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Case No: CL-2022-000558

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 30th January 2026

Before :

Nigel Cooper KC sitting as a Deputy Judge of the High Court

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Between :

IPJSC UNITED COMPANY RUSAL	**Claimant**
- and –	
(1) WHITELEAVE HOLDINGS LIMITED **(2) VLADIMIR OLEGOVICH POTANIN** **(3) CRISPIAN INVESTMENTS LIMITED** **(4) ROMAN ARKADIEVICH ABRAMOVICH**	**Defendants**

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FIONN PILBROW KC, TOM FORD, FRANCIS CARDELL-OLIVER (instructed by **PCB BYRNE LLP**) for the **Claimant**
TIM LORD KC, CRAIG MORRISON KC, FIRDAUS MOHANDAS (instructed by **SELADORE LEGAL**) for the **First and Second Defendants**

Hearing dates: 09 and 10 December 2025

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JUDGMENT

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This judgment was handed down remotely at 10:30am on Friday 30 January 2026 by circulation to the parties' representatives by e-mail and release to the National Archives

Nigel Cooper KC:

Introduction

1. On 09 and 10 December 2025, I heard the Third Case Management Conference (**"CMC 3"**) in this action. The First Case Management Conference (**"CMC 1"**) took place on 10 July 2025, at which Bryan J. listed this action for a 14 week-trial in Easter and Trinity Terms 2027, and ordered that disclosure should take place on 08 May 2026. The Second Case Management Conference (**"CMC 2"**) took place on 27 October and resulted in s.1 of the Disclosure Review Document (**"DRD"**) being settled subject to two outstanding points which have now been resolved. The DRD identifies some 46 disclosure issues.

2. At the start of CMC 3, there were seven matters for resolution:

   i) First, the obligations of the Second Defendant (hereafter **"Mr. Potanin"**) to provide disclosure of documents held by (i) PJSC MMC Norilsk Nickel **("NN")** and (ii) certain subsidiaries of NN on the basis that he has both legal and/or practical control of such documents for the purposes of PD 57AD.

   ii) Second, whether there should be disclosure of documents from external custodians of the First and Second Defendants (hereafter collectively **"the Defendants"** while the First Defendant is referred to as "**Whiteleave"**), specifically Interros Group documents, and documents held by the lawyers and corporate service providers who have acted or are acting for Mr. Potanin or the Interros Group.

   iii) Third, s.1 DRD points held over from CMC2, namely the wording of Issue for Disclosure (**"IFD"**) 18A and the test for relevance when considering whether Mr Potanin has directly or indirectly benefitted from impugned transactions.

iv) Fourth, whether the Defendants should be ordered to file a new DRD s.2 specifically addressing a series of questions, summarised in the Fourth Witness Statement of Ms. Bischof.

v) Fifth, the date ranges and searches to be used for Model D disclosure, to the extent these have not been agreed by the hearing.

vi) Sixth, issues relating to the Flash Drive (defined below).

vii) Seventh, amendment applications by the Claimant and by the Defendants.

3. In a spirit of cooperation, which is to be commended, the parties were able to resolve many of the second to seventh items listed above between themselves on terms which are recorded in my order of 16 December 2025, while others were resolved by oral rulings during the hearing of CMC 3. Accordingly, this reserved judgment is only concerned with the first item listed above, namely the extent of Mr. Potanin's obligations to provide disclosure of documents held by (i) NN and (ii) certain subsidiaries of NN on the basis that he has both legal and/or practical control of such documents for the purposes of PD 57AD.

4. It is important to emphasise at the start of this judgment that to the extent I address the issue of whether Mr. Potanin has legal or practical control over documents held by NN or its subsidiaries, I do so purely for the purposes of determining the extent of his disclosure obligations in this action and solely by reference to the tests for 'control' found under English law and Russian law in the context of disclosure. Nothing I say below is to be taken as making any finding or, indeed, expressing any view on the question of whether Mr. Potanin (or Whiteleave) has control of NN or its subsidiaries for any other purpose including for the purposes of the claims or counterclaims made in this action or for the purposes of any sanctions or counter-sanctions legislation.

5. So far as the other defendants are concerned, any issues between the Claimant and the Third Defendant were resolved prior to CMC 3 and the Third Defendant took no part in the hearing. The Fourth Defendant also took no part in CMC 3.

Evidence for the purposes of Rusal's Disclosure Application

6. Rusal's application was supported by the Fourth and Fifth Witness Statements of Ms. Olga Bischof, a partner with PCB Byrne, the law firm instructed on behalf of Rusal, as well as by two expert reports on Russian law from Mr. Maxim Kulkov.

7. In support of their opposition to Rusal's application, Mr. Potanin and Whiteleave rely on the First Witness Statement of Mr. Maxim Kuleshov, a partner with KKMP, the Russian law firm advising Mr. Potanin and Whiteleave, as well as an expert report on Russian law from Ms. Tatyana Neveeva.

