

IN THE HIGH COURT OF JUSTICE

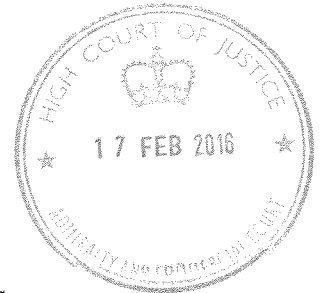
Claim No. FL-2016- 000002

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

FINANCIAL LIST

B E T W E E N:



THE LAW DEBENTURE TRUST CORPORATION PLC

**Claimant**

– and –

UKRAINE, REPRESENTED BY THE  
MINISTER OF FINANCE OF  
UKRAINE ACTING UPON  
INSTRUCTIONS OF THE CABINET  
OF MINISTERS OF UKRAINE

**Defendant**

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PARTICULARS OF CLAIM

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**A. THE PARTIES**

1. The Claimant is The Law Debenture Trust Corporation p.l.c., a company incorporated under the laws of England, whose registered office is at Fifth Floor, 100 Wood Street, London EC2V 7EX. The Law Debenture Trust Corporation p.l.c. is the trustee under the Trust Deed (as defined below) (the “Trustee”).
2. The Defendant is Ukraine, represented by the Minister of Finance of Ukraine acting upon Instructions of the Cabinet of Ministers of Ukraine (“Ukraine”).

## **B. THE TRUST DEED AND AGENCY AGREEMENT**

3. On 24 December 2013, the Trustee entered into a Trust Deed with Ukraine (the “Trust Deed”).
4. The Trust Deed sets out the terms and conditions upon which U.S.\$ 3,000,000,000 5.00 per cent notes, issued by Ukraine and due 20 December 2015 (the “Notes”), are constituted. Pursuant to Clause 5 of the Trust Deed, Ukraine covenants that it will comply with and perform and observe all the provisions of the Trust Deed which are expressed to be binding on it, and that the Terms and Conditions set out at Schedule 2 of the Trust Deed (the “Conditions”) shall be binding on Ukraine and the Noteholders. The Trustee shall hold the benefits of this covenant upon trust for itself and the Noteholders according to its and their respective interests.
5. The Trust Deed also provides, *inter alia*, as follows (capitalised terms are as defined in the Trust Deed):
  - (a) **Clause 1.1:** “Original Notes” is defined as “the notes in registered form comprising U.S.\$ 3,000,000,000 5.00 per cent. Notes due 20 December 2015 of the Issuer hereby constituted...”.
  - (b) **Clause 2.1:** The aggregate principal amount of the Original Notes is limited to U.S.\$ 3,000,000,000.
  - (c) **Clause 2.2:** Ukraine covenants with the Trustee that it will, in accordance with the Trust Deed, on the due day for the final maturity of the Original Notes, or on such earlier date as the same may become immediately due and payable in accordance with Condition 8 (*Events of Default*) of the Conditions, pay or procure to be paid unconditionally to or to the order of the Trustee an amount of principal equal to the principal amount of the Original Notes, together with interest on the outstanding principal amount pursuant to the Conditions (interest is addressed at Condition 4 of the Conditions). Pursuant to Condition 8(a), an Event of Default shall occur where Ukraine fails to pay any amount of principal

or interest in respect of the Notes and the default continues for a period of 10 days.

