

On behalf of the Applicants

CBE Philipps

Second witness statement

14 July 2022

Exhibit CBEP2

Claim No. CR-2022-002121

Company Registered No. 04343841

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF PETROPAVLOVSK PLC

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

**SECOND WITNESS STATEMENT OF
CHARLOTTE BERTHA ELISABETH PHILIPPS**

I, **CHARLOTTE BERTHA ELISABETH PHILIPPS** of Petropavlovsk PLC, 11 Grosvenor Place, Belgravia, London SW1X 7HH, **WILL SAY AS FOLLOWS:**

- 1 I am the same Charlotte Philipps who made a witness statement in these proceedings on 11 July 2022 (“**Philipps 1**”).
- 2 I make this further witness statement in order to update the Court on developments since Philipps 1 was finalised.
- 3 I refer in this witness statement to the paginated bundle of true copy documents labelled “**CBEP2**”. Unless otherwise indicated, any references in this witness statement to tabs or pages are references to the corresponding tabs or pages of that exhibit. References to “**CBEP1/AJMI**” are to the joint exhibit to my first witness

statement and to the witness statement of Allister Jonathan Manson dated 11 July 2022 (“**Manson 1**”). Any reference to “we” hereafter refers to the Applicants or the Company’s staff. Terms not defined in this witness statement have the meanings given to them in Philipps 1 and/or Manson 1.

4 The facts and matters stated herein are either within my own knowledge, in which case they are true, or based on documents and information supplied to me as a non-executive director of the Company, in which case they are true to the best of my knowledge, information and belief.

5 As required by paragraph 18.1(5) of CPR Practice Direction 32, I can confirm that this witness statement has been prepared with assistance from the Company’s solicitors Joseph Hage Aaronson LLP (“**JHA**”), from leading and junior insolvency counsel, and from Infralex, the Company’s Russian lawyers. This assistance was provided via email, telephone and in person. In referring to any legal advice that the Applicants and/or the Company have received, the Applicants and the Company do not intend to, and do not, waive any privilege by such reference or otherwise.

Board meeting on 11 July 2022

6 As explained in Philipps 1, the board of the Company resolved to make the Administration Application at a meeting held at 4pm on 11 July 2022 (the “**Meeting**”).

7 A draft minute of the Meeting is at [**CBEP2/Tab 3**], which has been redacted to preserve confidentiality in relation to: (i) a settlement agreement which the directors resolved to enter, and which is unrelated to the Administration Application; and (ii) the identity of “Bidder 2” as described in Philipps 1. The making of the Administration Application was supported by all directors save for Mr Potapov, the nominee director of UGC. Mr Potapov / UGC’s objections to the application are summarised in the correspondence referred to in Philipps 1 and the further correspondence referred to below.

Announcements, trading and listing

8 Immediately following the Meeting:

- 8.1 The Company Secretary requested from the FCA a suspension of the Company's ordinary shares and of the Convertible Bonds from the Official List of the London Stock Exchange. The suspensions took effect on 12 July 2022.
- 8.2 The Administration Application was electronically filed by JHA late on the evening of 11 July 2022.
- 9 On the following morning, 12 July 2022, the Company issued a press release stating that the board had resolved to issue the Administration Application, had requested the suspension of trading in London, and proposed to request the suspension of trading in its shares on MOEX and the Notes on GEM in due course **[CBEP2/Tab 5]**.
- 10 Also on 12 July 2022, the Company wrote to MOEX to request that MOEX delist the Company's shares. This letter is at **[CBEP2/Tab 6]** (in Russian and English).
- 11 Separately, on 12 July 2022 the Company's subsidiary Petropavlovsk 2016 Limited, the issuer of the Notes, issued a press release announcing the Administration Application to GEM **[CBEP2/Tab 7]**.

Shareholder communications

UGC

- 12 A few minutes before the Meeting on 11 July 2022, the board received an email from Mr Potapov attaching a letter (in Russian) from the Russian Federal Antimonopoly Service ("FAS") addressed to UGC. This letter and an English translation arranged by the Applicants are at **[CBEP2/Tab 4]**.¹
- 13 In short, FAS' letter (stated to be sent in response to a letter from UGC dated 5 July 2022, which was not provided to us) stated that "*introducing an external administration regime*" in relation to the Company without the prior Russian governmental approval would constitute a breach of the Russian Strategic Companies Law no. 57-FZ, which regulates foreign investment in certain Russian assets. At the Meeting, Mr Potapov relied on the FAS letter as a reason to oppose administration.

¹ UGC is referred to in the translation as "OOO YuGK Management Company".