8. Happily, there were not too many issues in dispute between the experts and both are well-qualified to act as experts on Russian law. To the extent there were issues between them, there is an inevitable difficulty that I did not hear their evidence tested under cross-examination. However, both experts appended their source materials to their reports and I have where necessary referred back to those materials for the purposes of resolving any conflicts in their evidence.

Background

9. The background to the action generally is summarised in the Agreed Case Memorandum and List of Issues. What follows is a further brief summary.

10. The parties are all shareholders (direct or indirect) or the ultimate beneficial owners of shares, in NN (or, on the Third Defendant's case, it was formerly such a shareholder). NN is a Russian company which, together with its

subsidiaries (collectively the **"NN Group"**), is one of the world's largest producers of nickel, palladium, platinum, rhodium, copper and cobalt. NN's operations are centred in and around the town of Norilsk, which is in a remote part of northern Siberia.

11. The Claimant (hereafter **"Rusal"**) is a Russian company and (together with its subsidiaries) one of the world's largest producers of aluminium and alumina. It has been a major shareholder in NN since 2008.

12. Whiteleave is part of the Interros Group and is owned and controlled by Mr. Potanin. Mr. Potanin has, through various Interros Group entities, been a major beneficial owner of shares in NN since 1995.

13. Alongside being a major beneficial owner of shares in NN since 1995, Mr. Potanin is also the President and General Director of NN, a position equivalent to being a Chief Executive Officer. Mr. Potanin holds his position at present as a result of, and on the terms of, the Framework Agreement (discussed below).

14. An account of Mr. Potanin's wealth and the way in which he carries on business can be taken from the recent Supreme Court and Court of Appeal judgments in financial remedy proceedings arising out of Mr. Potanin's 2014 divorce from Ms. Natalia Potanina. The judgments are reported as Potanin v Potanina [2024] AC 1063 and Potanin v Potanina (No.2) [2025] EWCA Civ 1136 respectively. Two points are relevant to the question of disclosure in this action:

    i) Almost all of Mr. Potanin's assets are held by the use of various trusts and companies; see the remarks of Lord Leggatt at [16].

    ii) Mr. Potanin relies on trusted individuals to carry out his instructions and manage his assets. It appears from the answers provided in s.2 of the DRD filed by the Defendants that Mr. Potanin does almost nothing that

is not done via his staff or proxies. His position is that he does not retain any hard copy or electronic documents or files; has no electronic document repositories under his control, does not have or use or a computer, smartphone, tablet, e-mail or any text or web messaging services and only uses his Nokia mobile for personal calls. In other words he runs NN as well as his other business interests exclusively by receiving reports and giving instructions in oral conversations but without apparently retaining any records of what is said. Rusal does not accept Mr. Potanin does not hold directly any relevant documents but says that the important inference of his position must be that where Mr. Potanin controls documents held by third parties, he should be obliged to obtain, search and disclose them.

15. The Third Defendant (hereafter **"Crispian"**) is a Cypriot company which acquired a shareholding in NN in 2013 as part of an arrangement by which the Fourth Defendant (hereafter **"Mr. Abramovich"**) who, at least at that time, owned and controlled Crispian, was to take on the role of "peacemaker" between Whiteleave (and Mr. Potanin) and Rusal (and, as at that time, Mr. Deripaska).

16. Rusal brings claims for breaches of a written agreement, "the Framework Agreement" (the **"FA"**), which was entered into on 10 December 2012 as part of the settlement of certain long-running disputes between Rusal and Interros as to the management of NN. The FA was subsequently amended by a number of "Side Letters" incorporated into its terms. Pursuant to clause 5.8, the FA and any dispute or claim arising out of or in connection with it is governed by English law and expressly subject to the jurisdiction of the High Court of England & Wales.

17. In the context of whether it is just and proportionate to make a disclosure order against Mr. Potanin in the terms sought by Rusal, it is significant that the signatories, including Mr. Potanin, expressly agreed to the jurisdiction of the High Court because they will have done so in circumstances where it can be reasonably inferred that they and their advisers will have been aware that if a dispute arose which led to proceedings in this Court, disclosure in accordance with the requirements of the CPR would be a necessary step in any timetable to trial.

18. The FA (as amended) regulated relations between the principal shareholders in, and governance of, the NN Group. Its features include the following:

    i) Mr. Abramovich, through Crispian, acquired a 5.87% shareholding in NN, for the purpose (at least in part) of acting as a 'peacemaker'.

    ii) Whiteleave, Rusal and Crispian are defined as "Investors" under the FA.

    iii) Mr. Potanin became General Director of NN, a position equivalent to CEO, with executive authorities to manage NN and select individuals for key positions.

    iv) Mr. Potanin became subject to various duties set out in the FA, which were enforceable by (amongst other things) a series of contractual remedies.

    v) Each of Rusal, Whiteleave and Crispian acquired a "Veto Right" in respect of certain "Reserved Matters". The Reserved Matters, as defined in the FA, included transactions disposing of NN Group assets that exceeded certain values.

vi) The FA provided for various contractual remedies for breach of the rights and duties set out therein. This included providing that: (a) certain breaches would constitute "Material Breaches", which potentially entitle the other investors to acquire certain compulsory purchase rights over part of the breaching party's shares in NN; (b) certain breaches of Mr. Potanin's duties would give rise to a duty to indemnify Rusal in accordance with a contractual formula; (c) certain breaches by Mr. Potanin would give rise to a duty to account for benefits received by Mr. Potanin or related parties; and (d) certain breaches could result in the termination of Mr. Potanin's powers and his replacement as General Director of NN.