- (d) **Clause 2.2.2:** In any case where payment of all or part of the principal amount due on any day is not made, interest shall continue to accrue on such principal amount at the rate specified in the Conditions (the “Conditions Rate”) (or, if higher, the rate of interest on judgment debts for the time being provided by English law (“the “Judgment Rate”)).
- (e) **Clause 7.1:** The Trustee may at any time, at its discretion and without notice, take such proceedings and/or other actions as it may think fit against or in relation to Ukraine to enforce its obligations under this Trust Deed.
- (f) **Clause 8:** The Trustee is bound to take the proceedings mentioned in Clause 7.1 where (*inter alia*) it is requested to do so in writing by the holders of at least one-quarter in principal amount of the Notes then outstanding and if indemnified to its satisfaction.
- (g) **Clause 14.5:** Ukraine is liable to pay or discharge all Liabilities of the Trustee in relation to the exercise of its powers under the Trust Deed, including but not limited to legal expenses.
- (h) **Clause 25.1:** The Trust Deed is governed by English law.
- (i) **Clause 25.2:** For the exclusive benefit of the Trustee and each of the Noteholders (and subject to the Trustee’s right to elect arbitration), Ukraine irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Trust Deed and the Notes and that accordingly any suit, action or proceedings arising out of or in connection with any of the above may be brought in such courts.
- (j) **Clause 25.9:** Ukraine appoints its Ambassador in London to receive service of process in any proceedings in England based on the Trust Deed or the Notes.

6. Pursuant to Clause 13(e) of the Trust Deed, Ukraine covenants that it shall at all times maintain Paying and Transfer Agents and a Registrar in accordance with the Conditions.
7. On 24 December 2013, Ukraine entered into an Agency Agreement between it, the Trustee and Citibank, N.A., London Branch (“Citibank”) and others, pursuant to which Citibank would act as Principal Paying Agent and Registrar in respect of the Notes (the “Agency Agreement”).
8. The Agency Agreement provides, *inter alia*, that (capitalised terms are as defined in the Agency Agreement):
  - (a) **Clause 2.6:** Upon the Notes becoming due and payable, the Trustee may, by notice in writing to Ukraine, require Ukraine to pay all subsequent payments in respect of the Notes to or to the order of the Trustee and not to the Principal Paying Agent.
  - (b) **Clause 4.1:** In order to provide for payment of principal and interest in respect of the Notes as the same becomes due and payable, Ukraine shall pay to the Principal Paying Agent on the Issuer Payment Date an amount equal to the amount of principal and/or interest falling due in respect of such Notes on the due date.
9. The Notes are constituted by the Trust Deed and subject to the Conditions. Pursuant to the Conditions, Noteholders shall be entitled to the benefit of, be bound by, and are deemed to have notice of, all the provisions of the Trust Deed and the Agency Agreement.
10. The Conditions further provide, *inter alia*, that:
  - (a) **Condition 3(c):** All payments in respect of any Note shall be made in full on the due date in respect thereof and Ukraine undertakes not to claim or exercise any right of set-off in respect of such payments.

- (b) **Condition 5(a):** Ukraine will redeem the principal amount of the Notes on 20 December 2015.
  - (c) **Condition 6(a):** Payments of principal and interest in respect of the Notes will be made in U.S. Dollars.
11. The Trustee shall rely on the Trust Deed, Conditions and Agency Agreement at trial for their full terms, meaning and effect.

### **C. THE NOTES**

12. On 24 December 2013, the Notes were issued and the Ministry of Finance of the Russian Federation (via its National Wealth Fund) was the sole subscriber to the Notes. There are no other Noteholders.
13. On 20 June 2014, 20 December 2014 and 20 June 2015, Ukraine made payments of interest in respect of the Notes in accordance with the requirements of Condition 4.
14. As at 21 December 2015 (20 December 2015 being a Sunday), US\$3,075,000,000, including principal and interest, was outstanding in respect of the Notes. The Sterling equivalent of US\$3,075,000,000 is £2,149,297,546.66 based on the Bank of England's daily spot rate on 16 February 2016 of 1 GBP= 1.4307 USD. This exchange rate is used throughout.

### **D. UKRAINE'S FAILURE TO PAY**

15. On 18 December 2015, the Ukrainian Cabinet of Ministers declared a purported moratorium to suspend all payments in respect of the Notes.
16. On 21 December 2015 (20 December 2015 being a Sunday), Ukraine failed to repay the principal and interest due in respect of the Notes at that date.
17. As a result of Ukraine's failure to pay, it is in breach of the terms of the Trust Deed, the Notes and the Agency Agreement.

