

IN THE HIGH COURT OF JUSTICE

Claim No. E40MA052

BUSINESS AND PROPERTY COURTS IN MANCHESTER

CIRCUIT COMMERCIAL COURT (QBD)

B E T W E E N:

ALEXANDER GORBACHEV

Claimant

-and-

ANDREY GRIGORYEVICH GURIEV

Defendant

PARTICULARS OF CLAIM

**Served in accordance with the order of HHJ Pearce
Q.C., dated 24 February 2020**

I. THE PARTIES

1. The Claimant (“**Mr Gorbachev**”) is a Russian national and businessman. Since April 2004, Mr Gorbachev has been domiciled and habitually resident in England. In April 2005, Mr Gorbachev was granted asylum by the Government of the United Kingdom on the basis that he had a well-founded fear that he would suffer persecution if he were to return to Russia. He has never returned to Russia since he left in January 2004 in circumstances described in further detail at paragraphs 75 and following below.
2. The Defendant (“**Mr Guriev**”) is a Russian national and businessman. Between 2001 and 2013, Mr Guriev served as a Senator in the Russian Federal Assembly. Mr Guriev is the Deputy Chairman of the Board of PJSC PhosAgro, a Russian public joint stock company (and formerly an open joint stock company) (“**OJSC**

PhosAgro”), which (together with its subsidiaries) is engaged in the production and distribution of apatite concentrate and mineral fertilisers from mines located in Russia. In this regard:

- (1) Since 2011, the shares in OJSC PhosAgro have been traded on the A1 quotation list of the Moscow Exchange.
- (2) Since 2011, global depositary receipts (“**GDRs**”) in OJSC PhosAgro (three GDRs represent one share) have also been traded on the London Stock Exchange.
- (3) The current market capitalisation of OJSC PhosAgro (as recorded by the London Stock Exchange) is in excess of £3.7 billion.
- (4) Prior to the initial public offering (“**IPO**”) of OJSC PhosAgro in 2011, Mr Guriev owned (via his holding companies) 100% of the shares in OJSC PhosAgro.
- (5) As at 31 December 2018, Mr Guriev and his family members owned (directly and via holding companies) 48.48% of the shares in OJSC PhosAgro.

II. FACTUAL BACKGROUND

3. Mr Gorbachev’s claim against Mr Guriev is based upon a series of actionable oral representations and/or declarations and/or promises made by Mr Guriev to Mr Gorbachev in London in 2005 (the “**2005 Declarations**”) as described at paragraphs 91-163 below.
4. In order to interpret the 2005 Declarations and place them in their proper context, it is necessary to set out the relevant factual background against which the 2005 Declarations were made. The relevant factual background comprises a long-standing prior business relationship between Mr Gorbachev and Mr Guriev which began in Russia in the early 1990s.

(1) The Menatep Group and Menatep-Lars

5. The business relationship between Mr Gorbachev and Mr Guriev began in the early

1990s against the backdrop of emerging free enterprise in Russia and whilst Mr Gorbachev and Mr Guriev were both working within a group of companies known as the Menatep Group. The Menatep Group was ultimately owned by various Russian oligarchs, including Mr Mikhail Khodorkovsky.

6. In or about 1991, a subsidiary was established within the Menatep Group called CJSC Menatep-Lars ("**Menatep-Lars**"). Menatep-Lars was engaged in the business of acquiring and developing real estate in Russia. Menatep-Lars was a joint venture carried on by Mr Khodorkovsky and Mr Guriev. Mr Guriev held a 30% interest in Menatep-Lars.
7. From about 1991 onwards, Mr Guriev extended invitations to Mr Gorbachev to join Menatep-Lars. Mr Guriev and Mr Gorbachev had known each other since 1989 when they were both First Secretaries of their respective Komsomol Moscow District Committees. The Komsomol was the youth wing of the Communist Party of the former USSR.
8. In or about 1994, Mr Gorbachev was appointed as the Deputy General Director of Menatep-Lars and thereafter became responsible for managing the business, identifying property opportunities, brokering deals and supervising property developments.
9. In or about 1994, Mr Guriev agreed that he would share with Mr Gorbachev a proportion of the profits Mr Guriev received (by reason of his 30% interest in Menatep-Lars) on any deals which Mr Gorbachev introduced to Menatep-Lars. The profit split would vary depending upon the deal in question. Mr Guriev always honoured his promise to share with Mr Gorbachev a proportion of the profits (up to 25%) earned by Mr Guriev on any deal.
10. In the 1990s and the early 2000s, it was common practice for businessmen working within the Menatep Group in Russia (including Mr Guriev and Mr Gorbachev) not to record in writing any agreements and arrangements made between themselves regarding their interests in companies and/or the distribution of profits from companies. The aforementioned common practice also existed in respect of other businesses in Russia at this time. Such agreements and arrangements were

deliberately made orally for at least the following reasons:

- (1) The business relationships between individuals working within the Menatep Group (including Mr Guriev and Mr Gorbachev) were founded upon close personal bonds of trust, confidence and loyalty. Agreements and arrangements between such businessmen were habitually concluded on the basis of handshakes and on a person's word.
- (2) The rule of law in Russia at this time was undeveloped, uncertain and unpredictable, and the Russian judiciary was also subject to political interference. Corruption amongst public officials was also rife. Businessmen such as Mr Guriev and Mr Gorbachev therefore placed their trust in oral agreements and arrangements rather than in written agreements and arrangements.
- (3) It was also important for businessmen to maintain secrecy in respect of the interests held by businessmen in companies and/or the distribution of profits from companies. Secrecy was considered important for at least the following reasons:
 - (a) The commercial, political and legal environment in Russia at this time was uncertain and dangerous. Written agreements and arrangements (recording business interests and/or profit distributions) were feared by businessmen such as Mr Guriev and Mr Gorbachev due to the risk that such documentation could be used against them for ulterior purposes.
 - (b) In particular, Russian businessmen at that time were frequently targeted by criminal networks, by reason of which businessmen such as Mr Guriev and Mr Gorbachev wished to keep the details of their assets and business interests secret. This state of affairs was well-known and notorious in Russia.
 - (c) Further, the Russian tax authorities wielded tremendous power. Tax laws and regulations were often applied indiscriminately and in an unpredictable fashion, by reason of which businessmen such as Mr Guriev and Mr Gorbachev wished to keep the details of their assets and

business interests secret. Again, this state of affairs was well-known and notorious in Russia.

11. In accordance with the practice pleaded at paragraph 10 above, all agreements between Mr Guriev and Mr Gorbachev relating to the distribution of profits on any deal which Mr Gorbachev introduced to Menatep-Lars (as referred to at paragraph 9 above) were made orally and were never recorded in writing. Despite not being recorded in writing, such agreements were regarded by Mr Guriev and Mr Gorbachev as binding and were honoured by Mr Guriev, in whom Mr Gorbachev reposed trust and confidence.

(2) The acquisition and initial development of Apatit in 1994 to 1995

12. Between 1994 and 1995, a substantial Russian State-owned phosphate mining company called JSC Apatit (“**Apatit**”) was partially privatised:
 - (1) At this time, Apatit owned various mines in the Murmansk region from which apatite-nepheline ore was extracted.
 - (2) The apatite extracted from this ore is the most common source of phosphate, from which phosphate-based fertiliser products are produced.
 - (3) At this time, Apatit extracted ore from the mines it owned and then sold raw apatite to factories across Russia and in former Soviet states (such apatite then being manufactured into fertiliser products).
13. In or about July 1994, a company called ZAO Volna (“**Volna**”) (a subsidiary within the Menatep Group) acquired 20% of the shares in Apatit from the Russian State as part of the aforementioned privatisation process. By the end of 1995, other subsidiaries within the Menatep Group had acquired a further 50.1% of the shares in Apatit from the market, thereby giving the Menatep Group majority control over Apatit.
14. Prior to the dissolution of the USSR, Apatit was the biggest producer of raw apatite in Europe and produced around 20 million tonnes per annum. Each of the republics of the USSR had developed fertilisers in the agricultural sector which used raw

apatite rather than other alternatives. However, following the dissolution of the USSR, each different part of the fertiliser supply chain was owned by different companies, and production had dropped to around 6.5 million tonnes per annum. Apatit no longer had funding from the USSR administration, and Apatit also had issues with low production volumes, low sales, high levels of debt and unpaid salaries.

15. In or about June 1995, Mr Guriev informed Mr Gorbachev that Mr Khodorkovsky had proposed to Mr Guriev that he and his team at Menatep-Lars should conduct an initial assessment into the viability of Apatit, with a view to managing Apatit for a one-year trial period. Mr Guriev asked Mr Gorbachev to lead this task and Mr Gorbachev agreed to do so. In this regard:
 - (1) Mr Gorbachev confirmed that Apatit was burdened with debt, had high production expenses, low production volumes and lacked an effective sales and distribution network.
 - (2) Mr Gorbachev also identified evidence that criminal organisations were extracting large amounts of money from Apatit via corrupt arrangements with Apatit managers.
 - (3) Mr Gorbachev believed that if the business of Apatit was cleaned up and managed by new and effective leaders then Apatit could become a viable and profitable business.
 - (4) Mr Gorbachev therefore recommended to Mr Guriev that they should take over the management of Apatit for a one-year trial period. Mr Guriev agreed with this recommendation and accordingly reported to Mr Khodorkovsky.
16. In or about July 1995, Mr Khodorkovsky agreed to pay Mr Guriev a fixed fee for managing Apatit during the aforementioned one-year trial period. At a subsequent meeting in or about July 1995, Mr Guriev agreed to pay Mr Gorbachev 30% of the fee that he (Mr Guriev) would ultimately receive from Mr Khodorkovsky (the “**July 1995 Arrangement**”). In accordance with the practice pleaded at paragraph 10 above, the July 1995 Arrangement was not recorded in writing.

17. In exchange for his 30% share of Mr Guriev's fee, Mr Gorbachev took over primary responsibility for managing and developing Apatit during the one-year trial period. In furtherance of the July 1995 Arrangement, and in or about July 1995, Mr Gorbachev was appointed as the Deputy General Director of ZAO Apatit-Trade (**"Apatit-Trade"**).
18. Apatit-Trade was established as a subsidiary within the Menatep Group following its acquisition of Apatit. Apatit-Trade operated as Apatit's trading arm, selling fertiliser products to customers. Apatit-Trade later became a subsidiary of Apatit, sometime after mid-1996. From about July 1995 onwards, Mr Gorbachev worked for Apatit and Apatit-Trade (together the **"Apatit Group"**) in order to investigate and grow the business during the one-year trial period. Mr Gorbachev provided regular updates to Mr Guriev during the one-year trial period (who in turn updated Mr Khodorkovsky).

(3) The January 1996 Arrangement

19. From his investigations during the course of the one-year trial period, Mr Gorbachev established that, in order for the Apatit Group to fulfil its potential for future growth and success, it was necessary for the Apatit Group to become a fully vertically-integrated business comprising each stage of the fertiliser production and supply chain, rather than simply producing and selling raw apatite.
20. Mr Gorbachev communicated the above business plan to Mr Guriev as part of the regular updates referred to in paragraph 18 above. Mr Guriev in turn communicated this business plan to Mr Khodorkovsky. This business plan was subsequently implemented following the conclusion of the one-year trial period, as described below.
21. At a meeting held in or about January 1996 (in the offices of the Menatep Group located on Kolpachny Lane in Moscow) Mr Guriev told Mr Gorbachev:
 - (1) That Mr Khodorkovsky had agreed in principle (and subject to the outcome of the one-year trial period) that Mr Guriev would have a 10% interest in *"the fertiliser business"* (meaning any entities carrying on business in the fertiliser industry which formed part of the Menatep Group, including, at this stage, the

Apatit Group); and

- (2) That Mr Khodorkovsky had agreed that there may be an option for Mr Guriev to increase his interest in "*the fertiliser business*" from 10% to 50% in the future, depending upon the success of the business.
22. From about January 1996 onwards, the term "*the fertiliser business*" was habitually used and understood by both Mr Guriev and Mr Gorbachev in their discussions as a shorthand to refer to all entities which from time to time formed part of the Menatep Group and carried on business in the fertiliser industry (including, at this stage, the Apatit Group).
23. At the same meeting held in or about January 1996 (as referred to at paragraph 21 above) Mr Guriev and Mr Gorbachev had a discussion about the management of the business and agreed that Mr Gorbachev would become the General Director of Apatit-Trade. Mr Guriev and Mr Gorbachev both discussed and understood that this would be an onerous and potentially risky position for Mr Gorbachev, for at least the following reasons:
 - (1) Mr Gorbachev would need to take steps to eradicate the corruption which he had identified within the Apatit Group and thereby prevent criminal organisations extracting money from the business (see paragraph 15(2) above).
 - (2) Mr Gorbachev's name and seal would be placed on commercial contracts concluded by Apatit-Trade with third parties. Mr Gorbachev would therefore be personally identified as the public face of the business (in the eyes of Russian government officials and criminal organisations).
 - (3) The General Director of a Russian closed joint stock company could incur personal liability to creditors for the liabilities of the company in the event of its insolvency. Mr Gorbachev was therefore personally exposed to real financial risks given that Apatit-Trade was not at this time in a financially strong position.
24. At the same meeting held in or about January 1996 (as referred to at paragraphs 21

and 23 above) and in exchange for Mr Gorbachev's agreement to become General Director of Apatit-Trade, Mr Guriev agreed and/or represented that, subject to the outcome of the one-year trial period and the implementation of the arrangements that Mr Guriev had agreed with Mr Khodorvsky (as described in paragraph 21 above), Mr Gorbachev would have a 30% interest in each of:

- (1) Mr Guriev's 10% interest in "*the fertiliser business*" (following the conclusion of the one-year trial period); and
- (2) Any further interest which Mr Guriev might subsequently acquire in "*the fertiliser business*";

(the "**January 1996 Arrangement**").

