, the Majority Shareholders explain that the District Court's decision is fundamentally flawed and its decision must be overturned by the Court of Appeal.

In brief summary:

- The District Court was wrong to rule that the Russian Federation's failure to ratify the ECT meant that the arbitral tribunal did not have jurisdiction. The Russian Federation had agreed to apply the ECT provisionally at all relevant times and such provisional application extended to the dispute resolution mechanisms under the treaty. As such, the arbitral tribunal did have jurisdiction to hear the claims.

- The Russian Federation had confirmed on numerous occasions throughout the years preceding this dispute that it provisionally applied the ECT without any exceptions. The Russian Federation had also never used the notification mechanisms provided for under the ECT to inform its treaty partners and potential investors that there were any legal, or other, obstacles preventing it from applying the ECT in full on a provisional basis.

- The District Court's analysis that individual provisions of the ECT required a separate basis under Russian law for them to be provisionally effective was wholly incorrect. The Majority Shareholders demonstrate in their Statement of Appeal that provisional application of the ECT is consistent with Russian law and, as was confirmed by the Russian Constitutional Court itself on various occasions (including in the case where the Constitutional Court confirmed the legality of the annexation of Crimea under the Russian law), provisionally applied treaties take precedence over Russian laws and regulations and that, in any event, the dispute resolution provisions of the ECT are consistent with Russian law which specifically permits arbitration of international investment disputes.

- The Majority Shareholders also briefly address other allegations raised by the Russian Federation in its pleadings, both written and oral, before the District Court, (including, allegations surrounding the acquisition of shares in Yukos by the Majority Shareholders and the privatisation of Yukos) but which were not addressed in the District Court's judgment. The Court of Appeal ruled in January 2017 that should the Russian Federation expand its argument on those matters, the Majority Shareholders will be granted a separate opportunity to respond.

- In support of their submissions the Majority Shareholders provided the Court of Appeal with reports by leading experts in the areas of public international law, Russian law, forensic linguistics, computer forensics and economics.

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