18. This default is continuing. In addition to the outstanding principal and interest, Ukraine is obliged to pay additional interest at the rate of 8% on the outstanding principal pursuant to the Judgment Debt Rate, alternatively at the rate of 5% on the outstanding principal pursuant to the Conditions Rate, and at the rate of 8%, alternatively 5%, alternatively such rate as the Court thinks fit pursuant to s. 35A of the Senior Courts Act 1981, on the outstanding interest.
19. As at 16 February 2016, US\$3,114,633,333.33 (being the equivalent of £2,176,999,603.92), including interest at the rate of US\$683,333.33 (being the equivalent of £477,621.67) per day (calculated at the rate of 8%), alternatively US\$3,099,770,833.33 (being the equivalent of £2,166,611,332.45), including interest at the rate of US\$427,083.33 (being the equivalent of £298,513.55) per day (calculated at the rate of 5%), was outstanding in respect of the Notes.
20. On 16 February 2016, the Ministry of Finance of the Russian Federation, as the holder of at least one-quarter in principal amount of the Notes then outstanding, directed the Trustee pursuant to Clause 8 of the Trust Deed to commence proceedings against Ukraine to enforce Ukraine's obligations under the Trust Deed pursuant to Clause 7.1 of the Trust Deed. The Trustee has been indemnified to its satisfaction.
21. On 16 February 2016, the Trustee sent a notice to Ukraine confirming that the Notes are due and payable and requiring payment by Ukraine to a designated account.
22. As a consequence of Ukraine's failure to pay, the Trustee and the Ministry of Finance of the Russian Federation (as the sole holder of the Notes) have suffered loss and damage, to be assessed, but including damages in respect of the following:
  - (a) Ukraine has failed to pay the principal and interest due at 21 December 2015 in the amount of US\$3,075,000,000 (being the equivalent of £2,149,297,546.66).
  - (b) Ukraine has failed to pay the further interest accruing on the sums due, accruing at a rate of US\$683,333.33 (being the equivalent of £477,621.67) per day (at a rate of 8%), alternatively US\$427,083.33 (being the equivalent of £298,513.55) per day (at a rate of 5%).

- (c) The Trustee and Ministry of Finance of the Russian Federation have incurred various other costs associated with enforcing their rights under the Trust Deed and the Notes.

## **E. REMEDIES SOUGHT BY THE TRUSTEE**

23. The Trustee seeks the following relief:

- (a) A declaration that the amount of US\$3,075,000,000 (being the equivalent of £2,149,297,546.66), comprising US\$3,000,000,000 (being the equivalent of £2,096,875,655.27) principal and US\$75,000,000 (being the equivalent of £52,421,891.38) interest at 20 December 2015, plus interest thereafter is immediately due and payable in respect of the Notes.
- (b) A declaration that interest on the Notes continues to accrue at a rate of US\$683,333.33 (being the equivalent of £477,621.67) per day (at a rate of 8%), alternatively at a rate of US\$427,083.33 (being the equivalent of £298,513.55) per day (at a rate of 5%), or at such other rate as the Court thinks fit (pursuant to the Trust Deed and/or the Conditions and/or s 35A of the Senior Courts Act 1981).
- (c) An order that Ukraine pay to the order of the Trustee the full amount due in principal and interest in respect of the Notes.
- (d) Further or alternatively, damages to be assessed, including (but not limited to) the amount of the principal and interest due in respect of the Notes and all costs incurred by the Trustee and the Ministry of Finance of the Russian Federation associated with enforcing the Trust Deed and the Notes.
- (e) A declaration that Ukraine is obliged to indemnify the Trustee pursuant to Clause 14.5 of the Trust Deed, in an amount to be assessed.
- (f) Costs.

(g) Such other relief as the Court thinks fit.

24. The claim is made in USD as this is the currency of Ukraine's obligations under the Notes.

**MARK HOWARD QC**

**OLIVER JONES**