25. In accordance with the practice pleaded at paragraph 10 above, the January 1996 Arrangement was not recorded in writing.
26. In furtherance of the January 1996 Arrangement, Mr Gorbachev was appointed as the General Director of Apatit-Trade on or about 27 January 1996. On or about 7 June 1996, Mr Guriev and Mr Gorbachev were both appointed as members of the board of directors of Apatit.

(4) Rosprom

27. ZAO Rosprom ("**Rosprom**") was a subsidiary within the Menatep Group, which had been established some time in 1996. Rosprom was a management company responsible for managing other entities within the Menatep Group. Rosprom had several departments, including:

- (1) The Oil and Gas Department; and
- (2) The Mining and Chemical Department.

28. Between 1995 and 1996, subsidiaries within the Menatep Group acquired majority control of a Russian state-owned oil and gas company called OAO Yukos Oil Company ("**Yukos**") as part of a privatisation programme.

29. The Oil and Gas Department of Rosprom was responsible for managing Yukos (amongst other companies).
30. The Mining and Chemical Department of Rosprom was responsible for managing *"the fertiliser business"* (including the Apatit Group).
31. In May 1996, Mr Gorbachev became Mr Guriev's deputy in the Mining and Chemical Department of Rosprom. This was around the same time that the Department was created. The Department effectively replaced the Investment Committee at Bank Menatep, which had previously overseen the Menatep Group's investment in the Apatit Group. Mr Guriev and Mr Gorbachev both reported to Mr Mikhail Brudno (the Chairman of the board of Apatit and the Vice President of Rosprom) on a weekly basis.
32. Mr Gorbachev's role within Rosprom was to improve the efficiency of *"the fertiliser business"*, identify new factories to acquire, negotiate the acquisition of those factories and ensure that the Apatit Group's factories were operating at optimal efficiency. Mr Gorbachev's role overlapped with his role as the General Director of Apatit-Trade. However, Mr Gorbachev's role within Rosprom allowed him to attend and provide reports at meetings held with senior Rosprom management on roughly a monthly basis, which meetings were attended by one or more of Messrs Khodorkovsky, Lebedev, Brudno, Nevzlin and Dubov.

(5) The June 1996 Arrangement

33. Towards the end of the one-year trial period for Apatit, Mr Gorbachev and Mr Guriev acknowledged that in order to implement the business plan pleaded at paragraphs 19-20 above they would need additional legal, finance and other expertise.
34. In or about June 1996, Mr Guriev therefore suggested to Mr Gorbachev that Mr Igor Antoshin (who was at this time the financial director of Menatep-Lars and who worked within the Menatep Group) should join *"the fertiliser business"* and that Mr Antoshin should be given 5% of Mr Guriev's interest in *"the fertiliser business"*. Mr Gorbachev agreed with Mr Guriev's proposal.

35. At a meeting held between Mr Guriev and Mr Gorbachev in or about June 1996 it was agreed that the January 1996 Arrangement would be modified and/or replaced with the following new arrangement under which:

- (1) Mr Antoshin would be given a 5% interest in Mr Guriev's 10% interest in "*the fertiliser business*" and in any further interest which Mr Guriev might subsequently acquire in respect of "*the fertiliser business*";
- (2) Mr Gorbachev had a 25% interest in Mr Guriev's 10% interest in "*the fertiliser business*" and in any further interest which Mr Guriev might subsequently acquire in respect of "*the fertiliser business*"; and
- (3) Mr Gorbachev had a 25% interest in all of Mr Guriev's other business interests (including Menatep-Lars, a food store and a furniture store);

(the "**June 1996 Arrangement**").

36. In accordance with the practice pleaded at paragraph 10 above, the June 1996 Arrangement was not recorded in writing.

(6) The conclusion of the one-year trial period in July 1996

37. In or about July 1996, the one-year trial period for Apatit (as referred to at paragraph 15 above) came to an end:

- (1) In accordance with the agreement made between them as referred to at paragraph 16 above, Mr Khodorkovsky paid a fee of USD 1.2 million to Mr Guriev.
- (2) In accordance with the July 1995 Arrangement, Mr Guriev paid USD 360,000 to Mr Gorbachev (*i.e.* 30% of his fee from Mr Khodorkovsky). Due to the need to maintain secrecy (as explained at paragraph 10 above) the sum of USD 360,000 was handed over to Mr Gorbachev in cash by Mr Antoshin in the presence of Mr Guriev in his office at a meeting held in or about July 1996. Mr Gorbachev deposited this sum of cash into a private safety deposit box.
- (3) At the same meeting at which the USD 360,000 was handed over in cash, Mr

Guriev reiterated the July 1996 Arrangement to Mr Gorbachev and Mr Antoshin, having explained that Mr Khodorkovsky had now confirmed that:

- (a) Mr Guriev had a 10% interest in “*the fertiliser business*” (following the conclusion of the one-year trial period); and
- (b) Mr Guriev had an option to increase his interest in “*the fertiliser business*” from 10% to 50% in the future, depending upon the success of the business.

(7) The further development of “*the fertiliser business*” from July 1996 onwards

38. Between July 1996 and July 2003, Mr Gorbachev was the central architect of and the driving force behind the development and growth of “*the fertiliser business*”. Over this period, Mr Gorbachev worked strenuously to improve the overall profitability of “*the fertiliser business*” as part of the business plan which he had identified (see paragraphs 19-20 above) to develop a fully vertically integrated fertiliser business. For example:

- (1) Mr Gorbachev carried out all major negotiations with respect to sales of apatite to customers both within and outside Russia.
- (2) Mr Gorbachev carried out all major negotiations with respect to purchases of materials from suppliers (including fuel suppliers).
- (3) Mr Gorbachev led the efforts to expand the Apatit Group’s production capacity, by acquiring additional factories.
- (4) Mr Gorbachev was involved in the negotiations to acquire shareholdings in related fertiliser companies including JSC Cherepovetsky Azot (“**Cherepovetsky Azot**”).
- (5) Mr Gorbachev was involved in the creation of a new company to deliver fertiliser products on behalf of the Apatit Group to customers within Russia.
- (6) Mr Gorbachev regularly travelled to Baltic States and CIS countries in order to negotiate contracts on behalf of the Apatit Group (including tolling

agreements).

39. In or about December 1997, a Swiss company called Apatit Fertilisers SA (“**Apatit Fertilisers**”) was incorporated within the Menatep Group. Apatit Fertilisers acted as a trading company and sold apatite and fertiliser products outside Russia. On or about 11 December 1997, Mr Gorbachev was appointed as the Vice President of Apatit Fertilisers. Thereafter, Mr Gorbachev negotiated contracts on behalf of Apatit Fertilisers, including agreements for the sale of apatite and fertiliser products.

(8) The creation and development of PhosAgro Association between 1998 and 1999

40. By about December 1998 the Apatit Group had become a profitable business and its production levels had increased significantly in comparison with production levels in July 1995.
41. In or about December 1998:
- (1) Mr Gorbachev suggested to Mr Guriev that they should establish an umbrella organisation to act as a trade association and to represent Russian companies involved in the fertiliser production chain (including, but not limited to, the entities owned by the Menatep Group carrying on business in the fertiliser industry). Mr Guriev agreed with this suggestion.
 - (2) Mr Guriev and Mr Gorbachev proposed the idea to create an umbrella organisation to Mr Brudno and thereafter the idea was approved by Mr Khodorkovsky. It was agreed that Mr Guriev and his team would take the lead in creating and developing this umbrella organisation, and that Mr Gorbachev would have primary responsibility for this task.
 - (3) Mr Gorbachev therefore stepped down from his position as General Director of Apatit-Trade in December 1998. However, Mr Gorbachev continued to work within his role at Rosprom and concentrated on the creation and development of the umbrella organisation.
42. Mr Gorbachev decided that the umbrella organisation should be called the Interregional Association of Phosphorous Fertilisers Producers and Consumers (the

“PhosAgro Association”).

43. The PhosAgro Association was launched on or about 11 June 1999. Mr Gorbachev was appointed as its Vice President and Executive Director.
44. The PhosAgro Association acted as an official lobbying group and trade association for the fertiliser industry in Russia. In particular, the PhosAgro Association represented its members’ interests in dealings with the Russian Government. The PhosAgro Association also carried out roadshows in international markets showcasing its members’ businesses and promoting their fertiliser products to various purchasers. Mr Gorbachev played a key role in these dealings from June 1999 onwards. Mr Gorbachev (and not Mr Guriev) thereby became identified as the public face of the PhosAgro Association.
45. Each member of the PhosAgro Association was a Russian company which formed part of the fertiliser production chain. The members included:
 - (1) The Apatit Group;
 - (2) Voskresenskiye Mineralnye Udobreniya (“**VMU**”) (which owned a fertiliser factory in the Moscow region and in which the Menatep Group held an interest);
 - (3) Balakovskiy Mineralnye Udobreniya (Saratov region) (“**BMU**”) (which owned a fertiliser factory in the Saratov region); and
 - (4) Scientific and Research Institute of Fertilisers and Insectofungicides (which formed part of the Menatep Group).
46. By reason of the activities carried on by the PhosAgro Association from 1999 onwards (as pleaded in paragraph 44 above) the name “*PhosAgro*” became well-recognised in the international fertiliser industry.

(9) The acquisition of Ammophos in 2000 and other entities

47. In or about 2000, Mr Gorbachev led the negotiations on behalf of the Menatep Group to acquire a major Russian manufacturer and distributor of fertiliser products called

OJSC Ammophos (“**Ammophos**”):

- (1) The Chairman of Ammophos was Mr Valery Babkin, with whom Mr Gorbachev negotiated during the acquisition process. During the course of these negotiations, Mr Gorbachev reported regularly to Mr Guriev and Mr Brudno.
 - (2) Mr Gorbachev also travelled to London and New York with Mr Brudno in order to arrange financing for the acquisition of Ammophos. The Menatep Group eventually acquired Ammophos for approximately USD 100 million.
48. On or about 15 February 2001, Mr Gorbachev was appointed as the Chairman of the board of Ammophos.
49. Mr Gorbachev played a significant role in the acquisition by the Menatep Group of assets and other entities in the fertiliser production chain as part of the business plan (which Mr Gorbachev had originally identified and had been actively pursuing since 1996) to develop a fully vertically integrated fertiliser business. The Menatep Group’s acquisitions included Cherepovetsky Azot, VMU (which was a member of the PhosAgro Association) and certain of the assets of BMU (which was also a member of the PhosAgro Association and had entered an insolvency process).
50. From about 2000 onwards, the term “*the fertiliser business*” was habitually used and understood by Mr Guriev and Mr Gorbachev in their discussions as a shorthand to refer to all entities and assets which (from time to time) formed part of the Menatep Group and carried on business in the fertiliser industry (including the Apatit Group, Ammophos, Cherepovetsky Azot, VMU and Balakovo Mineral Fertilizers LLC (“**BMF**”)).
- (10) Mr Gorbachev’s appointment as a Vice President of the IFA in 2001**
51. On 24 May 2001, Mr Gorbachev was appointed as a Vice President (Eastern Europe & Central Asia) of the International Fertilizer Industry Association Limited (“**IFA**”):
- (1) The IFA is an association of 450 member companies, including all of the largest fertiliser companies in the world. The IFA organised regional and

international conferences for its members on annual basis.

- (2) In his role as a Vice President of the IFA, Mr Gorbachev raised the international profile of "*the fertiliser business*" (i.e. the entities and assets which, from time to time, formed part of the Menatep Group and carried on business in the fertiliser industry) and helped ensure that those entities were regarded as serious and credible businesses in the international fertiliser industry.
- (3) Mr Gorbachev's actions in this regard benefited the Menatep Group because "*the fertiliser business*" was able to generate additional revenues and profits in both Russian and international markets. Mr Gorbachev's efforts also benefited Mr Guriev (by virtue of his 10% interest in "*the fertiliser business*") and in turn benefited Mr Gorbachev (by virtue of his 25% interest in Mr Guriev's 10% interest in "*the fertiliser business*" pursuant to the June 1996 Arrangement).

