

WITNESS STATEMENT OF KELVIN MARK HUDSON

1 INTRODUCTION

1. My name is Kelvin Mark Hudson. I was born on 12 April 1961 in Chalfont St Peter (United Kingdom). I currently reside in the parish of Castel in Guernsey.
2. After completing an MA in Mathematics at St John's College, Oxford University, in 1982, I joined Spicer & Pegler (now part of Deloitte) where I qualified as a Chartered Accountant. Before moving to Guernsey, I was the finance director for a firm of management consultants that specialised in the prevention, detection and investigation of fraud.
3. I moved to Guernsey in 1995 to become the managing director of a local trust company, The Legis Group. In 1999, I joined Saffery Champness Registered Fiduciaries ("**Saffery**"), one of the largest firms of registered fiduciaries in Guernsey. I was appointed Managing Director of the firm in 2001 and Executive Chairman in 2014, a position which I continue to hold today.
4. I have been asked by the lawyers of De Brauw Blackstone Westbroek N.V., who represent the interests of the companies Hulley Enterprises Limited, Yukos Universal Limited and Veteran Petroleum Limited (hereinafter jointly "**HVY**") in proceedings against the Russian Federation pending before the Court of Appeal in The Hague, The Netherlands, to elaborate on how I conduct my work as a representative of the corporate trustees of the Auriga Trust, the Draco Trust, the Mensa Trust, the Tucana Trust, the Pictor Trust, the Southern Cross Trust, and the Palmus Trust (jointly, the "**Trusts**") and make my decisions with regard to the Trusts' shareholdings.

2 THE TRUST SERVICES PROVIDED BY SAFFERY IN GUERNSEY

5. I should start by noting that Guernsey has an excellent reputation as a trust jurisdiction, recognised by the Organization for Economic Cooperation and Development ("**OECD**") through its inclusion on the first "White List"¹ on Transparency and Exchange of Information published in April 2009 and by being one of the seven jurisdictions given tax transparency compliance in July 2018. It has also been recognized by the 2009 Foot Report, an independent review of British offshore financial centres,² which placed Guernsey highly amongst international finance centres. The Guernsey Financial Services Commission (the "**GFSC**") supervises and regulates licences within the banking, fiduciary, insurance and investment sectors. It does so in accordance with standards set by international bodies in order to maintain the confidence in Guernsey as a safe off-shore jurisdiction. Guernsey's trust law is

¹ Jurisdictions included in the White List include those that have implemented the internationally agreed tax standard – i.e. not considered to be a tax haven by the OECD.

² Available in: <https://www.gov.im/media/624053/footreport.pdf>



codified in the Trusts (Guernsey) Law 1989 (as amended) and it broadly follows that of England and Wales.

6. Saffery has been operating in Guernsey for more than 40 years and, as indicated before, is one of the largest independent providers of fiduciary services on the island. Among other services, we provide trust and company management services to private clients, including wealthy individuals and families all over the world, as well as corporate clients. As part of our trust services, we act as professional independent trustees.
7. A trustee is an entity or person appointed to manage the assets of a trust for the benefit of the class or classes of beneficiaries in accordance with the applicable law and the terms of the trust. The trustee holds legal title to the trust property and owes fiduciary duties to the beneficiaries thereof. Typically, a trustee must preserve and enhance, so far as reasonable, the value of the trust property. In doing so, a trustee must observe the utmost good faith and act as specified in the Law of Guernsey to the standard "*en bon père de famille*". As I will explain in more detail below, in the case of a discretionary trust (where the beneficiaries or their entitlements to the trust fund are not fixed, but are determined by the trust deed), the economic benefit of the assets are for the class of beneficiaries, whereby the determination of the beneficiaries and/or their entitlement depends upon the terms of the trust deed and the exercise of the trustee's discretion.
8. When Saffery is requested to act as a professional trustee, we first conduct a very careful and thorough review of the potential client and their requirements. If, when conducting that review, there is any indication that the client's source of funds emanates from any illegal activity or we suspect that the client would seek to retain ownership and control of the assets either settled in or to be settled upon trust, we would reject the engagement. An individual who appears to have generated their wealth through criminal activity and is therefore trying to hide that wealth from the authorities or other parties would be deemed by Saffery to be concerned with Money Laundering. If Saffery were to have any suspicion that these type of activities had taken place regarding a potential new client, or were taking place within an existing relationship, the Saffery Anti Money Laundering reporting process would be followed and the business would be declined.
9. Since 2001, fiduciaries operating in Guernsey have been required to hold a fiduciary licence and are regulated by the GFSC. The GFSC conducts a planned series of visits to each registered fiduciary to ensure that the systems in place are adequate to detect, inter-alia, Money Laundering and that the fiduciary has sufficiently robust take-on procedures to ensure that a potential client's source of wealth is adequately verified and documented. Further, fiduciaries are also required to conduct an ongoing client review and monitoring process. I shall discuss the GFSC's visit regime in further detail later.
10. Situations where assets are settled into trust but where de facto control remains with the settlor are not considered to be fiduciary relationships. They may even be referred to as shams, in case the trustee and settlor intend that control remains with the settlor. Saffery will