19. Rusal's claims for alleged breach of the FA fall into six categories which are briefly summarised below.

i) The Diversion Scheme: decisions taken by NN to sell three of its direct or indirect subsidiaries. Rusal says that the sales were made at an undervalue and done to circumvent Rusal's veto rights. Rusal further says that the sales were procured or permitted by Mr. Potanin as part of a dishonest scheme to divert cashflow and profits out of NN into the hands of Mr. Potanin and his associates and to divest NN of critical business functions so as to make it dependent on Mr. Potanin.

ii) The AF and Altan Claims: Payments which Rusal says are dishonest payments made to Mr. Potanin via a chain of offshore companies by way of kickback or payment for sham marketing expenses.

iii) The Charities Claims: Rusal says a number of purported charitable donations made by the NN Group were in fact improper gifts made for the benefit of Mr. Potanin or his associates.

iv) The Industrial Accidents Claims: Rusal alleges that Mr. Potanin breached his duties under the FA to exercise reasonable skill and care in managing the NN Group leading to the development or perpetuation of dangerous approaches to investment and risk management which manifested in two major industrial disasters in 2020 to 2021.

v) The POSB Claim: Rusal alleges that if liability is established, one of the remedies the FA provides for is a right by Rusal to compulsorily purchase certain shares in NN, ultimately owned by Whiteleave, which Crispian is obliged to hold as security for such liability (referred to as Whiteleave's "Part of Shares Block" (**"PoSB"**). After the current disputes arose and after a transfer of the PoSB from Crispian to a subsidiary of Whiteleave for a dividend record date in June 2022, Rusal says that the PoSB has not been re-transferred to Crispian, though this was not revealed to Rusal at the time. Rusal alleges that this was a breach of the FA and a deliberate attempt by Whiteleave or Mr. Potanin to neuter the remedies available to it.

vi) The Digital Assets Claims: Rusal brings two claims relating to digital financial assets. First, Rusal alleges that the NN Group's resources were used to develop a blockchain exchange platform called Atomyze, with the true extent of Mr Potanin's interest in this concealed, and NN Group's interest in the relevant companies and/or software diverted and reduced in favour of companies associated with Mr Potanin (**"the Atomyze Claim"**). Second, NN Group has launched a purported incentive share scheme – the Digital Investor Programme (**"DIP"**) – which Rusal alleges is really a front for Mr Potanin secretly to acquire more shares in and control over NN (the **"DIP Claim"**).

20. The Defendants deny any liability to Rusal and advance three counterclaims including a claim that Rusal has breached a duty of good faith contained in the FA by relying in its pleadings on certain 'whistleblower' reports. The Defendants say this constitutes bad faith because, they say, it should be inferred that: (a) information in the reports was actually obtained by hacking then 'laundered' by being sent to Rusal in disingenuous 'whistleblower' reports; and (b) Rusal's senior management had actual knowledge of this at the time they approved Rusal's particulars of claim. The key evidence on which the Defendants rely on is a flash drive (the **"Flash Drive"**) which they say contains various incriminating documents. Rusal denies any liability to the Defendants.

Documents likely to be relevant

21. Rusal submits that all of its claims save for the PoSB Claim concern dealings involving NN Group projects, transactions or assets. Rusal says (i) it follows that documents currently held by NN are likely to be highly relevant to the issues in these proceedings and (ii) relevant documents are also likely to be held by the 11 NN subsidiaries it has identified in the draft order produced for the hearing. At paragraph 9 of her Fourth Witness Statement, Ms. Bischof sets out by reference to each category of claims made by Rusal against the Defendants why it is likely that NN or its subsidiaries would hold documents relevant to that claim. Ms. Bischof supplements her evidence at paragraph 9 of her Fourth Witness Statement at paragraph 27 of her Fifth Witness Statement. In summary, her evidence is that:

    i) It is Rusal's case that the alleged fraudulent schemes were not only perpetrated on NN but were perpetrated using the corporate machinery of NN. In other words, Rusal says that the frauds were perpetrated by NN's management causing NN to enter into numerous transactions with third parties.

ii) Rusal's allegations concerning the industrial accident claims relate to mismanagement not fraud. The majority, if not all of the documents relevant to those allegations are likely to be held within the NN Group.

22. In fact, the Defendants do not seriously dispute that it is likely that NN or the 11 identified subsidiaries will have relevant documents. The issues before me were concerned rather with the question of whether in principle a disclosure order could be made against Mr. Potanin; it being agreed that, as CEO, he was more properly the target of any disclosure order rather than Whiteleave. While Mr. Kuleshov makes a general assertion at paragraphs 26 and 27 of his First Witness Statement that it is unlikely that NN or its subsidiaries will have relevant documents, that assertion is not supported by any sustainable analysis as to why this is the case.