(11) Mr Guriev's appointment as Senator in 2001

52. In November 2001, Mr Guriev was appointed as a Senator in the Russian Federal Assembly, representing the Murmansk region. Such appointment was made by the local Governor and ratified by the local Parliament. Many of the Apatit Group's mines were located in the Murmansk region. Mr Guriev remained a Senator until November 2013.
53. Mr Gorbachev understood at the time (from his discussions with Mr Guriev) that the rules of the Russian Federal Assembly prohibited Mr Guriev from being involved in the management of any business. From November 2001 onwards, Mr Guriev therefore continued to entrust to Mr Gorbachev the task of growing "*the fertiliser business*" (and being its public face) in order that Mr Guriev would not be publicly identified as being involved in the management of "*the fertiliser business*".
54. In or about November 2001, and in order to give the outward impression that he was not involved in the management of any business, Mr Guriev resigned as a member of the board of directors of Apatit. Notwithstanding his resignation, Mr Guriev remained actively involved in the management of "*the fertiliser business*" in an

unofficial capacity (after his election as Senator in the Russian Federal Assembly) and regularly met and discussed important operational and financial matters relating to the business with Mr Gorbachev and other key managers within it.

(12) The creation of OJSC PhosAgro in 2001 and initial IPO discussions

55. In or about 2001, the Menatep Group agreed that steps would be taken to prepare for an IPO of *“the fertiliser business”*.

56. By 2001, the Menatep Group had already taken steps to prepare for an IPO of Yukos. Various advisors (including investment banks) had been engaged by the Menatep Group to assist in that process.

57. In or about October 2001 (following receipt of advice from advisors) two new entities were incorporated within the Menatep Group:

(1) OJSC PhosAgro; and

(2) CJSC PhosAgro AG (**“PhosAgro AG”**).

58. The purpose of OJSC PhosAgro was to act as a holding company for all Menatep Group entities which formed part of *“the fertiliser business”*:

(1) The name “PhosAgro” was chosen specifically in order to capitalise upon the name recognition which had been achieved as a result of the activities of PhosAgro Association (led by Mr Gorbachev) as described at paragraphs 44 and 46 above.

(2) In advance of the IPO, it was intended that all existing Menatep Group entities which comprised *“the fertiliser business”* (as well as any other fertiliser entities to be acquired in the future as part of the strategy to develop a vertically-integrated fertiliser business) would gradually become subsidiaries of OJSC PhosAgro.

(3) In their discussions from 2001 onwards in connection with the IPO, Mr Guriev and Mr Gorbachev specifically agreed and clearly understood that:

- (a) OJSC PhosAgro would be the company that would be floated in the IPO; and
 - (b) OJSC PhosAgro would be listed on the London Stock Exchange following the IPO.
- 59. The purpose of PhosAgro AG was to act as a management company for all Menatep Group entities which formed part of "*the fertiliser business*".
- 60. From about October 2001 onwards, the term "*the fertiliser business*" was habitually used and understood by Mr Guriev and Mr Gorbachev in their discussions as a shorthand to refer to all entities which (from time to time) formed part of the Menatep Group and carried on business in the fertiliser industry (including the Apatit Group, Ammophos, BMF, VMU, Cherepovetsky Azot, OJSC PhosAgro and PhosAgro AG).
- 61. From about October 2001 onwards, Mr Guriev continued to hold a 10% interest in "*the fertiliser business*". Mr Gorbachev understood (from his discussions with Mr Guriev) that Mr Guriev held his 10% interest via an offshore structure incorporated outside Russia. Mr Guriev's offshore structure included a BVI company called PhosCo Industries Ltd ("**PhosCo**").
- 62. In or about October 2001, Mr Guriev and Mr Gorbachev decided that Mr Sergei Fedorov (who was at that time the General Director of Apatit and worked within the Menatep Group) should be appointed as the General Director of PhosAgro AG.
- 63. At a meeting held in Mr Guriev's office in Moscow in or about October 2001, Mr Guriev proposed and Mr Gorbachev and Mr Antoshin agreed that they would each relinquish 1% of their existing interests to Mr Fedorov such that thereafter:
 - (1) Mr Guriev had a 69.30% interest in his existing 10% interest and any further interest which he might subsequently acquire in respect of "*the fertiliser business*";
 - (2) Mr Gorbachev had a 24.75% interest in Mr Guriev's existing 10% interest and any further interest which Mr Guriev might subsequently acquire in respect of

“the fertiliser business”;

- (3) Mr Antoshin had a 4.95% interest in Mr Guriev’s existing 10% interest and any further interest which Mr Guriev might subsequently acquire in respect of *“the fertiliser business”*; and
- (4) Mr Fedorov had a 1% interest in Mr Guriev’s existing 10% interest and any further interest which Mr Guriev might subsequently acquire in respect of *“the fertiliser business”*;

(the **“October 2001 Arrangement”**).

- 64. In accordance with the practice pleaded in paragraph 10 above, the October 2001 Arrangement was not recorded in writing. Even though Mr Gorbachev’s interest had decreased from 25% to 24.75%, Mr Gorbachev and Mr Guriev continued to refer in their discussions to the fact that Mr Gorbachev had a *“25% interest”* in Mr Guriev’s interest in *“the fertiliser business”*, using the round figure of *“25%”* as a shorthand to refer to Mr Gorbachev’s 24.75% interest (as had been agreed in the October 2001 Arrangement).
- 65. From late 2001 onwards, Mr Gorbachev was heavily involved in the preparations for the IPO and consulted with Mr Guriev about the IPO. From incorporation it was intended that Mr Gorbachev would become chairman of OJSC PhosAgro. In or about March 2002 Mr Gorbachev was formally appointed as the Chairman of the board of OJSC PhosAgro. In or about June 2002, Mr Gorbachev was also appointed to the board of PhosAgro AG. At this point in time, Mr Gorbachev was also Chairman of the board of Ammophos. In his capacity as Chairman of both OJSC PhosAgro (prior to and following his formal appointment) and Ammophos and from about October 2001 onwards, and consistent with his prior roles and activities (as described at paragraph 38 above):
 - (1) Mr Gorbachev was heavily involved in the organisation and management of *“the fertiliser business”*, overseeing the interaction between all entities at each stage of the business processes (from the extraction of raw apatite to the ultimate sale of manufactured fertilisers).

- (2) Mr Gorbachev also led and implemented an investment programme in order to modernise the production processes at Ammophos. This investment programme was funded by the profits earned by entities within “*the fertiliser business*”.
66. Mr Gorbachev also carried out extensive preparatory work for the IPO of OJSC PhosAgro. In this regard:
- (1) Mr Gorbachev worked closely with Mr Platon Lebedev (a senior executive within Yukos) and Mr Maxim Volkov (who was originally a consultant to, and later a member of, the board of OJSC PhosAgro) in order to prepare for the IPO. By this stage, Mr Lebedev and Mr Volkov had prior experience in preparing for the IPO of Yukos and accordingly they were assigned by the Menatep Group to assist in the preparation of the IPO of OJSC PhosAgro.
- (2) Mr Gorbachev engaged PricewaterhouseCoopers (“PWC”) in Moscow to act as lead advisor and UBS Warburg (“UBS”) to act as another advisor in connection with the IPO. PWC and UBS advised Mr Gorbachev about the steps that would need to be taken in order to prepare for an IPO of PhosAgro and a subsequent listing of PhosAgro on the London Stock Exchange, including the preparation of several years’ worth of audited financial statements for PhosAgro (prepared in accordance with international financial reporting standards). PWC and UBS also carried out a valuation exercise of all the entities and assets that formed “*the fertiliser business*” and that would by the time of the IPO be subsidiaries of OJSC PhosAgro, and valued the business at over USD 1 billion.
- (3) In or around 2002, during the course of the IPO preparations, Mr Lebedev and Mr Volkov told Mr Gorbachev that it would be necessary to create a paper trail to document the interests held by the management team in “*the fertiliser business*”, as this information would need to be disclosed in an IPO prospectus. To this end, an option agreement was prepared in or about 2003 pursuant to which Mr Gorbachev was to be granted an option to acquire 5% of the shares in PhosCo. This was (to the knowledge of Mr Guriev and Mr Gorbachev) the first stage of establishing a paper trail to document the

interests held by the management team in “*the fertiliser business*” and Mr Gorbachev was led to understand that subsequent stages would follow, most likely with further options being granted to him such that by the time of the IPO there would be a paper trail to document Mr Gorbachev’s entire 24.75% interest in “*the fertiliser business*”.

67. It was originally anticipated that it would take at least three years’ worth of preparation work (from October 2001 onwards) before OJSC PhosAgro could be floated as part of an IPO. However, the IPO plans were interrupted by events in 2003 (as described at paragraph 68 and following below).

(13) Investigations and arrests by the Russian authorities in 2003

68. By early 2003, Mr Khodorkovsky had started to fund opposition parties in Russia who were opposed to President Putin. Mr Khodorkovsky had also become openly critical of President Putin (including at public events and in comments to the media). Mr Khodorkovsky was viewed by the Kremlin as a threat and a potential future presidential candidate. The Russian authorities therefore took steps in order to remove this threat.
69. From June 2003 onwards, the Office of the Prosecutor General of Russia commenced a series of high-profile and politically-motivated investigations and arrests of individuals associated with the Menatep Group, including:
- (1) Mr Lebedev (who was arrested in June 2003 on charges of fraud, embezzlement and tax evasion); and
 - (2) Mr Khodorkovsky (who was interrogated in July 2003 and arrested in October 2003 on charges of fraud, embezzlement and tax evasion).
70. In or about July 2003, Mr Guriev informed Mr Gorbachev that the charges against Mr Lebedev appeared to relate to the original acquisition by Volna in 1994 of the shares in Apatit (as described at paragraph 13 above). The Prosecutor General alleged that the shares in Apatit had been acquired by Volna at an undervalue.
71. In or about July 2003, Mr Guriev instructed Mr Gorbachev and other individuals

who had been associated with the Apatit Group (including two other former Director Generals of Apatit-Trade, Mr Gennadi Chistykov and Mr Alexander Beebanyn) to leave Russia due to the uncertainty over the scope of the Prosecutor General's investigation into the affairs of the Menatep Group and whether it would cover the activities of the Apatit Group from 1996 onwards. Mr Gorbachev suggested that he might speak with the Prosecutor General, but Mr Guriev instructed him not to do so.

(14) Mr Gorbachev's departure from Russia in 2003

72. Fearing for their own position, in July 2003, Mr Gorbachev, Mr Chistykov and Mr Beebanyn left Russia together and flew to Turkey where they remained while the Prosecutor General's investigations were ongoing. Mr Guriev visited Mr Gorbachev in Turkey on several occasions. Whilst in Turkey, Mr Gorbachev learned that the Prosecutor General was investigating the activities of the Apatit Group between 1996-1997, which was the period while Mr Gorbachev was the General Director of Apatit-Trade. Mr Chistykov and Mr Beebanyn returned to Russia in view of the fact that the Prosecutor General's investigation only covered the period of Mr Gorbachev's directorship of Apatit-Trade.
73. In or about October 2003, Mr Gorbachev left Turkey and flew to Brussels. He remained in Brussels until in or about November 2003. In or about November 2003, Mr Gorbachev moved to Geneva, Switzerland where the offices of Apatit Fertilisers were located:
 - (1) Whilst in Geneva, two subsidiaries within the Menatep Group (Polyfert AG and GM Services SA) covered Mr Gorbachev's living expenses.
 - (2) Mr Gorbachev continued to speak with Mr Guriev about "*the fertiliser business*" throughout 2003 whilst Mr Gorbachev was living in Geneva. Mr Guriev also visited Mr Gorbachev in Geneva on several occasions.
 - (3) In their discussions from 2003 onwards, Mr Guriev and Mr Gorbachev continued to habitually use and understand the term "*the fertiliser business*" in the sense described at paragraph 60 above.
 - (4) On one such visit in 2003, Mr Guriev told Mr Gorbachev that the October

2001 Arrangement remained in force (the “**2003 Declaration**”). Mr Guriev and Mr Gorbachev also agreed that their respective interests in “*the fertiliser business*” would be kept secret due to:

- (a) The Prosecutor General’s ongoing investigations into Mr Gorbachev;
and
- (b) Mr Guriev’s position as a Senator in the Russian Federal Assembly.

- 74. In late December 2003, Mr Gorbachev returned to Russia for several days in order to spend Christmas with his family. He then returned to Switzerland before flying back to Russia again in January 2004 for another short visit. During this visit to Russia, Mr Gorbachev met with Mr Guriev in person.
- 75. On 27 January 2004, Mr Gorbachev was informed by Mr Antoshin that he (Mr Gorbachev) would shortly be summoned for an interview by the Prosecutor General. On 28 January 2004, Mr Gorbachev flew from Russia to Geneva. Mr Gorbachev has never returned to Russia since this date.