only accept appointments where the management, control and exercise of discretion rests with our professional trustees.

11. When we have accepted an appointment, we usually use our principal Guernsey fiduciary services trust company, Rysaffe Trustee Company (C.I.) Limited ("**Rysaffe**") but, on occasion after discussions with potential clients, we have incorporated a dedicated trust company which only acts as trustee of a limited number of trusts for one client. These dedicated trust companies are included on our fiduciary licence and are fully regulated by the GFSC. In either case, usually all of the directors at Saffery act as the directors of the trust company. One of the directors will be assigned primary responsibility for managing the relationship with the client and for managing the associated trust structures. That director normally takes the lead with the day-to-day decisions of the trusts he or she primarily manages but each decision of the trustee will be minuted at a board meeting of the trustee at which at least two directors are present. At our Guernsey office, we hold daily directors' meetings where each of the directors (including myself) regularly briefs and updates the other directors on those day-to-day decisions, whilst the more complex decisions affecting each trust are typically discussed jointly by all the directors.
12. As trustees, we make management and investment decisions in compliance with the terms of the trusts to which our trust companies have been appointed as trustees. Those decisions are in the interest of the respective class or classes of beneficiaries of the relevant trust. As trustees, we have fiduciary duties towards beneficiaries, we regularly meet with beneficiaries of each trust we administer to keep them informed of the investment performances of the trust's assets, future investments, etc. Normally we do not meet with the full class of beneficiaries of a trust. We do not take any instructions from beneficiaries regarding the assets of the trust or the trust itself. Our decisions are and have always been formed independently and are guided by what we believe is best for the trust under management and the assets held therein.
13. As part of its ongoing supervision of the financial services sector in Guernsey, the GFSC regulates fiduciary services providers such as Saffery and the trust companies it operates. In carrying out its remit, the GFSC undertakes thematic reviews and inspections of regulated entities. In 2018, the GFSC carried out a full fiduciary inspection of Saffery. During the inspection the GFSC reviewed our portfolio of clients and selected various clients, including a number of the Trusts, for a detailed review. The GFSC carefully reviewed our processes, the way we operate and the conduct of the client relationship and, had there been any suspicion of illegalities, or concerns as to how we were providing our services as independent trustees, the GFSC would have acted accordingly.
14. The GFSC also conducts regular thematic reviews which involve reviewing the processes put in place by regulated entities to deal with a specific issue. For instance, the GFSC recently conducted a thematic review regarding data security. Saffery voluntarily participates in these reviews on a regular basis as one of the major and most reputable service providers in



Guernsey. Our procedures and systems have often been used by the GFSC as positive examples of industry practice.