23. I am therefore satisfied for the reasons advanced by Rusal that it is likely that NN and at least some of its subsidiaries will have documents which are relevant to the claims and counterclaims made between Rusal and the Defendants.

24. Regrettably neither party is presently able to say with any precision what relevant documents are held by either NN or any of the 11 subsidiaries or how many documents are likely to be held by them. This is a point to which I will return when I come to consider the reasonableness and proportionality of the disclosure order sought by Rusal.

Preliminary Points

25. In opening his oral submissions, Mr. Pilbrow KC made a number of preliminary remarks, which are pertinent to the outcome of Rusal's disclosure application. In this regard, I accept:

i) Rusal's application is not seeking to do something extraordinary or unorthodox. Nor is it seeking third party disclosure by the back door. Rusal is seeking documents in the possession of NN and its subsidiaries, which Rusal says are in the control of Mr. Potanin for the purposes of disclosure. In other words, unless I am satisfied that Mr. Potanin has control of documents (or some of them) belonging to NN or its subsidiaries, Rusal is not entitled to the disclosure order it seeks.

ii) While there is value in a joint request by shareholders to NN for documents pursuant to Article 91 of the JSC Law (defined below), it is not a substitute for a disclosure order, if one is otherwise appropriate. In particular:

   a) It is likely that disclosure will produce a wider class of documents than a shareholder request.

   b) Disclosure will be a more targeted exercise.

   c) Disclosure will be supervised by the parties' English solicitors who have their own duties and is therefore likely to be more rigorous.

   d) In the context of an action where substantial allegations of fraud are being made, the absence of documents can be as revealing as the presence of documents, it is therefore important that the parties can be cross-examined against the background of a properly supervised disclosure process rather than by a reference to a process which is more obviously dependent on the cooperation of a third party.

26. It was accepted between the parties that if a disclosure order is to be made, that order would be against Mr. Potanin as CEO of NN. If a joint request by shareholders is to be made, that request will be made by Whiteleave.

27. Although Rusal's application was initially made on the basis that Mr. Potanin had both legal and practical control over NN as well as practical control over NN's subsidiaries, it became clear during the oral hearing that the basis of the application must be that Mr. Potanin has legal control over NN, which in turn gives him practical control over the named subsidiaries. There is no good case that Mr. Potanin had practical control over NN if he does not have legal control.

28. This judgment is a judgment in principle as to whether a disclosure order should be made against Mr. Potanin in respect of documents held by NN or its subsidiaries. It is not and cannot be a determination of whether all documents held by NN or its subsidiaries relating to the disclosure issues agreed in the DRD are within the control of Mr. Potanin. For reasons developed below, it may be that there are particular documents or categories of documents over which Mr. Potanin does not have control even if a disclosure order is otherwise appropriate. This is because, as Mr. Pilbrow KC accepted in his oral submissions, even if it is the case that Mr. Potanin has a prima facie right to access all documents of NN, if it were established that disclosure of certain documents was not in the interests of the company or would irremediably breach the Russian Confidentiality Rules (defined below), then Mr. Potanin would not have control over the documents or category of documents concerned.

Mr. Potanin's Control over Documents held by NN and NN Subsidiaries

Control under English Law

29. Subject to one issue in relation to the test for practical control, there was no significant dispute between the parties as to the relevant principles of English law.

30. Disclosure under PD 57AD is limited to documents which are or have in the past been within a party's *'control'*. Control in this context is defined non-exhaustively in Appendix I to PD 57AD as including documents (a) which are or were in a party's physical possession; (b) in respect of which a party has or has had a right to possession; or (c) in respect of which a party has or has had a right to inspect or take copies.

31. A right to possession or inspection for the purposes of disclosure under PD 57AD may fall into two categories:

    i) A party may have a legally enforceable right under contract or otherwise to possess, inspect or copy a document (referred to hereafter as 'legal control'); Lonhro v Shell [1980] 1 WLR 627, 636 – 36. The right must be broad enough to allow for the party to exercise it for the purpose of disclosing documents in connection with the relevant legal proceedings; see Unilever PLC v Gillette UK Ltd [1988] RPC 416 at 419.

    ii) A party may have the benefit of an arrangement or understanding such that, even if not legally binding, it has *"free and unfettered access to the documents covered"* (referred to hereafter as 'practical control'); Ardila Investments NV v ENRC NV [2015] EWHC 3761 (Comm) at [14] and Pipia v BGEO Group Ltd [2020] EWHC 402 (Comm) at [50] – [52].