(15) The charges against Mr Gorbachev

- 76. On or around 27 January 2004, the Russian authorities filed charges against Mr Gorbachev. In this regard:
 - (1) The charges against Mr Gorbachev were concerned with a contract (made in 1996-1997) between Apatit-Trade and a Lithuanian fertiliser company relating to the sale of apatite. The aforementioned contract was signed by Mr Gorbachev in his capacity as General Director of Apatit-Trade. It was alleged that Mr Gorbachev was involved in a conspiracy with Mr Brudno, Mr Lebedev and Mr Khodorkovsky.
 - (2) Mr Gorbachev did not understand how the aforementioned contract could have implicated Mr Gorbachev in any criminal wrongdoing. It appeared to Mr Gorbachev that he was being pursued by the General Prosecutor on fabricated charges and as part of the broader campaign that the Russian authorities were pursuing against Mr Khodorkovsky and Mr Lebedev.

77. On 6 February 2004, the General prosecutor instigated an international search for Mr Gorbachev. This subsequently led to a Russian court in Basmanny issuing a warrant for the arrest and detention of Mr Gorbachev, which led in turn to an Interpol Red Notice being issued against Mr Gorbachev.
78. In or about March 2004, Mr Guriev and his wife visited Mr Gorbachev in Geneva. Amongst other matters, Mr Guriev and Mr Gorbachev discussed the ongoing criminal investigation by the Prosecutor General.

(16) Mr Gorbachev's arrival in the United Kingdom

79. On 5 April 2004, Mr Gorbachev arrived in the United Kingdom. He subsequently applied for asylum on the basis that he had a well-founded fear that he would suffer persecution if he were to return to Russia. Throughout his asylum process, Mr Gorbachev did not mention his interest in "*the fertiliser business*" or Mr Guriev in accordance with the agreement referred to at paragraph 73(4) above.
80. While in London, Mr Gorbachev lived in an apartment in Lancaster Gate rented by GM Services (GB) Ltd ("**GM Services**"), which company was associated with "*the fertiliser business*". Mr Gorbachev's living expenses were also covered by GM Services. Mr Gorbachev's family were still living in Russia at this time and their living expenses were also covered by Mr Guriev and/or companies associated with Mr Guriev.
81. Mr Gorbachev continued to speak with Mr Guriev about "*the fertiliser business*" during 2004 whilst Mr Gorbachev was living in London.
82. In around November 2004, the Russian Government commenced extradition proceedings against Mr Gorbachev in the Bow Street Magistrates' Court in London:
- (1) Mr Gorbachev was accused of having committed the crimes of conspiracy to defraud and conspiracy to steal arising out of a contract for the sale of apatite concluded by Apatit-Trade in 1996-1997. In particular, Mr Gorbachev was alleged to have conspired together with Mr Khodorkovsky, Mr Brudno and Mr Lebedev.

- (2) The charges were denied by Mr Gorbachev. He believed that the charges were unjustified and formed part of the Russian General Prosecutor's campaign to implicate as many individuals as possible in the politically-motivated conspiracy charges which were being pursued against Mr Khodorkovsky and other Menatep Group individuals.
83. On 18 April 2005, the Secretary of State for the Home Office granted political asylum to Mr Gorbachev in the United Kingdom on the basis that he had a well-founded fear that he would suffer persecution if he were to return to Russia. He was also granted indefinite leave to remain in the United Kingdom.
84. On 17 August 2005, the Bow Street Magistrates' Court stayed the Russian Government's proceedings against Mr Gorbachev to extradite him to Russia on the basis that such proceedings were an abuse of process of the court given that Mr Gorbachev had been granted political asylum.

(17) The acquisition of 40% of the Menatep Group's interest

85. Following Mr Gorbachev's arrival in London in April 2004, he was kept updated on matters concerning OJSC PhosAgro by Mr Volkov (who was at this point in time CFO of PhosAgro), Mr Evgeniy Mariashin (a lawyer for OJSC PhosAgro) and Mr Antoshin. These updates were provided through discussions on Cyprus cell phones and SIM cards as well as in-person meetings (when Messrs Volkov, Mariashin and Antoshin were in London). Further, Mr Mariashin was closely involved in Mr Gorbachev's asylum application, frequently travelled between London and Moscow and acted as a link between Mr Gorbachev and Mr Guriev.
86. By December 2004, Mr Guriev had procured the acquisition (via his offshore companies) of 40% of the Menatep Group's interest in the "*the fertiliser business*" (including OJSC PhosAgro) for approximately USD 60 million. Mr Gorbachev became aware of this acquisition from his discussions with Mr Volkov and Mr Mariashin when they visited Mr Gorbachev in London. This acquisition was made as a result of the option referred to in paragraph 37(3)(b) above.
87. From at the latest December 2004 onwards, and by reason of the said acquisition, Mr Guriev's interest in "*the fertiliser business*" (including, in particular, OJSC

PhosAgro) had increased from 10% to 50%.

(18) The acquisition of the remaining 50% of the Menatep Group's interest

88. In or around December 2004 or January 2005, Mr Guriev procured the conclusion of an agreement (via his offshore companies) to acquire the remaining 50% of the Menatep Group's interest in the "*the fertiliser business*" (including OJSC PhosAgro) for approximately USD 150 million (the "**50% Acquisition Agreement**"). This purchase price was not based on a fair valuation of the business, but was driven by the fact that Mr Khodorkovsky was under arrest and facing trial for serious charges of fraud, embezzlement and tax evasion (as described at paragraph 69(2) above). Although the acquisition was publicly announced in January 2005, it was conditional on the payment of the consideration, which was to be paid in three tranches. Mr Gorbachev was also made aware of this acquisition from his discussions with Mr Volkov and Mr Mariashin when they visited Mr Gorbachev in London.
89. Following completion of the 50% Acquisition Agreement, Mr Guriev held (via his offshore companies) a 100% interest in "*the fertiliser business*".
90. To the best of Mr Gorbachev's knowledge and belief, the 50% Acquisition Agreement was expressly governed by English law, Mr Gorbachev having been informed of this during the course of discussions with Mr Volkov during one of his visits to London (as referred to at paragraphs 85 above).

III. LONDON – THE 2005 DECLARATIONS

(1) The First and Second 2005 Declarations

91. Between about 24 and 26 June 2005, Mr Guriev and his wife visited Mr Gorbachev in London. Mr Guriev and his wife stayed at the Sheraton Park Tower Hotel in Knightsbridge. This visit was the first occasion that Mr Gorbachev and Mr Guriev had seen one another in person since March 2004 and accordingly the first opportunity for Mr Guriev and Mr Gorbachev to discuss with one another in detail the developments that had been and were taking place with regard to "*the fertiliser business*" and the ongoing criminal investigations in Russia.

92. During the course of the visit, Mr Gorbachev and Mr Guriev had extensive conversations (all of which were spoken in Russian) about various matters relating to “*the fertiliser business*”, including:
- (1) The acquisition of 40% of the Menatep Group’s interest in “*the fertiliser business*” such that Mr Guriev’s interest had now increased from 10% to 50%;
 - (2) The agreement to acquire the remaining 50% of the Menatep Group’s interest in “*the fertiliser business*”;
 - (3) The fact that Mr Fedorov had left “*the fertiliser business*” in about October 2004 and had been replaced by Mr Volkov and that Mr Fedorov’s 1% interest could potentially be given to Mr Volkov;
 - (4) The nature and extent of Mr Gorbachev’s interest in Mr Guriev’s existing and further interest in “*the fertiliser business*” (as described in further detail at paragraphs 93 and 94 below);
 - (5) The current state of the operations of the “*the fertiliser business*” and future expansion plans;
 - (6) The fact that the IPO of PhosAgro would need to be postponed until the position in Russia became clearer;
 - (7) The recent convictions of Mr Khodorkovsky and Mr Lebedev (both of whom had been sentenced in May 2005 to lengthy terms of imprisonment by the Russian courts);
 - (8) The ongoing investigation by the Prosecutor General in Russia and the Russian Government’s application to extradite Mr Gorbachev from the United Kingdom; and
 - (9) The fact that Mr Gorbachev had recently been granted asylum (in April 2005), the fact that this grant of asylum meant he would not be able to be extradited to Russia, the fact that he had been granted indefinite leave to remain in the United Kingdom and the fact that his family would join him in England.

93. During the course of their discussions:

- (1) Mr Guriev told Mr Gorbachev that he had met with the General Prosecutor General in 2004 and been told that if the Menatep Group retained any interest in any fertiliser businesses (including PhosAgro) then those businesses would be destined for the same fate as Yukos (which by this point in time was under severe attack by entities controlled by the Russian State as part of the politically-motivated prosecution of Mr Khodorkovsky);
- (2) Messrs Guriev and Gorbachev discussed the steps that Mr Guriev had taken to acquire 100% of "*the fertiliser business*" from the Menatep Group to prevent it from falling into the hands of the Russian State (in the same way as Yukos);
- (3) Mr Guriev and Mr Gorbachev agreed that after all of the required payments had been made under the 50% Acquisition Agreement, PhosAgro could eventually be floated in an IPO on the London Stock Exchange;
- (4) Mr Gorbachev told Mr Guriev that he had been approached by journalists from Russia and England in relation to his extradition proceedings as well as the charges brought against him and other Menatep Group individuals in Russia (including Mr Khodorkovsky and Mr Lebedev);
- (5) Mr Guriev specifically asked Mr Gorbachev (i) not to mention his name in any of the proceedings which were still ongoing in respect of Mr Gorbachev and individuals associated with the Menatep Group; and (ii) not to conduct any press interviews or mention Mr Guriev's name; and
- (6) Mr Guriev also told Mr Gorbachev that he (Mr Gorbachev) would be identified in documents submitted by Apatit parties in proceedings in Russia relating to Apatit-Trade as having been the public face of Apatit-Trade at the relevant time(s) and that Mr Guriev's role would be concealed.

94. During the course of the same visit and on or about 25 June 2005, Mr Guriev and Mr Gorbachev visited a health club on North Row in Mayfair for a couple of hours. Whilst in the sauna and in the relaxation area at the health club, Mr Gorbachev and

Mr Guriev discussed (amongst other matters) their interests in “*the fertiliser business*”. Whilst they were together in the sauna and in the relaxation area:

- (1) Mr Guriev said to Mr Gorbachev (in Russian) words to the effect that “*You shouldn’t worry about anything. Your interest is protected and secured under my name. It is more protected now because I am a Senator and they cannot come after me. I will continue holding your interest until the situation will be resolved in Russia*” (the “**First 2005 Declaration**”).
- (2) Mr Gorbachev promised to keep his and Mr Guriev’s interests in “*the fertiliser business*” secret and that:
 - (a) Mr Gorbachev would not give any interviews to journalists about the criminal proceedings or any of the other prosecutions against Menatep Group individuals;
 - (b) Mr Gorbachev would only contact Mr Guriev on his Cyprus cell phone number using Mr Gorbachev’s Cyprus SIM card; and
 - (c) Mr Gorbachev would not contact Mr Guriev by any other means in Russia due to the risk that such communications might be intercepted by Russian authorities.

95. After they had left the health club on North Row, Mr Gorbachev and Mr Guriev went together to the Audley Public House in Mayfair. During the course of their discussions at the Audley Public House:

- (1) Mr Gorbachev told Mr Guriev that (following his grant of asylum in April 2005 and his grant of indefinite leave to remain) since the plan was that that his family were to join him in England (as they had already discussed) he would need financial provision to purchase a property.
- (2) Mr Guriev said (in Russian) words to the effect that “*I will hold your 25% of the fertiliser business for you under my name. You shouldn’t worry about anything.*” (the “**Second 2005 Declaration**”).
- (3) Mr Gorbachev reiterated his promise to keep his and Mr Guriev’s interests in

“the fertiliser business” secret, as set out at paragraph 94(2) above.