3 THE TRUSTS

15. In the early 2000s Mr. Khodorkovsky and his business partners were introduced to Saffery via Lord Jacob Rothschild, a Saffery client at the time. The firm and I were further approached in November 2002 by the law firm Herbert Smith. At the time, Herbert Smith was assisting Yukos Oil Company (“**Yukos**”) in connection with the listing of the company’s shares on the New York Stock Exchange (“**NYSE**”). I understood that, as part of that process, Herbert Smith had reviewed the shareholding structure of Yukos’ majority shareholder GML Limited (“**GML**” then called Group Menatep Limited).
16. Saffery was then engaged to establish a discretionary trust governed by Guernsey law into which the assets of the Palmus Foundation (which owned nearly 50% of GML’s shares at the time) would be resettled. That trust became known as the Palmus Trust. Saffery agreed to act as the trustee of that trust, and following discussions with Herbert Smith, agreed to establish a dedicated trust company. Under the applicable Guernsey law, the establishment/incorporation and licensing of a trust company, such as this one, had to be approved by the GFSC. Saffery’s application to the GFSC detailed the identity of the economic settlor of the Palmus Trust and the assets to be settled onto the Palmus Trust. The GFSC reviewed and approved our application and Palmus Trust Company Limited (“**Palmus**”) was incorporated on 24th December 2002 solely to act as the trustee of the Palmus Trust. The Palmus Trust was subsequently settled on 5th March 2003 and the 2,499,999 shares in GML were added to it on 8th March 2003.
17. Additionally, I understand that Herbert Smith advised the other individual shareholders of GML (namely, Messrs. Khodorkovsky, Lebedev, Nevzlin, Dubov, Brudno, Shakhnovsky and Golubovich) to set up individual discretionary trusts governed by Guernsey law to hold their personal shares in GML. These discretionary trusts, namely the Pavo Trust, the Mensa Trust, the Pictor Trust, the Draco Trust, the Auriga Trust, the Tucana Trust and the Carina Trust respectively, were settled on 20th October 2003 (together with the Palmus Trust, the "**Original Trusts**"). Rysaffe, the principal fiduciary services trust company of Saffery, was appointed to act as their trustee. Subsequently, the Pavo Trust ceased to be a shareholder of GML on 30th September 2005 transferring its shares to the Southern Cross Trust. Rysaffe also acts as the trustee of the Southern Cross Trust. The Carina Trust ceased to be a shareholder of GML on 23rd July 2007 when GML repurchased its shares held by that trust.
18. Herbert Smith provided draft deeds for each of the Original Trusts to Saffery for review. We reviewed those drafts together with Guernsey advocates that we instructed and provided our comments on the drafts until they were in agreed final form.
19. Each of the Trusts constitutes a discretionary trust, that is, a trust where the beneficiaries do not have a fixed entitlement to the trust funds. The trustee has complete discretion as to what



extent (if at all) to distribute trust capital or income to the beneficiaries, in accordance with the criteria set out in the trust deed by the settlor. The beneficiaries of a discretionary trust do not have any interest or entitlement to the assets of the trust; they merely have a right to be considered for benefit or a mere expectancy that they might benefit from the trust until such time as the trustee exercises its discretion to make a distribution to that beneficiary. Therefore, no member of the beneficial classes of any of the Trusts is entitled to demand the payment of any income or capital. Furthermore, each of the Trusts has an 'open class' of beneficiaries. That beneficial class is formed, in most of the Trusts, by the original settlor (who is listed as the 'First Beneficiary' under the trust deeds) and his family members. The fact that the Trusts have open classes of beneficiaries means that persons can, potentially, be added to, or excluded from, the group of beneficiaries in the future by the trustee, with the consent of the protector.

20. Each of the Trusts has a protector whose consent is required for certain important decisions such as, for instance, the addition or exclusion of beneficiaries. It is common for discretionary trusts to have a protector whose consent is required before the trustees can undertake certain actions (although a protector's consent is not usually required, nor required in this case, with respect to the making of distributions or the management of the trust's assets).
21. One feature of the Trusts that is uncommon, in my experience, is the existence of the office of "confirmator". Under the Trusts' deeds, the confirmator's role is to certify that the protector understands the nature of the actions he/she undertakes and that he/she is acting of his/her own free will. Each of the Trusts have different confirmators. The confirmator provisions add a layer of protection to make sure that the protectors' decisions are not taken under duress or undue influence and that they fully comprehend the effects of their decisions.
22. Each of the Trust deeds contain so-called *Anti-Bartlett* provisions. Trustees have well established duties to safeguard trust property and manage shareholdings in the manner of a prudent investor. However, such duties can be limited by including *Anti-Bartlett* provisions. Such clauses provide a trustee with a degree of comfort that he does not have the duty to involve himself in the day-to-day business of a company whose shares are held by the trust. While the presence of these *Anti-Bartlett* provisions may exempt the Trustees of the Trusts from certain duties, they do not, and cannot, exclude, let alone affect, (a) the duty of the Trustees to manage the assets of the Trusts in a prudent fashion (including keeping abreast of developments regarding those assets) and (b) the powers of the Trustees as shareholders of GML.