- 14 On the following day, 12 July 2022, the board received a letter from Mr Strukov, the controlling shareholder of UGC [CBEP2/Tab 8]. Mr Strukov referred to the resolution to make the Administration Application and to the FAS letter. He stated that “[i]t appears that the directors that voted for the decision knowingly took steps to breach the law, which will unavoidably result in loss by the Company of control over all of its assets.” He asked the board to clarify its position in this regard.
- 15 On 14 July 2022, the Chairman responded to Mr Strukov to explain the Applicants’ view, on advice from Russian counsel, that: (i) the analysis in FAS’ letter was incorrect, including because the making of an administration order would not constitute a change of control of the Russian assets; and (ii) even if the making of the order were to breach Russian law, the practical consequences would not be as significant as had been suggested by UGC. The letter confirmed that the board did not therefore propose to seek clearance from FAS. The Chairman’s letter is at [CBEP2/Tab 12].

Other shareholder communications

- 16 On 14 July 2022 the Company sent a response to the email received from Mr Carlo Jimenez on 16 May 2022, referred to at paragraph 137 of Philipps 1. This is at [CBEP2/Tab 9].

Communication with potential counterparties

UMMC

- 17 As explained in Philipps 1 at paragraphs 177-178, on 30 June 2022 UMMC had granted what it described as a “*final extension*” until 12 July 2022 of its offer to purchase the Company’s assets [CBEP1/AJM1/Tab 76].
- 18 On 13 July 2022, the board received a further letter from UMMC [CBEP2/Tab 11] which:
- 18.1 Stated that UMMC was “*extremely disappointed that there is no serious progress with consideration of the Offer since [30 June 2022] ... and UMMC-INVEST does not have a clear understanding about the timeline of further steps*”.

- 18.2 Indicated that UMMC “*will proceed with enforcement actions, aimed at recovering debt under the [Term Loan]*” including by: (i) enforcing the Term Loan against the Company as the principal debtor; (ii) applying for interim relief in support of that claim, including attachment of the shares of the Company’s subsidiaries; (iii) demanding that the Company’s Russian subsidiaries who act as guarantors of the Company’s obligations under the Term Loan repay the debt, and filing for their bankruptcy in Russia if they failed to do so.
- 18.3 Expressed a willingness to make “*a renewed time-limited offer to acquire Assets on the terms previously agreed*” subject to: (i) UMMC being granted exclusivity in negotiations; and (ii) the value of the operating subsidiaries not deteriorating further.
- 19 On 14 July 2022, I was informed by Mr Ploschenko, the Group’s CFO, that:
- 19.1 UMMC, in its capacity as Lender under the Term Loan, sent notices dated 13 July 2022 to each of the four subsidiaries who are guarantors of the Term Loan (namely Pokrovskiy Rudnik JSC, Albynskiy Rudnik LLC, Malomirskiy Rudnik LLC and TEMI LLC) to demand that the guarantors pay the debt within five days. Copies of these notices are at **[CBEP2/Tab 13]** (in Russian only, because we have not yet had time to translate the documents).
- 19.2 UMMC has also filed a public notice of its intent to pursue bankruptcy proceedings in relation to the four guarantors. This notice was published on the Russian government’s “Fedresource” website, again in Russian.²

UGC

- 20 On 13 July 2022, Opus wrote to UGC to request further information regarding the UGC Proposal. This letter is at **[CBEP2/Tab 10]**. As at the date of this evidence, I understand that no response has been received.

² At <https://fedresurs.ru/sfactmessage/E1EDC240444A476E8A6C15D2B95CF93F>.

Notice of the hearing

- 21 On 13 July 2022, the hearing of the Administration Application was listed for 18 July 2022.
- 22 On 14 July 2022, the Applicants gave specific notice of the hearing date to UGC [CBEP2/Tab 14] and (through JHA) to OFSI [CBEP2/Tab 15].
- 23 The hearing date is also stated in a press release published by the Company on 14 July 2022 [CBEP2/Tab 16].

Other matters arising from Philipps 1

- 24 At paragraph 49 of Philipps 1, I stated that the assignment agreement between GPB and UMMC had not been provided to the Company. I was mistaken: UMMC in fact provided a copy of the assignment agreement by their letter to the Company dated 19 April 2022 which appears at [CPEB1/AJM1/Tab 38/1588-1598].
- 25 At paragraph 180.3(iii) of Philipps 1, I referred to a statutory demand in relation to unpaid legal fees issued by a law firm which had previously acted for the Company. That statutory demand, dated 24 May 2022, is at [CBEP2/Tab 2]. On 1 June 2022, the Company and the law firm agreed a confidential settlement of this claim. The statutory demand remains outstanding, but we anticipate that it will be satisfied and withdrawn in the coming weeks.
- 26 The document exhibited to Philipps 1 at [CPEB1/AJM1/Tab 15] is the revolving credit line agreement in respect of one of the Company's operating subsidiaries, Albynskiy Rudnik LLC, which is in Russian. In Philipps 1 I incorrectly referred to this as the agreement with another subsidiary, Malomirskiy Rudnik LLC (or "Malomyr Mine"), which agreement is however in identical terms. We have now obtained a translation into English of this document, which is at [CBEP2/Tab 1].

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

A handwritten signature in blue ink, appearing to read 'C. Bertha Elisabeth Philipps', is written above a horizontal line.

CHARLOTTE BERTHA ELISABETH PHILIPPS

Date: 14 July 2022