96. In the context of the facts and matters set out above (including the January 1996 Arrangement, the June 1996 Arrangement, the October 2001 Arrangement, the matters pleaded in paragraphs 65 to 73(4) above and the 2003 Declaration) each of the First 2005 Declaration and the Second 2005 Declaration constituted express and/or implied declarations and/or representations that Mr Guriev held and would hold 24.75% of his interests (howsoever held and whether directly or indirectly, including any future interests) in the **“Fertiliser Business”** (being that business carried on by entities including the Apatit Group, Ammophos, BMF, VMU, Cherepovetsky Azot, OJSC PhosAgro and PhosAgro AG) and all proceeds and benefits derived therefrom on express trust for Mr Gorbachev, and that Mr Guriev would continue to hold such interests.
97. Consequently, Mr Guriev held and was obliged to hold 24.75% of (1) his then interests and (2) any future interests in the Fertiliser Business for the benefit of Mr Gorbachev in accordance with the duties pleaded further at paragraph 140 below (and in particular the duty to preserve and manage the trust property for the benefit of Mr Gorbachev, as pleaded at paragraph 140(3) below). Accordingly, any alienation and/or disposal by Mr Guriev of his interests (howsoever held and whether directly or indirectly) in the Fertiliser Business to third parties would constitute a breach of such duties and Mr Guriev would be required to account to Mr Gorbachev for any value received consequent upon any such alienation and/or disposal.
98. Alternatively, by reason of the foregoing, Mr Guriev represented by each of the First 2005 Declaration and the Second 2005 Declaration (and/or Mr Guriev and Mr Gorbachev formed the common intention) that:
- (1) Mr Gorbachev was entitled to 24.75% of Mr Guriev’s interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business; and
 - (2) Mr Guriev would continue to hold such interests and held and would hold 24.75% of such interests (and all proceeds and benefits derived therefrom) for Mr Gorbachev’s benefit.

(2) The Third, Fourth and Fifth 2005 Declarations

99. In or about August or September 2005, Mr Guriev visited Mr Gorbachev in London once again. On this occasion, Mr Guriev's wife and son accompanied Mr Guriev. During the visit, Mr Guriev, his wife and his son stayed at the Ritz Hotel. Mr Volkov also arrived in London on or about the same day that Mr Guriev arrived with his family.
100. Mr Gorbachev understood (from his discussions with Mr Guriev and Mr Volkov) that the purpose of Mr Guriev's visit to London was to finalise the arrangements by which his offshore companies were acquiring the remaining 50% interest in "*the fertiliser business*" (including PhosAgro) from the Menatep Group (as had been discussed and agreed between Mr Guriev and Mr Gorbachev between about 24 to 26 June 2005: see paragraph 92 above). Mr Gorbachev had been involved in earlier discussions relating to this acquisition from the Menatep Group. In particular, Mr Volkov had visited Mr Gorbachev in London and they had spent time discussing the terms of the acquisition.
101. During the course of his trip to London, Mr Guriev and Mr Volkov had several meetings connected with "*the fertiliser business*" and the acquisition of the remaining 50% of the Menatep Group's interest. Mr Guriev and Mr Volkov told Mr Gorbachev that in the course of those meetings the first payment under the 50% Acquisition Agreement had been made, and that once the two further payments were made matters would be settled with the Menatep Group.
102. During the course of a meeting between Mr Guriev and Mr Gorbachev held in London on the day that Mr Guriev arrived Mr Guriev said in Russian words to the effect that "*we will soon get 100% of the whole fertiliser business from the Menatep Group*" (the "**Third 2005 Declaration**").
103. On the following day, Mr Gorbachev accompanied Mr Guriev, his wife and son, and Mr Volkov to the premises of a safety deposit box company located on Park Lane in London. Mr Gorbachev saw two A4 envelopes, which he was led by Mr Guriev and Mr Volkov to understand contained important documents relating to the 50% Acquisition Agreement, which envelopes were deposited into two separate safety

deposit boxes, namely:

- (1) One safety deposit box in the names of Mr Guriev and his family; and
- (2) One safety deposit box in the names of and shared by Mr Gorbachev and Mr Volkov.

104. After visiting the safety deposit boxes Mr Gorbachev, Mr Volkov, Mr Guriev, Mr Guriev's wife and Mr Guriev's son had some celebratory drinks in the Ritz Hotel lobby in London before going for a celebratory meal at The Wolseley restaurant in London. During the course of the celebrations, Mr Guriev said (in Russian) to Mr Gorbachev words to the effect that "*We finally have 100% of the fertiliser business*". By the use of the word "*we*" Mr Guriev meant (and Mr Gorbachev reasonably understood him to have meant) that Mr Guriev, Mr Gorbachev and Mr Antoshin between them now ultimately owned the whole of the Fertiliser Business.

105. Later that evening, during the course of a separate discussion held (alone) between Mr Guriev and Mr Gorbachev (whilst walking back from the Wolseley to the Ritz Hotel) the two men discussed their respective interests in the Fertiliser Business. During the course of this discussion, Mr Guriev repeated (in Russian) words to the effect that "*We finally have 100% of the fertiliser business*" (together with the statement pleaded in paragraph 102 above, the "**Fourth 2005 Declaration**").

106. On the following day (and whilst Mr Guriev and Mr Gorbachev were again together alone in the Audley Public House):

- (1) Mr Gorbachev told Mr Guriev that his family would soon be coming to live with him in England and that he would need to purchase a house. Mr Gorbachev told Mr Guriev that because of the Interpol Red Notice he was unable to work in England and that a structure would need to be put in place for him to receive money while he was living in England.
- (2) During the course of their discussions, Mr Guriev said (in Russian) words to the effect that "*don't worry, I still hold your interest in the fertiliser business under my name*" and "*I will stand by our deal*" and "*I hold the shares for you*" (the "**Fifth 2005 Declaration**").

- (3) Mr Guriev and Mr Gorbachev had a discussion about how Russian media coverage in January 2005 had reported that the "*Management Group of PhosAgro*" had purchased all of the Menatep Group's interest, and Mr Guriev told Mr Gorbachev that there was general speculation in Russia as to the identity of the individuals who made up the "*Management Group*". Mr Guriev and Mr Gorbachev both clearly understood that this formulation had been used in the press releases to keep their interests in "*the fertiliser business*" secret.
- (4) Mr Gorbachev reiterated his promise to keep his and Mr Guriev's interests in "*the fertiliser business*" secret, as set out at paragraphs 94(2) and 95(3) above.
107. By the Third, Fourth and/or Fifth Declarations and in the context of the facts and matters set out above (including the January 1996 Arrangement, the June 1996 Arrangement, the October 2001 Arrangement, the 2003 Declaration, the matters pleaded in paragraphs 65 to 73(4) above, the First 2005 Declaration and the Second 2005 Declaration) Mr Guriev expressly and/or impliedly represented (and Mr Gorbachev reasonably understood him to be representing) that:
- (1) Mr Guriev held a 100% interest in the Fertiliser Business; and
- (2) Mr Guriev held 24.75% of such interest for Mr Gorbachev.
108. In the premises, the Third and/or Fourth and/or Fifth 2005 Declarations constituted express and/or implied declarations and/or representations that Mr Guriev held and would hold 24.75% of his interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business and all proceeds and benefits derived therefrom on express trust for Mr Gorbachev, and that Mr Guriev would continue to hold such interests. Further, Mr Gorbachev repeats the matters pleaded at paragraph 97 above.
109. Alternatively, by reason of the foregoing, Mr Guriev represented by the Third and/or Fourth and/or Fifth 2005 Declarations (and/or Mr Guriev and Mr Gorbachev formed the common intention) that:
- (1) Mr Gorbachev was entitled to 24.75% of Mr Guriev's interests (howsoever

held and whether directly or indirectly, including any future interests) in the Fertiliser Business; and

- (2) Mr Guriev would continue to hold such interests and held and would hold 24.75% of such interests (and all proceeds and benefits derived therefrom) for Mr Gorbachev's benefit.

110. The First and/or Second and/or Third and/or Fourth and/or Fifth 2005 Declarations are referred to as the “**2005 Declarations**”.

IV. CLAIM IN CONTRACT

111. Further or in the alternative:

- (1) In the context of the facts and matters set out above (including the January 1996 Arrangement, the June 1996 Arrangement, the October 2001 Arrangement, the matters pleaded in paragraphs 65 to 73(4) above and the 2003 Declaration) the 2005 Declarations constituted oral promises by Mr Guriev to Mr Gorbachev that:
 - (a) Mr Gorbachev was entitled to and would receive 24.75% of Mr Guriev's interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business and/or 24.75% of the shares in PhosAgro (following any subsequent IPO of PhosAgro); and
 - (b) Following any subsequent IPO of PhosAgro, Mr Guriev would give and/or transfer the said interests or shares to Mr Gorbachev and/or procure that Mr Gorbachev received such interests or shares.
- (2) In consideration for Mr Guriev's promises as pleaded at paragraph 111(1) above, Mr Gorbachev promised to keep secret his and Mr Guriev's interests in the Fertiliser Business and promised not to mention Mr Guriev's name (as pleaded at paragraphs 94(2), 95(3) and 106(4) above).
- (3) In the premises, the aforesaid promises created binding agreements between Mr Guriev and Mr Gorbachev made in London. The said agreements imposed

the contractual obligations upon Mr Guriev which are pleaded at paragraphs 111(1)(a) and (b) above.

V. **SECREC**Y

112. From 2005 onwards, Mr Gorbachev fulfilled his promises (as pleaded at paragraphs 94(2), 95(3) and 106(4) above) to keep secret his and Mr Guriev's interests and involvement in the Fertiliser Business. In this regard, Mr Gorbachev's actions from 2005 onwards in maintaining the secrecy of these interests conferred significant and substantial benefits upon Mr Guriev including (but not limited to) the fact that Mr Guriev could continue to remain a Senator of the Russian Federal Assembly but without his full interest in and involvement with the Fertiliser Business being publicly identified. Furthermore, Mr Gorbachev thereby gave up the opportunity to negotiate with the General Prosecutor for the charges against him to be withdrawn or reduced in return for the provision by Mr Gorbachev of information and testimony in relation to the General Prosecutor's investigations, including Mr Guriev's role in *"the fertiliser business"*.

VI. **APPLICABLE LAW**

113. Under the Recognition of Trusts Act 1987 (the "**1987 Act**") and the Hague Convention on the Law of Trusts (the "**Hague Convention**"), and in any event, the express and/or implied trusts created by the 2005 Declarations (and any other obligations arising out of those trusts) were each governed by English law.
114. The following non-exhaustive list of facts and matters demonstrates that the said trusts were impliedly governed by English law for the purposes of Article 6 of the Hague Convention and the 1987 Act:
- (1) From the outset, Mr Guriev deliberately established an arrangement whereby Mr Gorbachev's interest in the Fertiliser Business was held outside Russia via offshore structures which were beneficially owned by Mr Guriev (see paragraph 61 above).
 - (2) The 50% Acquisition Agreement (which related to the subject matter of the said trusts) was executed in London and was governed by English law (see

paragraph 90 above).

- (3) The 2005 Declarations were made in meetings between Mr Guriev and Mr Gorbachev which were held in England.
- (4) As at the date of the 2005 Declarations, Mr Gorbachev was domiciled and habitually resident in England (having been granted asylum there) and could not return to Russia (see paragraph 83 above).
- (5) The trusts created by the 2005 Declarations were intended to benefit Mr Gorbachev in England.
- (6) At as at the date of the 2005 Declarations, it was intended that:
 - (a) OJSC PhosAgro (which related to the subject matter of the said trusts) would subsequently be floated on the London Stock Exchange in an IPO (see paragraphs 92(6) and 93(3) above); and
 - (b) OJSC PhosAgro's shares would be traded in England and the IPO itself would be (implicitly) governed by English law (and was in fact in the event governed by English law, as described at paragraph 142 below).
- (7) Accordingly, the intention was that Mr Gorbachev (whilst in England) would receive from Mr Guriev the benefits flowing from the PhosAgro IPO and so Mr Gorbachev would receive benefits from the trust property in England.
- (8) Mr Gorbachev and Mr Guriev both knew (or will be taken to have known) that any attempt to enforce their arrangements arising out of the 2005 Declarations could only realistically take place in England (as Mr Gorbachev could not return to Russia).

115. Alternatively, the above list of non-exhaustive facts and matters demonstrates that the express and/or implied trusts established by the 2005 Declarations were most closely connected with English law for the purposes, *inter alia*, of Article 7 of the Hague Convention and the 1987 Act.

116. The above list of non-exhaustive facts and matters demonstrates that the contracts

established by the 2005 Declarations were most closely connected with England and hence were governed by English law pursuant to the Contracts (Applicable Law) Act 1990 and Article 4 of the Rome Convention on the Law Applicable to Contractual Obligations.

VII. EVENTS AFTER THE 2005 DECLARATIONS

(1) The provision of monies to Mr Gorbachev

117. Following the 2005 Declarations, Mr Gorbachev and Mr Guriev continued to have discussions on their Cyprus mobile telephone numbers about the Fertiliser Business. They also had discussions face-to-face when Mr Guriev was in London:

- (1) During the course of these discussions, Mr Guriev informed Mr Gorbachev that he would arrange for monies to be provided to Mr Gorbachev and his family (as more fully described below) which payments were made in recognition of Mr Gorbachev's interest in the Fertiliser Business.
- (2) Mr Guriev also confirmed to Mr Gorbachev that offshore structures would need to be established (and documentation would need to be signed by Mr Gorbachev) in order to enable monies to be provided to Mr Gorbachev in London.
- (3) Mr Guriev also confirmed to Mr Gorbachev that he had engaged Russian and Cyprus lawyers (Mr Mariashin and Ms Areti Charidemou) to enable these offshore structures to be established and to enable monies to be provided to Mr Gorbachev in London.
- (4) As pleaded at paragraph 85 above, Mr Mariashin had been heavily involved in Mr Gorbachev's asylum application. Mr Mariashin had also previously discussed the offshore structures with Mr Gorbachev. Ms Charidemou manages trusts for Mr Guriev and his family.

