

# From Holland with Love!

STEEF M. BARTMAN, MAIN EDITOR

Early March this year a new trial started in Moscow against Michail Chodorkowski, the former Russian ‘oligarch’ and creator of the Yukos group, probably ending by sending him to prison for yet another twenty years. While this human drama and offence against the rule of law drags on, the legal struggle for the assets of the Dutch company Yukos Finance and its subsidiaries between the Kremlin-driven authorities and Chodorkowski’s representatives on Yukos Finance’s board is nearing its final stage. Mr Rebgun, once appointed as trustee in the bankruptcy estate of the Russian corporation Yukos Oil, indirectly holding all shares in Yukos Finance, started off by firing all company directors of Yukos Finance. The directors took immediate legal action before the Dutch court in summary proceedings as well as in proceedings on the merits. In summary proceedings the Supreme Court last December decided that the principle of territoriality, underlying Dutch insolvency law, is not an absolute impediment for the Russian trustee to exercise Yukos Oil’s voting rights on the Yukos Finance shares ‘because it has neither been stated nor made likely that such exercise will negatively influence the Yukos’ creditors ability to seek recourse on its assets in the Netherlands.’<sup>1</sup>

In other words, Yukos Oil’s trustee in bankruptcy is welcome in Holland in that capacity, on the assumption that his actions do not jeopardize the interests of Yukos’ Dutch creditors. Although I am aware of the limited scope of judgment in cassation proceedings before the Supreme Court, I find this result rather disappointing. Surely one may expect that the replacement of the current Yukos Finance Directors by Poetin-puppets, as a result of the trustee voting the Yukos Finance shares, will affect the value of its assets. Of course, merely the exercise of voting rights does not have such effect. However, once the Chodorkowski directors were replaced, this would give the trustee de facto a million ways to transfer moneys and assets from Yukos Finance to Yukos Oil or other related entities, turning Yukos Finance into an empty shell in no time. True, under Dutch law Yukos’ Dutch creditors may in theory have plenty legal instruments to counter this process and its consequences – for example actions based on tort, actio pauliana, directors’ liability etc. – but, as in most such scenarios, these instruments commonly prove to be very costly, time consuming and inefficient. And even then, tracing back your money and getting compensated through the ‘Kremlin Archipel’ of today’s

Russia is not really an attractive perspective either. As the Dutch expression goes: ‘Where there’s nothing left even the Emperor loses his right’.

But then how about the other legal venue taken by the Chodorkowski followers? Didn’t the Amsterdam District Court decide in October 2007 that the opening of Yukos Oil’s bankruptcy was against Dutch basic principles of due process and that, as a consequence, all the trustee’s resolutions taken as sole shareholder in Yukos Finance – including kicking out the Chodorkowski representatives as company directors – were declared null and void? That is true. As emeritus professor Van Schilfgaarde commented in his earlier editorial in ECL: ‘*The decision by the Amsterdam District Court in Yukos must have raised the eyebrows, to say the least, of the Russian authorities.*’<sup>2</sup> Hopefully those eyebrows will remain in a raised position once the Amsterdam Court of Appeals has rendered its award in these proceedings on the merits. In my darkest dreams, however, I see the trustee with an odious grin on his face scribbling on a postcard to Mr Chodorkowski’s jailhouse residence in Tsjita, east-Siberia, the words: ‘from Holland with love!’.

<sup>1</sup> Dutch Supreme Court, 19 Dec. 2008, JOR 2009/94 (*Yukos Finance c.s./Rebgun q.q.*), with comments by P.M. Veder

<sup>2</sup> ECL vol. 5, no. 1, 4. For a full translation in English of this award and some comments by Barend Verkerk see the same issue.