4 THE WORK OF THE TRUSTEES OF THE TRUSTS

23. Palmus and Rysaffe are the trustees of the Trusts (the "**Trustees**"), and consequently they are the legal owners of the assets vested therein. As mentioned above, all of Saffery's directors are directors of the Trustees. I have acted, and continue to act, as the lead Saffery's director in relation to the management of the Trusts. I am primarily responsible for the day-



to-day administration of the Trusts' assets and I ensure that those management and investment decisions are in compliance with the terms of the Trusts and the interests of the beneficiaries. On matters of import, decisions regarding the management and administration of the Trusts are taken with my fellow directors of each of the Trustees. As the lead director, I personally meet beneficiaries of each of the Trusts on a regular basis to inform them of the investment performance of each Trust's assets. I normally do not meet with the full class of beneficiaries of each Trust but with the so-called 'First Beneficiary' thereof. All decisions with respect to each Trust are, and have always been, formed independently and guided by what the Trustees believe is in the best interests of the beneficiaries within the terms of the trust deeds.

24. The shares in GML owned by each of the Trusts are among the most important assets of the Trusts. In line with the *Anti-Bartlett* provisions contained in the Trusts' deeds, the trustees are not obliged to interfere in the day-to-day management of GML. As a representative of the Trustees I represent GML's shareholders, and Timothy W. Osborne, one of GML's directors, keeps me regularly informed of the decisions taken by the GML board. On certain occasions, Mr. Osborne may seek my views on strategic or important decisions that the GML board intends to take. For these purposes, we meet in person approximately once a month. In any event, the full authority to take decisions regarding GML and its management remains solely with the GML board. The Trustees have never sought to be or have been involved in GML's day-to-day management.
25. As I mentioned, I meet with the 'First Beneficiaries' of the Trusts on a regular basis – on average approximately twice per year – to inform them about the performance of the Trusts' assets. Because the GML shares are important assets of each of the Trusts, naturally the performance of GML is discussed at those meetings. When the performance of GML is due to be discussed at a meeting, Mr. Osborne at my request, usually attends such meetings to provide an update on GML's activities. I find it appropriate that he does so, as he is involved in the management of GML on a day-to-day basis and my knowledge of, and involvement with, GML's management is limited in view of the *Anti-Bartlett* provisions of each Trust.
26. In relation to my interaction with the Trusts' beneficiaries, it is worth noting that initially, when the Original Trusts were first established, various beneficiaries (Messrs. Khodorkovsky, Lebedev, Nevzlin, Dubov, Brudno, Shakhnovsky and Golubovich) were not acquainted with the specific functioning of discretionary trusts and the fact that it was for the trustee, as owner of the assets in trust, to make all decisions. As it has often been the case in my professional experience, I have made clear from the outset what the Trustee's role and the functioning of the Trust are. The beneficiaries have always understood their position and I have experienced no issues; furthermore, I have never received any complaints from them in relation to the way my interaction with them works.
27. The only exception was Mr. Golubovich who did not seem to understand the way discretionary trusts are supposed to operate and did not agree with the way we, as independent trustees, dealt with the Carina Trust, of which he was the 'First Beneficiary'. At



some point, Mr. Golubovich requested the Trustees to distribute all of the cash held by the Carina Trust to his personal account. We refused to proceed as requested by Mr. Golubovich as we did not find such a distribution appropriate or in the interest of the beneficiaries of the said Trust.

5 ALLEGATIONS BROUGHT BY THE RUSSIAN FEDERATION IN THE CURRENT PROCEEDINGS

28. I understand that the Russian Federation relies on certain documents to allege that certain beneficiaries of the Trusts make all decisions of significance concerning the Trusts' underlying assets (in particular with respect to their shareholdings in GML and its underlying assets) and that the Trustees do not play any meaningful role in this respect. This is untrue. As explained above, the Trustees of the Trusts make all decisions concerning the management and administration of these Trusts. The beneficiaries of the Trusts have no entitlement to make decisions, nor do they.
29. I will now refer briefly to two specific allegations which, as was explained to me, were made by the Russian Federation which it claims are direct evidence that the Trustees are bypassed with respect to matters relating to GML.
30. It was explained to me by the lawyers acting for HVY that, based on the content of a letter sent by Mr. Osborne to Bruce Misamore dated 15th April 2011, the Russian Federation asserts that (1) Mr. Brudno conducted negotiations on behalf of GML and/or HVY with respect to a multimillion dollar business transaction, and (2) the fact that the Trustees are not mentioned in the letter, shows that the 'First Beneficiaries' of the Trusts freely circumvent the Trustees by giving instructions to GML and HVY as to how they are to proceed with various matters. These assertions are incorrect. The decision to write this letter was a decision taken by the board of directors of GML. The letter concerned GML and the use of its own funds. As mentioned above, the Trustees are not involved in the day-to-day management of GML and the GML board does not require the Trustees' approval to enter into any transaction.
31. As I mentioned above, I hold regular meetings with certain of the 'First Beneficiaries' to update them on matters regarding their respective Trusts. On occasion, Mr. Osborne attends such meetings to provide an update regarding matters concerning GML. On 15 December 2010, I had such a meeting with some of the 'First Beneficiaries' of the Trusts in Tel Aviv where Mr. Osborne was also present. After Mr. Osborne had provided his update regarding the activities of GML he left the meeting. I then held separate meetings with each of the First Beneficiaries present to discuss matters regarding each of their Trusts.
32. In the evening, I had dinner with Mr. Osborne. He told me that Mr. Brudno had discussed with him the idea of creating a bonus pool to reward the directors of the Dutch Foundations³