118. On or about 7 November 2005 (and with the knowledge and approval of Mr Guriev) a trust deed was executed pursuant to which the Gamini Trust was established:

- (1) The Settlor of the Gamini Trust was a company incorporated in Cyprus called

Fresnillo Trading Ltd (“**Fresnillo**”). Mr Guriev was the majority ultimate beneficial owner (“**UBO**”) of Fresnillo.

- (2) The Trustee of the Gamini Trust was Ms Charidemou.
- (3) The Beneficiaries of the Gamini Trust included “*any person or persons, company or companies appointed by the Trustees*”.
- (4) Mr Gorbachev was subsequently appointed as a Beneficiary by Ms Charidemou.
- (5) The Gamini Trust was subsequently used as a vehicle to enable monies to be provided by Mr Guriev to Mr Gorbachev to purchase a house called Ormidale (in Surrey) for Mr Gorbachev and his family in England.
- (6) Ormidale was acquired on 15 March 2006. The purchase price for Ormidale (£4.8 million) was ultimately funded by companies of which Mr Guriev was the UBO.

119. In or about August 2006, Mr Gorbachev’s wife and children moved to England. Mr Gorbachev’s mother and mother-in-law remained in Russia; and Mr Guriev arranged for their living expenses to be paid.

120. On or about 3 August 2007 (and with the knowledge and approval of Mr Guriev) a trust deed was executed pursuant to which the Goaliva Trust was established:

- (1) The Settlers of the Goaliva Trust were Ms Charidemou and Ms Marina Loizou (who was another Cyprus lawyer in Ms Charidemou’s firm).
- (2) The Trustee of the Goaliva Trust was a company incorporated in Cyprus called First Link Management Services Ltd (“**First Link**”). Mr Guriev was the UBO of First Link.
- (3) The Beneficiaries of the Goaliva Trust included “*any person or persons, company or companies appointed by the Trustees*”.
- (4) Mr Gorbachev was subsequently appointed as a Beneficiary.

(5) The Goaliva Trust was subsequently used as a vehicle to enable monies to be provided by Mr Guriev to Mr Gorbachev in England. In particular, on various occasions after August 2007:

(a) Mr Guriev procured and/or arranged for monies to be loaned to First Link.

(b) First Link entered into loan agreements with Mr Gorbachev (the “**Loan Agreements**”) pursuant to which Mr Gorbachev received certain monies.

(2) Mr Guriev’s visits to England between 2006 and 2007

121. In addition to their telephone discussions (and as pleaded at paragraph 117 above) Mr Guriev visited Mr Gorbachev in England on several occasions between 2006 and 2007. Over this period Mr Volkov, Mr Antoshin, Mr Mariashin and various other PhosAgro executives regularly visited Mr Gorbachev in England and held discussions with Mr Gorbachev about the Fertiliser Business (including operational issues and financial issues).

122. In around June or July 2006 during a visit by Mr Guriev to England, Mr Guriev and Mr Gorbachev spent some days together in London and Brighton, during which time Mr Guriev discussed the Fertiliser Business in detail with Mr Gorbachev including the acquisition of new factories. Mr Guriev also mentioned the potential for involving Mr Gorbachev in large projects and investments to acquire property in England.

123. On another visit later in the summer of 2007 at Ormidale, in the context of discussing Mr Gorbachev’s requirement for further funds to be advanced to him, Mr Guriev told Mr Gorbachev (in Russian) that “*our fertiliser business is doing very well*”, and they were “*partners*”. Mr Guriev also suggested that Mr Gorbachev should make various improvements to Ormidale and should purchase the adjacent property.

124. In the premises, the representations made by Mr Guriev as set out in paragraph 123 above corroborated the fact that Mr Guriev made the 2005 Declarations and reasonably led Mr Gorbachev to continue to believe (1) that he was entitled to

24.75% of Mr Guriev's interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business, (2) that Mr Guriev's interest in the Fertiliser Business at that time was 100% and (3) that Mr Guriev would continue to hold 24.75% of his 100% interest in the Fertiliser Business for Mr Gorbachev.

(3) The 2007 Option Agreement

125. In or about September or October 2007 (and following on from his meeting with Mr Guriev in the summer of 2007 at Ormidale) Mr Gorbachev met with Mr Antoshin at the Marriott Hotel on Park Lane to discuss the mechanism by which further funds would be provided to Mr Gorbachev.

126. A few weeks later, Mr Mariashin (together with Messrs Guriev, Antoshin and Volkov) telephoned Mr Gorbachev. Mr Mariashin informed Mr Gorbachev that he had spoken with Mr Guriev, Mr Antoshin and Mr Volkov and that they had a solution to release additional funds to Mr Gorbachev, which was to revive the proposal for an option agreement which had been discussed during the aborted IPO (as pleaded at paragraph 66(3) above).

127. Mr Mariashin explained to Mr Gorbachev that the plan would be:

- (1) That Mr Gorbachev would assign the option to one of the trusts that had been established for the benefit of Mr Gorbachev and his family; and
- (2) That documents would be created to look like a sale of the option, which would justify making a payment of additional sums into the trust.

128. During this telephone conversation, Mr Gorbachev asked Mr Mariashin how much cash could be released pursuant to this mechanism. Mr Mariashin explained that Mr Guriev thought that a payment of USD 20 million would be sufficient to cover Mr Gorbachev's expenses until the Apatit Group investigation and the charges against Mr Gorbachev were resolved.

129. Mr Mariashin called Mr Gorbachev a day or two later to explain that documents would be prepared and sent to Mr Gorbachev by Ms Charidemou for Mr Gorbachev

to sign and return in order to put in train this process. Mr Mariashin explained that the option should be back-dated to before Mr Gorbachev travelled to the UK.

130. A few days after speaking with Mr Mariashin, Ms Charidemou sent Mr Gorbachev the following documents to sign and return by post, which he did:

- (1) An option agreement dated on its face 19 November 2003 between B&C Consultants Limited (Belize) and Mr Gorbachev, pursuant to which Mr Gorbachev was stated to have paid USD 1 to acquire an option over 5% of the shares in PhosCo (the “Shares”) (the “**2007 Option Agreement**”).
- (2) A deed of assignment dated on its face 29 November 2005 between Mr Gorbachev and the Trustees of the Gamini Trust, pursuant to which Mr Gorbachev assigned the 2007 Option Agreement to the Trustees of the Gamini Trust.

131. Mr Mariashin and Mr Gorbachev had another telephone conversation a couple of months later regarding this process. In that conversation, Mr Mariashin told Mr Gorbachev that:

- (1) Mr Antoshin wanted to use part of the USD 20 million to clear ostensible liabilities on the balance sheets of the Gorbachev family trusts; and
- (2) If Mr Gorbachev subsequently needed more money for living and other expenses, a similar mechanism (to the 5% option and paper sale) could be put in place.

132. The following documents completed the process to release the USD 20 million to the Gorbachev family trusts, although Mr Gorbachev was not aware at the time of the detail of the documents or the process they put in place:

- (1) An assignment agreement between the Trustees of the Gamini Trust and the Trustees of the Goaliva Trust dated on its face 4 August 2007, under which terms the 2007 Option Agreement was stated to be assigned to the Trustees of the Goaliva Trust.
- (2) An instrument of transfer between B&C Consultants Limited and the Trustees

of the Goaliva Trust dated on its face 2 November 2007, under which terms the Shares were stated to be transferred to the Trustees of the Goaliva Trust.

- (3) A sale and purchase agreement between the Trustees of the Goaliva Trust and Phosco dated on its face 2 November 2007, under which terms the Shares were stated to be sold by the Goaliva Trust for USD 20 million.

133. To the extent that the above documents were dated prior to late 2007, they were back-dated since they were dependent on Mr Gorbachev's assignment of the 2007 Option Agreement.

134. Mr Gorbachev's understanding at the time was that the documents identified above:

- (1) Did not reflect any disposition of his interests under the trusts created by the 2005 Declarations; but
- (2) Instead, were simply a mechanism to facilitate the provision of funds to the Gamini Trust in order to cover Mr Gorbachev's living expenses pending the IPO of PhosAgro.

135. Mr Gobachev will give credit as appropriate for such sums as were in fact received for his benefit against the sums to which he is entitled, having regard to the facts and matters set out in paragraphs 151-152 below.

(4) The 2008 declarations

136. On another visit to London in or about March or April 2008, Mr Guriev informed Mr Gorbachev about his proposal to establish an investment management company in England and to develop property in England. In this regard:

- (1) Sometime in 2007, Mr Guriev had asked Mr Roger Gherson of Gherson & Co (who had acted for Mr Gorbachev in his asylum case) for recommendations for a commercial lawyer, and Mr Gherson had recommended Mr Neil Micklethwaite (who was as at that time a partner at Gherson & Co).
- (2) During Mr Guriev's visit to London in or about March or April 2008, Mr Gorbachev visited Mr Guriev at a penthouse flat which Mr Guriev had

recently acquired in Vauxhall at 10 St George Wharf. Mr Guriev's wife and son were also at the penthouse, as was Mr Bichkov (who had been involved with Menatep-Lars and was at this time in exile from Russia). Whilst at the penthouse, Mr Guriev told Mr Gorbachev (in Russian) words to effect that *"the fertiliser business is doing well"* and *"we have a lot of money"* and *"we should think about making our next big investment in the property market in England"*.

- (3) From the penthouse in Vauxhall, Mr Guriev and Mr Gorbachev visited another property which Mr Guriev was proposing to purchase called 'Witanhurst' in Highgate (one of the largest private residences in England). Also accompanying them on this visit was Mr Guriev's son and wife, Mr Bichkov, two representatives of the estate agency Knight Frank and Mr Micklethwaite. Mr Guriev told Mr Gorbachev that this was a potentially profitable investment due to the growth of the real estate market, and he wanted him to manage the project to develop 'Witanhurst' (together with Mr Guriev's son). Mr Guriev also told Mr Gorbachev that he wanted his identity as the purchaser of 'Witanhurst' to be kept secret.
- (4) The day after visiting the two aforementioned properties, Mr Guriev and Mr Gorbachev spent time together with Mr Sergey Tarahnenko, who had been a lawyer for PhosAgro and who was in exile in London. They met at a café near to Mr Guriev's Vauxhall penthouse, and then travelled to the Prospect of Whitby public house in Wapping. During the trip to the Prospect of Whitby, whilst Mr Taranenko went either to the bathroom or to the bar, Mr Guriev and Mr Gorbachev discussed the Fertiliser Business. Mr Guriev told Mr Gorbachev that the investigation into Apatit in Russia was soon likely to reach a positive conclusion, and they were therefore starting to prepare for the IPO of OJSC PhosAgro. As such, Mr Guriev told Mr Gorbachev (in Russian) words to the effect of *"don't worry"*, *"our agreement remains the same"* and *"later on we can discuss how we will structure your holding in the fertiliser business"*.
- (5) The following day, Mr Guriev and Mr Gorbachev went shopping in London with Mr Bichkov. During this shopping trip, Mr Guriev and Mr Gorbachev

were alone in a café (whilst Mr Bichkov had stepped out for a few minutes) and they discussed the Fertiliser Business. Mr Guriev reassured Mr Gorbachev and specifically stated (in Russian) words to the effect of “*I remember everything*”, “*our understanding remains the same*”, “*please don’t worry*”, “*everything is the same as before*”.

137. In the premises, the declarations made by Mr Guriev in 2008 as set out in paragraph 136 above (and in particular Mr Guriev’s repeated use of plural pronouns such as “*we*”, “*our*” and “*us*”) corroborated the fact that Mr Guriev made the 2005 Declarations and reasonably led Mr Gorbachev to continue to believe (1) that he was entitled to 24.75% of Mr Guriev’s interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business (2) that Mr Guriev’s interest in the Fertiliser Business at that time was 100% and (3) and that Mr Guriev would continue to hold 24.75% of his 100% interest in the Fertiliser Business for Mr Gorbachev.

VIII. MR GORBACHEV’S RELIANCE UPON THE 2005 DECLARATIONS

138. Mr Gorbachev relied upon the representations made by Mr Guriev in the 2005 Declarations and the common intention arising therefrom, *inter alia*, as follows such that it would be unconscionable for Mr Guriev to resile from the 2005 Declarations and/or to deny the said common intention:

- (1) Mr Gorbachev entered into the Loan Agreements and assumed the liabilities referred to in at paragraph 120(5) above in the belief that he had an entitlement to 24.75% of Mr Guriev’s interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business and all proceeds and benefits derived therefrom and that Mr Guriev would continue to hold such interests.
- (2) Mr Gorbachev agreed to Ormidale being acquired in the name of the Trustee of the Gamini Trust (rather than in his own name) in the belief that he had an entitlement to 24.75% of Mr Guriev’s interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business and all proceeds and benefits derived therefrom, and that Mr Guriev would

continue to hold such interests.