32. Andrew Baker J. summarised the position in relation to practical control in the following terms in Pipia at [50]:

> *"A true analysis is that there are three elements to the question whether a third party's documents, or particular such documents or classes of such documents are within the "control" of a party so as to be within the scope of its disclosure obligations in English civil litigation, by virtue of some standing consent given by the third party to the disclosing party in respect of its (the third party's) documents that falls short of an enforceable contract:*
>
> *(i) Firstly, the scope (subject matter) of the consent – the documents or types of documents covered by the consent;*
>
> *(ii) Secondly, the type of consent – how, under the consent given, the disclosing party will get hold of those document (e.g. by looking through documents for itself and taking copies if it wishes, or by having documents located and sent (or copied) to it, or by having documents located and sent (or copied) to it to the extent that they match some further (review) criteria);*
>
> *(iii) Thirdly, the quality of the consent – whether it involves free and unfettered access to the documents covered, of which (or copies of which) the party will get hold in that way."*

33. It is important to be cautious about the expression *"free and unfettered access"*. Like Mr. Robin Vos sitting as a Deputy High Court Judge in Berkley Square Holdings Limited & Ors v Lancer Property Asset Management Ltd & Ors [2021] EWHC 849 (Ch) (at [42]), I do not find the expression helpful because it can cause confusion as to whether there must be an arrangement which allows a party to search for and access documents by whatever means they see. However, it is clear the expression *"free and unfettered access"* is only concerned with the quality of consent and not with the scope of the consent or how access to documents is to be given. In other words, the expression is concerned with the question of whether the third party's consent to the disclosing party's access to documents or particular categories of document is for specific purposes only or is sufficiently unrestricted (or 'unfettered') that the

disclosing party can be said to have control of those documents for disclosure purposes. The expression is not concerned with the separate questions of:

i) To which documents or categories of documents does the third party's consent extend. In particular, the fact that the third party's consent only applies to certain documents or categories of documents rather than to its documents generally is not a bar to the disclosing party being required to disclose those documents or categories of documents which are covered by the third party's consent.

ii) Whether there are limits on how the disclosing party may access documents – in other words whether the disclosing party is entitled to search for and access documents or copies of documents itself or whether it can only access documents once they have been located by the third party and possibly been the subject of review by the third party.

34. The distinction drawn between the purpose of a disclosing party's right of access and the scope of that right of access or how the right is exercised, is drawn out in the judgment in Pipia. Andrew Baker J. recognises that a party can have control over a limited number of documents or only over certain categories of document ([19], [20] and [52]) and also have control even if they don't have unrestricted access to documents but are dependent on the cooperation of a party for copies of documents ([48]). Further, Pipia and Berkley Square are both authorities for the proposition that in determining whether there is a sufficient arrangement or understanding such that a disclosing party has practical control, it is necessary to look at all the circumstances.

35. An example of a case in which a disclosure order was not appropriate because the disclosing party only had a limited right of access to documents rather than an unfettered right is Unilever v Gillette UK Ltd [1988] RPC 416. That case

concerned the question of whether the disclosing party had control of documents belonging to a US company because it was entitled under the terms of a licence agreement to demand access to those documents. The relevant clause in the licence agreement expressly provided that the disclosing party's right to documents was limited to the situation where those documents were required for the development, manufacture and sale of certain products. The agreement also contained confidentiality provisions, which meant that it would be a breach of the agreement for the disclosing party to use the documents for any other purpose. In other words, there was a purpose-based restriction on use of the documents. The Court refused to make a disclosure order.

36. So far as burden of proof is concerned, I accept that the burden is on Rusal to establish that Mr. Potanin has control of the documents, which are the subject of the disclosure order sought. In this regard, Jacobs J. in Public Institution for Social Security v Al Wazzan [2024] EWHC 480 (Comm) put the position as follows at [32] and [33]:

> *"One issue ventilated in the arguments is whether it was for the applicants to establish (albeit on the basis of an inference) the practical control which they alleged, or whether it was for PIFSS to disprove it. I see nothing in the authorities which casts the onus of disproving practical control on the party who disputes that documents are within its practical control. Furthermore, under paragraph 17 of Practice Direction 57AD, it must be for the applicant to show that there has been or may be a failure adequately to comply with an order for extended disclosure.*
>
> *Ultimately, however, on an interlocutory application such as the present, the question is whether (as Cockerill J put it in Loreley at [32]) the balance of the evidence favours the conclusion that there is practical control. I again accept, as the applicants submitted, that it is open to the court – for example in a case where the existing evidence is unsatisfactory or insufficient to form a fair view on the question of practical control – to require one or both parties to provide further*

evidence in order for the issue to be resolved: see e.g. Republic of Mozambique at [78(9)]."

37. However, while the burden of proof may be on Rusal, the fact that Rusal cannot demonstrate at this stage that all documents or categories of document covered by the disclosure order are within Mr. Potanin's control does not mean that Rusal is not entitled to a disclosure order at all.

38. The existence of control is ultimately a question of English law but where the right to access documents exists under foreign law, regard has to be had to that foreign law to determine the nature and extent of that right of access; see Pipia as well as Various Airfinance Leasing Companies v Saudi Arabian Airlines Corp. [2022] 1 WLR 1027, especially at [30]. It will be necessary for the party seeking disclosure to establish that the disclosing party has control of the relevant documents under the relevant foreign law on the balance of probabilities.