³ I was aware of the work of the Dutch Foundations as Mr. Osborne had informed me about them. These two Dutch foundations were the Stichting Administratiekantoor Yukos International and of the Stichting Administratiekantoor Financial Performance Holdings. They were set up to protect the foreign assets of Yukos Oil Company from expropriation and to ultimately distribute assets to the former shareholders of Yukos Oil Company.

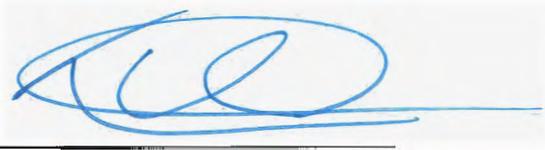


for their continued efforts to protect former assets of Yukos against attacks from the Russian Federation and its allies for the benefit of Yukos' former shareholders. Mr. Osborne was sympathetic towards the idea and suggested that GML set aside 10% of any distributions received by GML from the Dutch Foundations to be put towards a bonus pool to reward those directors. Mr. Osborne explained to me that, having considered the proposal, he thought it would be appropriate to reward and incentivise the Dutch Foundations' directors in this manner. While I did not need to give my approval to this proposal, as such matters are wholly at the discretion of the GML board, I did have some discussions with Mr. Osborne as to whether setting aside 10% of any distribution received by GML was appropriate. In the end, we considered it would be appropriate to incentivise the directors of the Dutch Foundations in this manner, as 90% of any distributions would still be retained by GML.

33. Accordingly, the decision to create this bonus opportunity was made by GML's board after I had been consulted. It was not made by Mr. Brudno. He merely discussed the idea with Mr. Osborne. Also, it is untrue that I was in any way "circumvented" in this matter.
34. I have also been informed by lawyers acting for HVY that the Russian Federation relies on excerpts from a deposition given, and documents disclosed by, Eric Wolf in legal proceedings in the United States in 2015. I am informed by HVY lawyers that the Russian Federation now argues that some emails sent to or by Mr. Wolf amount to evidence that Mr. Nevzlin, one of the First Beneficiaries of the Trusts, personally instructed Mr. Wolf as an agent to negotiate a settlement with a third party, Promneftstroy, on behalf of GML and HVY, and that, by doing so, the beneficiaries of the Trusts circumvented the Trustees and the boards of GML and HVY. Again, this is not true.
35. During October 2014, Mr. Osborne informed me that Mr. Wolf had requested permission to act as a facilitator on behalf of GML to approach Mr. Deitz from Promneftstroy to attempt to negotiate an agreement that could potentially lead to the settlement of protracted litigation in the Netherlands involving the Dutch Foundations and Promneftstroy. Mr. Osborne, as a director of GML, authorised him to find out whether there was a middle ground between the Dutch Foundations, GML and Promneftstroy and, if there was, to present it to GML for their consideration. It would have been for GML to make representations regarding the proposed settlement to the boards of the Dutch Foundations
36. These negotiations went back and forth over the course of several years. No agreement was reached between Promneftstroy, GML and the Dutch Foundations. Throughout the course of those negotiations, the ultimate decision as to whether to conclude any proposed settlement belonged solely to the Boards of the Foundations and GML, as intended parties to the settlement. However, Mr. Osborne kept me regularly informed of developments and discussed with me the different settlement proposals presented to and by Mr. Wolf in the context of him obtaining my views and opinions on the proposals and my ongoing monitoring of the Trusts' investment in GML.



Signed on: 14th February 2019 in the Parish of St Sampson, Guernsey.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Kelvin Mark Hudson