- (3) Mr Gorbachev otherwise arranged his affairs, incurred liabilities and expended money (including by expending approximately USD 2 or 3 million between 2007 and 2008 on renovations to Ormidale and was encouraged and/or induced to carry out these renovations by Mr Guriev, as pleaded at paragraph 123 above) in the belief that that he had an entitlement to 24.75% of Mr Guriev's interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business and all proceeds and benefits derived therefrom, and that Mr Guriev would continue to hold such interests..
- (4) Mr Gorbachev continued to keep his and Mr Guriev's interests in the Fertiliser Business secret from 2005 onwards and did not give any interviews to journalists or contact Mr Guriev by telephone or email in Russia in order to avoid any such communications from being intercepted by Russian authorities.
- (5) Mr Gorbachev did not take any steps to contact the General Prosecutor to offer information or testimony in exchange for the withdrawal or reduction in the charges filed against him (as pleaded in paragraph 112 above).
- (6) Mr Gorbachev did not take any steps to seek to establish or obtain his entitlement under the arrangements that had been made prior to 2005, including in the context of the IPO and subsequently.

139. In the premises, if and to the extent that Mr Gorbachev is not a beneficiary under express trusts declared by Mr Guriev by virtue of the 2005 Declarations:

- (1) Mr Gorbachev acquired a right to 24.75% of Mr Guriev's interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business and all proceeds and benefits derived therefrom pursuant to a common intention constructive trust.
- (2) Alternatively, Mr Gorbachev is entitled to relief in the same terms pursuant to the doctrine of proprietary estoppel.

- (3) Alternatively, Mr Gorbachev is entitled to relief in the same terms way of a constructive trust arising under a *Pallant v Morgan* equity.

IX. MR GURIEV'S DUTIES AS TRUSTEE

140. By virtue of the express and/or implied trusts created by the 2005 Declarations and/or Mr Gorbachev's reliance on the 2005 Declarations, Mr Guriev (as trustee) owed duties to Mr Gorbachev (as beneficiary) which included:

- (1) A duty of care in administering and dealing with the trust property, namely the Fertiliser Business (being a duty to use the same degree of diligence and care that a person of ordinary prudence would exercise in the management of his own affairs);
- (2) A duty to take proper care of the trust property;
- (3) A fiduciary duty to preserve and manage the trust property for the benefit of Mr Gorbachev;
- (4) A fiduciary duty to account to Mr Gorbachev for 24.75% of Mr Guriev's interests at any given time (howsoever held and whether directly or indirectly) in the Fertiliser Business and all proceeds and benefits derived therefrom;
- (5) A fiduciary duty to provide full and accurate information as to the amount and state of the trust property;
- (6) A fiduciary duty not to profit from his position as a trustee;
- (7) A fiduciary duty not to place himself in a position where his personal interest conflicted with his duties as a trustee; and
- (8) A fiduciary duty not to prefer his own interests over those of Mr Gorbachev.

X. THE PHOSAGRO IPO AND SPO

141. On or about 14 June 2011, OJSC PhosAgro published a press release indicating that it intended to conduct an IPO and noting that:

- (1) PhosAgro had received approval from the Federal Service for Financial Markets in Russia to float up to 2,661,927 shares in OJSC PhosAgro (*i.e.* up to 21.35% of the total share capital) in the form of Global Depositary Receipts (“**GDRs**”) on a capital market outside of Russia;
 - (2) OJSC PhosAgro’s shares were already listed and traded on the MICEX Stock Exchange and the RTS Stock Exchange in Russia; and
 - (3) OJSC PhosAgro intended to apply for the admission of the GDRs to the Official List of the United Kingdom Financial Services Authority (“**FSA**”) and to trade them on the main market of the London Stock Exchange.
142. On or about 13 July 2011, a prospectus was published under the Prospectus Rules of the United Kingdom FSA containing an IPO of certain shares owned by certain shareholders of OJSC PhosAgro (the “**IPO Prospectus**”):
- (1) The IPO Prospectus recorded (at page 178) that 76.5% of the shares in OJSC PhosAgro were owned by various companies (incorporated in Cyprus) of which Mr Guriev and members of his family were the beneficial owners, including:
 - (a) Adorabella Limited (“**Adorabella**”);
 - (b) Miles Ahead Management Limited (“**Miles Ahead**”); and
 - (c) Chlodwig Enterprises Limited (“**Chlodwig**”).
 - (2) The IPO Prospectus recorded (at page 178) that the remaining 23.5% of the shares in OJSC PhosAgro were legally and/or beneficially owned by:
 - (a) Mr Vladimir Litvinenko (the former campaign manager of President Putin and the Rector of the St Petersburg Mining Institute) who was the legal owner of 5.01% of the shares and the beneficial owner of 5.01% of the shares;
 - (b) Mrs Evgeniya Gurieva (Mr Guriev’s wife) who was the legal owner of 4.73% of the shares;

- (c) Mr Antoshin who was the legal owner of 2.01% of the shares and the beneficial owner of 5.03% of the shares;
 - (d) Mr Volkov (who took over from Mr Fedorov as the General Director of OJSC PhosAgro) was the legal owner of 1.00% of the shares; and
 - (e) Maderatcha Consulting Limited (which was beneficially owned by several employees and former employees of OJSC PhosAgro) was the legal owner of 0.70% of the shares.
- (3) The IPO Prospectus recorded (at page 248) that Adorabella and Miles Ahead had entered into an Underwriting Agreement dated 13 July 2011 pursuant to which they had agreed to sell 1,282,000 of their shares in OJSC PhosAgro (being 10.32% of the total shares in OJSC PhosAgro) for a price of USD 420 per share to various Joint Bookrunners.
- (4) The IPO Prospectus recorded that the shares to be floated as part of the IPO would be traded in the form of GDRs on the London Stock Exchange, with 30 GDRs representing one share in OJSC PhosAgro.
- (5) The IPO Prospectus contained (at page 266) a list of the significant subsidiaries owned by OJSC PhosAgro, including:
- (a) Ammophos;
 - (b) Apatit;
 - (c) Cherepovetsky Azot;
 - (d) BMF;
 - (e) PhosAgro AG.
- (6) The IPO Prospectus recorded (at page 53) that the Underwriting Agreement and the Listing Agreement were expressly governed by English law.
- (7) The Terms and Conditions of the GDRs provided (at page 246) that the Deposit Agreements, the Conditions and the GDRs, and any non-contractual

obligations arising out of or in connection with the Deposit Agreements, the Conditions and the GDRs, were governed by and construed in accordance with English law.

143. Since about July 2011, GDRs in OJSC PhosAgro have been publicly traded on the Main Market of the London Stock Exchange. The current market capitalisation of OJSC PhosAgro (as recorded by the London Stock Exchange) is in excess of £3.7 billion.
144. In or about April 2013, OJSC PhosAgro carried out a secondary public offering (“SPO”) of 11,111,000 shares in OJSC PhosAgro (representing approximately 9% of the shares in OJSC PhosAgro). These shares were offered and ultimately sold by Adorabella and Chlodwig for USD 466,662,000.
145. On dates not presently known to Mr Gorbachev and without the knowledge of Mr Gorbachev:
- (1) Mr Guriev and/or companies of which he is the UBO (including Adorabella, Miles Ahead and Chlodwig) received substantial sums representing the proceeds of sale of the OJSC PhosAgro shares which were floated during the aforementioned IPO and the aforementioned SPO:
 - (a) Pending disclosure, Mr Gorbachev is not presently able to quantify the exact amounts received by Mr Guriev (directly or indirectly) and/or companies of which he is the UBO (including Adorabella, Miles Ahead and Chlodwig) as part of the aforementioned IPO and SPO.
 - (b) However, on the assumption that 1,282,000 shares were sold for a price of USD 420 per share (as recorded in the IPO Prospectus and as pleaded at paragraph 142(3) above) Mr Guriev and/or companies of which he is the UBO can be taken to have received at least USD 538,440,000.
 - (c) Furthermore, in connection with the SPO as pleaded at paragraph 142 above, Mr Guriev and/or companies of which he is the UBO can be taken to have received at least USD 466,662,000.

- (2) Mr Guriev alienated and/or disposed of and/or procured the disposition of part of his interests in the shares in OJSC PhosAgro to (*inter alia*) Mr Litvinenko, Mrs Gurieva, Mr Antoshin, Mr Volkov and Maderatcha Consulting Limited (as pleaded at paragraph 140(2) above). Pending disclosure, Mr Gorbachev is not presently able to quantify the amounts received by Mr Guriev (directly or indirectly) and/or companies of which he is the UBO in respect of the aforementioned dispositions.
- (3) Mr Guriev and/or companies of which he is the UBO (including Adorabella and Miles Ahead) received substantial dividends which have been declared by PhosAgro on an annual basis (both before and after the IPO in 2011). Pending disclosure, Mr Gorbachev is not presently able to quantify the precise amounts received by Mr Guriev (directly or indirectly) and/or companies of which he is the UBO in respect of the aforementioned dividends. However:
- (a) On the basis of information contained in PhosAgro's annual financial statements and on its website, Mr Gorbachev has been able to estimate that PhosAgro has paid total dividends of approximately USD 3.88 billion from 2008 to date (full particulars of which are set out in **Schedule A** hereto).
- (b) Mr Guriev and/or companies of which he is the UBO (including Adorabella, Miles Ahead and Chlodwig) are likely to have received a substantial proportion of the USD 3.88 billion declared by OJSC PhosAgro by way of dividends from 2008 to date.
146. The aforementioned sums (as pleaded in paragraph 145 above) constitute proceeds and benefits derived from Mr Guriev's interests in the Fertiliser Business, and hence constitute trust property pursuant to the express trusts and/or the common intention constructive trusts established by the 2005 Declarations.
147. Mr Guriev and/or companies of which he is the UBO continue to hold substantial shareholdings in OJSC PhosAgro. Pending disclosure, Mr Gorbachev is not presently able to particularise the extent of those shareholdings. However, those shareholdings constitute Mr Guriev's interest in the Fertiliser Business (howsoever

held and whether directly or indirectly) and hence constitute trust property pursuant to the express trusts and/or the common intention constructive trusts established by the 2005 Declarations.

XI. MR GURIEV'S DENIAL OF MR GORBACHEV'S INTEREST

148. On 8 July 2012, Mr Gorbachev wrote to Mr Guriev to request a meeting to discuss how Mr Gorbachev would access his interest in OJSC PhosAgro now that the IPO had occurred. Mr Guriev refused to meet with Mr Gorbachev. Mr Gorbachev was subsequently informed by Mr Mariashin (on Mr Guriev's behalf) that there was "*nothing to discuss*".

149. In or about late November 2012, Mr Gorbachev received a call from Mr Mariashin, the protector of the Gamini Trust, stating that he wished to meet with Mr Gorbachev in Geneva. The meeting took place on or about 7 December 2012 at the Beau Rivage Hotel. The meeting was attended by Mr Mariashin and Mr Gorbachev alone. Amongst other matters discussed at the meeting:

- (1) Mr Mariashin stated (on behalf of Mr Guriev) that Mr Gorbachev had no entitlement to any of Mr Guriev's interests in the Fertiliser Business.
- (2) Mr Gorbachev stated that Mr Mariashin had a conflict of interests between (a) speaking for Mr Guriev and (b) his capacity as protector of the Gamini Trust.

150. Following the meeting with Mr Mariashin in November 2012:

- (1) In or about November 2012, companies associated with Mr Guriev stopped paying the living expenses of Mr Gorbachev. At around the same time, those companies also stopped paying the living expenses Mr Gorbachev's mother and mother-in-law in Russia.
- (2) On 7 and 8 December 2012, Mr Gorbachev wrote to Ms Charidemou to give notice, firstly, of his wish to remove Mr Mariashin as protector of the Gamini Trust, and then of his wish to appoint Mr Nigel Stone of Boodle Hatfield solicitors as the replacement protector.
- (3) Mr Mariashin telephoned Mr Gorbachev on instructions from Mr Guriev to

suggest a meeting between lawyers, which meeting took place on 17 January 2013.