39. Where a party has a presently enforceable right (including under foreign law) to possess, inspect or copy a document, the fact that disclosing or producing the document might breach a third party's confidence or lead to a breach of foreign law (including foreign criminal law) is not automatically a basis on which a party can avoid disclosure. However:

    i) An English court will not lightly make an order for disclosure where compliance would entail a party to English litigation breaching its own (i.e. foreign) criminal law; Bank Mellat v HM Treasury [2019] EWCA Civ 449 at [63].

    ii) The court can make its order on terms which reduce or minimise the foreign law concerns, for example, by imposing confidentiality restrictions in respect of the relevant documents.

iii) The burden is on the party resisting disclosure to establish that there is a real risk, in practice, of sanctions under the relevant foreign law.

iv) The court has to conduct a balancing exercise weighing on the one hand the actual risk of prosecution in the foreign state against, on the other hand, the importance of the documents of which inspection is ordered to the fair disposal of the English proceedings; see Public Institution for Social Security v Al Wazzan [2023] EWHC 1065 (Comm) at [43] to [52] and [156] and the review of the law in Various Persons v Standard Chartered plc [2025] EWHC 2136 (Ch) at [18]ff.

40. So far as practical control is concerned, what is required is an existing arrangement or understanding to the effect that the third party will comply with the requests of the disclosing party. It is not enough that a third party would be expected to comply with the requests of the disclosing party; see Ardila Investments v ENRC NV [2015] EWHC 3761 (Comm) at [11]. In this regard, it is also not enough that there is a close legal or commercial relationship such as parent and subsidiary companies or employer and employee relationships, rather there must be more specific and compelling evidence of such an arrangement; see Saudi Arabian Airlines at [21]. Further, it does not suffice that some previous requests for the provision of documents were granted, there must be 'standing consent' or some other promise to meet requests in the future arising out of the prior assistance although it is possible that repeat behaviour may be sufficient to imply a promise as to the future; see Pipia at [21].

41. I also accept that, as a matter of English law, while a company will be managed and run by its directors, this does not inevitably mean that a director can necessarily access company documents for the purposes of giving disclosure in litigation brought against that director in their personal capacity; Kelly v Baker [2021] EWHC 964 (Comm) at [36].

Control under Russian Law

42. It is common ground between Mr. Kulkov and Ms. Neveeva that:

i) The CEO of a public joint stock company (PJSC) such as NN has a legal right to access the company's documents.

ii) The CEO of a PJSC has a duty to act reasonably and in good faith in the interests of the company. A CEO's right to access documents (just like any other right held by the CEO) must be exercised consistently with that duty.

iii) Russian law contains restrictions on the dissemination of documents which contain (i) commercial secrets, (ii) insider information, (iii) personal data of individuals or (iv) information which might undermine Russian counter-sanctions measures (collectively referred to hereafter as **"the Russian Confidentiality Rules"**).

43. The legal right of the CEO of a PJSC to access the company's documents flows from the following legal provisions of Federal Law of the Russian Federation No. 208-FZ dated 26 December 1995 on Joint Stock Companies (the **"JSC Law"**).

i) Article 69.1 of the JSC Law provides for the obligation of the CEO to manage a company's day-to-day operations.

ii) Article 69.2 of the JSC Law provides that the competence of the CEO includes all matters relating to the management of the company's day-to-day operations, except matters falling within the competence of the general meeting of shareholders or the board of directors (supervisory board) of the company.

iii) Article 89 of the JSC Law requires a company to keep the documents stipulated by the law, the company's charter, internal documents of the company, resolutions of the general meeting of shareholders, the board of directors (supervisory board) of the company, the management bodies of the company, as well as documents stipulated by regulatory legal acts of the Russian Federation. The company is required to store these documents at the location of its executive body (the CEO) in accordance with the procedure and within the time limits established by the Bank of Russia. Paragraph 3.1 of the Resolution of the Federal Securities Commission of the Russian Federation dated 16 July 2003 on the Procedure and Terms of Storage of Documents of Joint-Stock Companies places responsibility for the organisation of storage of the company's documents on the CEO.

44. The effect of Article 69.2 is that a CEO has access to the company's documents in order to carry out the day-to-day management of the company and is entitled to issue mandatory instructions to the company's employees including for the provision of company documents and information. Further, Article 89 gives the CEO permanent access to the company's documents because they are responsible for organising the storage of those documents and where appropriate giving third parties, such as insolvency trustees, access to documents; see, for example, Judgment of the 14th Commercial Appellate Court dated 6 November 2024 in Case No. A13-7/2020.

45. As to the duty to act reasonably and in good faith in the interests of the company, the origins of that duty are found in Article 71(1) of the JSC Law and Article 53(3) of the Russian Civil Code (the **"RCC"**).

i) Article 71(1) provides:

"Members of the board of directors (supervisory board) of the company, the sole executive body of the company (director, general director), the interim sole executive body, members of the collegial executive body of the company (management board, directorate), as well as the managing organisation or manager, in exercising their rights and duties shall act in the interests of the company and exercise their rights and perform duties with respect of the company in good faith and with reasonable care."

ii) Article 53(3) provides:

"A person that by virtue of the law, or other legislative act or constituent document of a legal entity, is authorised to act on its behalf shall act in the interests of the legal entity that he represents in a reasonable and good faith manner. The same obligation shall be borne by members of the collegial bodies of a legal entity (supervisory or other council, management board, etc)."