151. Unbeknown to Mr Gorbachev, in the intervening period between Mr Gorbachev's meeting with Mr Mariashin in Geneva in late November 2012 and the meeting on 17 January 2013, steps were taken in relation to loans said to be owed by the Gamini Trust (which trust held Mr Gorbachev's home, Ormidale). More particularly:

- (1) Mr Gorbachev has seen two documents dated on their face 29 December 2006, both of which are entitled "*Gamini Trust Loan Agreement*" and purport to be agreements between Lightwater Holdings Limited, a company with its registered office in the Seychelles ("**Lightwater**"), and the trustees of the Gamini Trust ("**the Lightwater Agreements**"). He is presently unable to verify the provenance of the Lightwater Agreements or whether there were in fact any loans by Lightwater.
- (2) On 11 January 2013, Brown Rudnick LLP sent a letter on behalf of Lightwater to the Gamini Trustees enclosing two "*notices*" dated 10 January 2013 which were signed by Mr Andreas Karas (Lightwater's director) and which made demand for sums said to be owed under two loan agreements dated 29 December 2006. Mr Karas signed those notices on instructions from Ms Cheridemou. The letter from Brown Rudnick LLP contains the contact details of Mr Neil Micklethwaite. Brown Rudnick LLP are the solicitors acting for Mr Guriev in these proceedings and who were acting for Mr Guriev in 2013.
- (3) Subsequently, on 15 May 2013, Ms Cheridemou granted a mortgage over Ormidale in favour of Lightwater to secure the sums said to be due to it. The mortgage was signed by Mr Karas on behalf of Lightwater, again on instructions from Ms Cheridemou.

152. It is to be inferred that Mr Guriev is connected with Lightwater and procured that the demands were made by it by reason of the following:

- (1) The timing of the demands by Lightwater shortly followed the meeting between Mr Gorbachev and Mr Mariashin in Geneva.

- (2) In respect of those demands, Lightwater engaged the same solicitors who act for Mr Guriev and who have acted for him historically.
- (3) Lightwater is an offshore entity and information as to its beneficial ownership is not publicly available. However, Ms Charidemou is closely connected with Mr Guriev (managing family trusts on his behalf as pleaded at paragraph 117(4) above) and (i) the Lightwater Agreements were signed by Ms Charidemou on behalf of Lightwater and (ii) the notices and mortgage referred to above were signed by Mr Karas on behalf of Lighthouse on the instructions of Ms Charidemou.

XII. MR GURIEV'S BREACHES OF TRUST AND CLAIM FOR RELIEF

153. In the premises, Mr Gorbachev has a right to an account of the trust property, which right (and the existence of the trusts) has been denied by Mr Guriev in deliberate and/or fraudulent breach of his duties as trustee:

- (1) To account for the trust property; and
- (2) To provide full and accurate information as to the amount and state of the trust property.

154. Pending the provision by Mr Guriev of an account of his dealings with the trust property, Mr Gorbachev is accordingly unable to plead as to the manner in which the trust property has been applied and/or in which it has been disposed of and/or alienated from the ultimate legal and/or beneficial ownership of Mr Guriev. Mr Gorbachev reserves the right to plead further upon the provision by Mr Guriev of a full account of his dealings with the trust property.

155. To the extent that Mr Guriev has caused, allowed or procured that part or all of the trust property (or the proceeds thereof) has been applied otherwise than in the interests of Mr Gorbachev (including by reason of the matters pleaded at paragraph 145 above):

- (1) Mr Guriev has committed a deliberate and/or fraudulent breach of his duty of care in administering and dealing with the trust property;

- (2) Mr Guriev has committed a deliberate and/or fraudulent breach of his duty to take proper care of the trust property and/or to preserve and manage the trust property for the benefit of Mr Gorbachev.
156. Further still, to the extent that Mr Guriev has profited from the trust property (or its proceeds), placed himself in a position where his personal interests conflicted with those of Mr Gorbachev and/or preferred his own interests over those of Mr Gorbachev (including by reason of the matters pleaded at paragraph 145 above), he has acted in deliberate and/or fraudulent breach of the fiduciary duties owed by him.
157. In support of the allegations of deliberate and/or fraudulent breach of duty (as pleaded above) Mr Gorbachev will rely (*inter alia*) on the following facts and matters:
- (1) Mr Guriev well knows that he made the 2005 Declarations which gave rise to the express and/or implied trusts referred to above. Mr Guriev's subsequent denial of the existence of Mr Gorbachev's interests as beneficiary under those trusts (as pleaded at paragraph 148-149 above) of itself amounted to a deliberate and fraudulent breach of the duties owed by Mr Guriev as trustee (as pleaded above) and the attempted appropriation by Mr Guriev of the trust property.
- (2) Further or alternatively, on dates not presently known to Mr Gorbachev (and without the knowledge or consent of Mr Gorbachev) it is reasonably to be inferred from the facts and matters set out herein (including those pleaded at paragraphs 145 and 148-151 above) that:
- (a) Mr Guriev decided to keep for himself and/or alienate to others the trust property which was created by the 2005 Declarations; and
- (b) Mr Guriev decided to keep the aforementioned decision secret from Mr Gorbachev and then subsequently sought to deny the existence of Mr Gorbachev's interest in any trust property in 2012.
- (3) In the premises, it is reasonably to be inferred that Mr Guriev formed an intention to pursue the courses of action set out paragraph 157(2)(a) and (b)

above either knowing that this was contrary to the interests of Mr Gorbachev (as beneficiary) or being recklessly indifferent as to whether this was contrary to his interests or not.

(4) Further or alternatively:

(a) Mr Guriev arranged for substantial sums to be provided to Mr Gorbachev between 2005 and 2012 in recognition of Mr Gorbachev's interests under the express and/or implied trusts created by the 2005 Declarations (as pleaded at paragraphs 117-120 and 125-135 above);

(b) Between 2006 and 2008, Mr Guriev also engaged in deliberate conduct (in the presence of Mr Gorbachev) which reasonably led Mr Gorbachev to believe that he had an interest under the express and/or implied trusts created by the 2005 Declarations (as pleaded at paragraphs 117-137 above).

(5) In the premises, Mr Guriev's subsequent denial in 2012 of Mr Gorbachev's interest in any trust property (as pleaded at paragraph 149(1) above) amounted to a deliberate and fraudulent breach of the duties Mr Guriev owed as trustee (as pleaded above).

(6) Yet further, in view of the facts and matters pleaded in paragraphs 151-152 above, it is to be inferred that Mr Guriev procured that demands were made by Lightwater in order to put pressure upon Mr Gorbachev not to pursue his claims.

158. In the premises, Mr Gorbachev is entitled to and claims:

(1) A declaration that Mr Guriev held and continues to hold 24.75% of his interests (howsoever held and whether directly or indirectly, and including any past or future interests) in the Fertiliser Business and all proceeds and benefits derived therefrom on trust for Mr Gorbachev;

(2) An order that Mr Guriev shall account to Mr Gorbachev for the said ownership and the proceeds received by him deriving from his interests (howsoever held

and whether directly or indirectly) in the Fertiliser Business and all proceeds and benefits derived therefrom. Upon the taking of such account, Mr Gorbachev will give credit as appropriate for such sums as were in fact received for his benefit against the sums to which he is entitled (as pleaded in paragraph 135 above).

- (3) Alternatively, equitable compensation for Mr Guriev's breaches of trust and/or fiduciary duty.

XII. MR GURIEV'S BREACHES OF CONTRACT AND CLAIM FOR RELIEF

159. Further or alternatively, in continuing and deliberate breach of his contractual obligations as pleaded at paragraph 111 above, Mr Guriev has:

- (1) Denied Mr Gorbachev's entitlement to receive 24.75% of Mr Guriev's interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business and/or 24.75% of the shares in OJSC PhosAgro (following the aforesaid IPO and SPO of OJSC PhosAgro); and/or
- (2) Refused (following the aforesaid IPO and SPO of OJSC PhosAgro) to give and/or transfer the said interests or shares to Mr Gorbachev and/or procure that Mr Gorbachev received such interests or shares.

160. In support of the allegations of deliberate breach of duty (as pleaded at paragraph 158 above) Mr Gorbachev will rely (*inter alia*) on the same facts and matters set out at paragraph 157 above.

161. In the premises, Mr Gorbachev is entitled to and claims:

- (1) Orders for specific performance by Mr Guriev of his obligation to give and/or transfer the said interests or shares to Mr Gorbachev and/or to procure that Mr Gorbachev receives such interests or shares; and/or
- (2) Damages for sums to be assessed by reason of Mr Guriev's failure to hold 24.75% of the said interests and/or shares in OJSC PhosAgro for the benefit of Mr Gorbachev and/or to procure that such interests and/or shares are so held and/or Mr Guriev's refusal to give and/or transfer such interests and/or

shares to Mr Gorbachev and/or to procure the same.

XIII. INTEREST

162. Mr Gorbachev also claims interest pursuant to statute or pursuant to the Court's equitable jurisdiction.

XIV. LIMITATION

163. If and to the extent that Mr Guriev may seek to plead a limitation defence in respect of any of the claims set out herein, Mr Gorbachev will contend, as a minimum, as follows:

- (1) No period of limitation applies to Mr Gorbachev's claim for an account of the trust property (as pleaded at paragraph 153 above) and for orders and relief consequent upon the taking of the said account (as pleaded at paragraph 158 above).
- (2) Further or alternatively, by virtue of section 21(1) of the Limitation Act 1980, no period of limitation applies to Mr Gorbachev's claims (as pleaded at paragraphs 153-158 above) in that such claims constitute actions by a beneficiary (*viz.* Mr Gorbachev) under express and/or implied trusts, being actions:
 - (a) In respect of fraudulent breaches of trust to which the trustee (*viz.* Mr Guriev) was a party or privy; and/or
 - (b) To recover from Mr Guriev trust property or the proceeds of trust property in the possession of Mr Guriev, or previously received by Mr Guriev and converted to his use.
- (3) Further or alternatively, by virtue of section 32 of the Limitation Act 1980, the period of limitation in respect of Mr Gorbachev's claims did not begin to run until at least six years prior to the issuance of the claim form in these proceedings (on 6 July 2018) because:
 - (a) Mr Guriev committed a deliberate breach of his duties (as pleaded at

paragraphs 153-158 and paragraphs 159-161 above) in circumstances where such breach was unlikely to be discovered for some time; and/or

- (b) Mr Gorbachev's claims are based on the fraud of Mr Guriev (as pleaded at paragraphs 153-158 above).
- (4) Further or alternatively, Mr Guriev has committed and continues to commit a continuing breach of his duties (as pleaded at paragraph 159 above) such that the period of limitation in respect of such claim has not expired.
- (5) Further or alternatively, none of Mr Gorbachev's claims (including the claims pleaded at paragraph 139 above) are barred by the doctrine of laches.

AND THE CLAIMANT CLAIMS:

- (1) A declaration that Mr Guriev held (and continues to hold) 24.75% of his interests (howsoever held and whether directly or indirectly, including any past and future interests) in the Fertiliser Business and all proceeds and benefits derived therefrom on trust for Mr Gorbachev (whether pursuant to an express trust and/or pursuant to a common intention constructive trust and/or pursuant to the doctrine of proprietary estoppel and/or pursuant to a *Pallant v Morgan* equity);
- (2) An order that Mr Guriev shall account to Mr Gorbachev for the said ownership and the proceeds received by him deriving from his interests (howsoever held and whether directly or indirectly, including all past interests) in the Fertiliser Business and all proceeds and benefits derived therefrom.
- (3) All necessary inquiries and directions for the purposes of taking the said account.
- (4) An order that Mr Guriev shall pay to Mr Gorbachev the sums found to be due upon the taking of the said account.
- (5) Orders for the sale of the trust property and that the trusts affecting the said property be executed with all necessary accounts and inquiries.
- (6) Alternatively, equitable compensation for Mr Guriev's breaches of trust and/or

fiduciary duty.

- (7) Alternatively, damages and/or specific performance for the breach of Mr Guriev's contractual obligations.
- (8) Interest as aforesaid.
- (9) Costs.
- (10) Such further or other relief as the Court thinks fit.

Paul Lowenstein QC
Tony Beswetherick
Mark Tushingham

STATEMENT OF TRUTH

I believe that the facts stated in these Particulars of Claim are true:



.....
Signature



.....
Full name



.....
Date

SCHEDULE A

Particulars of dividends paid by OJSC PhosAgro since 2008

Year	Total dividends paid by PhosAgro (USD) ¹
2008	44,000,000
2009	45,000,000
2010	110,000,000
2011	1,155,000,000
2012	394,000,000
2013	236,000,000
2014	101,975,883
2015	248,755,878
2016	461,332,511
2017	256,387,999
2018	228,650,796
2019	501,478,986
2020	44,000,000
Total	3,882,992,838

¹ The conversion of amounts from RUB to USD has been done as follows:

- for 2014 to 2018 inclusive, at the exchange rate given in the Annual Report for the relevant year;
- for 2019, at the exchange rate specified by the Central Bank of the Russian Federation ("CBR") on 31 December 2019; and
- for 2020, at the exchange rate specified by the CBR as at 24 February 2020, the date on which PhosAgro declared the dividend. As at the date of these Particulars of Claim, this is the only dividend that has been declared in 2020.