46. It is common ground between the experts that there is no principle of Russian law that a CEO may not access company documents in their personal capacity. However, Mr. Potanin submits that there is a further restriction on a CEO's right to access documents beyond the duty to act in good faith, with reasonable care and in the interests of the company, namely that a CEO must exercise their rights only for the purpose of carrying out the day-to-day management of the company in the course of exercising their duties as CEO. In support of this further restriction, Mr. Potanin relies on paragraphs 134 to 140 of Ms. Neveeva's expert report.

47. I do not, however, read those paragraphs as imposing an additional restriction in the terms suggested by Mr. Potanin. In particular, the extracts from Russian cases cited by Ms. Neveeva at paragraphs 137 and 138 go no further than supporting the agreed common ground, namely that the CEO is the individual competent to manage the day-to-day operations of a company and must act in the interests of the company, with reasonable care and in good faith; see for example the Resolution of the Plenum of the Supreme Court of the Russian

Federation dated 02 June 2015, no. 21 at paragraph 2 and Resolution of the Ninth Arbitration Court of Appeal dated 16 April 2025 in case no. A40-267083/2024. The case extracts do not show the courts going further and imposing a restriction that the only basis on which a CEO may access company documents is if it is for the management of the company's day-to-day operations.

48. Further, neither the JSC Law nor the RCC imposes an express restriction of the type suggested on behalf of Mr. Potanin.

49. Accordingly, I find there is no separate restriction that a CEO may only exercise their rights of access to documents for the purposes of carrying the day-to-day management of the company.

50. Mr. Potanin further submitted that in any event a CEO cannot access company documents for the purposes of defending themselves against claims brought against the CEO because the CEO would not be acting in the interests of the company by doing so and would not be acting in accordance with their obligations for the management of the company. Ms. Neveeva did not, however, point to any authority or commentary on Russian law suggesting such a blanket restriction on a CEO's right to access company documents. Nor does she refer to any authority in which a CEO has been sued for misusing a company's documents to defend claims made against the CEO.

51. In contrast, Mr. Kulkov is able to point to a number of Russian cases where CEOs have been able to use company documents for the purposes of defending themselves against claims brought either by the company or by shareholders of the company. Mr. Lord KC rightly points out that it is not possible to know from the reports of these cases how the documents came to be before the court and whether this was because the company made them available or because the

documents were produced in response to a shareholder request or by some other means. What the cases do illustrate, however, is that there is no reason in principle why a CEO should not be able to use company documents to defend claims against them. This proposition is supported by Resolution No. 62 of 30 July 2013 from the Plenum of the Supreme Commercial Court of the Russian Federation (**"Resolution No. 62"**), which discusses the circumstances in which a company director may be found to have acted in bad faith or unreasonably and provides for the CEO to be entitled to submit evidence rebutting those allegations. As the commentary of A.A. Kuznetsov on the Resolution discusses, the director's ability to rebut the allegations made against him arises from the fact that they, as CEO, ordinarily control the information, including documents, relating to the matters which are the subject of the allegations.

52. Mr. Kulkov provides examples of cases where a director has been able to use company documents to defend divorce proceedings, regulatory proceedings and criminal proceedings. He also points to a judgment of the Commercial Court of the North-Caucasus Circuit dated 23 October 2024 in Case No. A32-48225/2022, Alpika-Agro as a case in which the court ordered the defendant who was both CEO and shareholder of a company to disclose company documents. The case concerned a shareholder dispute and the court ordered that:

> *"… as the general director of the company, [he] must have information about the company's activities, disclose them to the court, provide the court with financial and economic documentation and provide explanations about the expenditure of funds, the reasons for bankruptcy."*

53. What flows from the cases discussed above is that the question of whether it is in the interests of a company for its CEO to rely on company documents to defend claims made against them is a question which has to be answered by reference to the particular circumstances of the case. There is no general

principle that it is not in a company's interest for the CEO to search for and disclose company documents to defend claims made against them.

54. So far as the obligation of good faith is concerned, there is a presumption in Russian law that the CEO is using information in good faith unless a claimant proves to the contrary. In Resolution No. 62, the Plenum of the Supreme Commercial Court of the Russian Federation put the position in the following terms:

> *"By virtue of Article 10(5) of the RCC, the claimant must prove the existence of circumstances evidencing bad faith and/or unreasonable actions or inactions of the director that led to adverse consequences for the legal entity."*

55. Again, it is a question of considering the individual circumstances of a case to know whether a CEO is acting in bad faith when they disclose company documents.

56. Turning to the exceptions to a CEO's right of access to a company's documents and information, Article 5 of Russia's Federal Law on Information provides that information may be freely used by any person unless federal laws establish restrictions on access to information or other requirements for the procedure for its provision or distribution.

57. So far as the four limbs of the Russian Confidentiality Rules identified in paragraph 42.iii) above are concerned, Ms. Neveeva sets out in some detail in her expert report the law relating to each of the different limbs of the Russian Confidentiality Rules. For the purposes of the decision I have to make, it suffices to note the following:

    i) Article 3 of the Federal Law No. 98-FZ of 29 July 2004 on Commercial Secrecy provides that commercially secret information is information of

any nature that has actual or potential commercial value due to being unknown to third parties, to which third parties do not have free access on legal grounds and in relation to which the owner has imposed a commercial secrecy regime. The CEO of a company has a duty to protect the confidentiality of commercial information belonging to the company. It is, however, clear that the owner of commercially secret information can consent to a third party having access to it.

ii) Article 2 of Federal Law No. 224-FZ dated 27 July 2010 on Counteracting the Unlawful Use of Insider Information and Market Manipulation and on Amending Certain Legislative Acts of the Russian Federation defines insider information as accurate and specific information that has not been disclosed (including information constituting commercial, official, banking, communications (in relation to information on postal money transfers) and other secrecy protected by law) and the disclosure of which may have a significant impact on the price of financial instruments, foreign currency and/or goods (including information relating to one or more issuers of securities, one or more management companies of investment funds, mutual investment funds, and non-state pension funds or one or more financial instruments, foreign currency, and/or goods).

iii) Article 3 of the Federal Law No. 152-FZ of 27 July 2006 gives a broad definition to 'personal data' including any information relating directly or indirectly to a specific or identifiable natural person. Again, however, a subject of personal data is able to consent in writing to the disclosure of their personal data including for the use of their data in foreign court proceedings.

iv) Article 21.4 of Federal Law No. 46-FZ dated 08 March 2022 on Amendments to Certain Legislative Acts of the Russian Federation imposes restrictions on the dissemination of counter-sanctions information. Counter-sanctions information is defined as information of any nature (production, technical, economic, organisational, and other) about transactions completed or planned by Russian individuals or legal entities participating in foreign trade activities in the field of foreign trade of goods, works, services, information and/or intellectual property for the purposes of meeting the needs of the domestic market of the Russian Federation, the dissemination of which may result in the introduction of restrictive measures against the parties to such transactions by foreign states, state associations, unions and/or international organisations that are acting in a hostile manner and in violation of international law with respect of the Russian Federation, Russian legal entities and citizens of the Russian Federation.

58. It is clear from the evidence of both experts that where information or documents are covered by the Russian Confidentiality Rules, one or more of the following exemptions may apply:

i) The owner of any information relating to its activities can consent to its disclosure;

ii) Information can be redacted if necessary;

iii) Disclosure is permitted for the purposes of court proceedings.

59. So far as the exception for disclosure for the purpose of court proceedings is concerned, there is a dispute between the experts as whether the exception extends only to Russian court proceedings. In this regard, Ms. Neveeva suggests that it is generally accepted in practice that, unless specified to the contrary, the

term 'court' in Russian legislation refers to the courts of the Russian Federation within the meaning of Article 4 of the Federal Constitutional Law No. 1-FKZ of 31 December 1996 on the Judicial System of the Russian Federation, namely the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, arbitrazh courts and courts of general jurisdiction and therefore the exception for disclosure for use in court proceedings does not apply to foreign court proceedings. Mr. Kulkov disagrees with Ms. Neveeva that there is any such limitation on the exception.

60. For the purposes of the present application, it is not necessary for me to reach a final view as to whether Ms. Neveeva or Mr. Kulkov is correct not least because there is no evidence before me to identify any specific documents or categories of documents which might fall within the scope of any disclosure order but which are covered by the Russian Confidentiality Rules. However, it does seem to me that Mr. Kulkov has the better of the argument. First, Article 4 is concerned with defining Federal courts and providing that justice in the Russian Federation shall be administered only by courts established in accordance with the Constitution of the Russian Federation and this Federal Constitutional Law. It does not on the face of it purport to provide an exclusive definition of 'court' or 'court proceedings' for the purposes of other Russian laws. Further, as Mr. Kulkov explains in his second report, if it were the case that the exception to court proceedings only applied in relation to Russian courts, this would limit the ability of a Russian party to protect their civil rights in a foreign court. Mr. Kulkov supports his opinion that disclosure is permitted for the purposes of foreign proceedings by reference to Article 11 of the RCC, which provides a definition of 'court' in the following terms *"The violated civil rights may be protected in a court, a commercial court or in arbitration (hereafter – the court) according to their competence [jurisdiction]"*. He also points to:

i) The following commentary found in *Karapetov A.G, The Main Provisions of Civil Law: Article-by-Article Commentary to Articles 1 – 16.1 of the Civil Code of the Russian Federation (2020)*:

> *"Civil Rights governed by Russian law can be defended not only in Russian courts but also in foreign courts taking into account the rules in force in the respective country for determining the competence [jurisdiction] of national courts."*

ii) The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters dated 18 March 1970 to which Russia has been a party since 05 May 2021 and the recommendations made by an expert committee of the Russian Federal Bar Association dated 14 July 2012 which confirm that a Russian attorney may collect evidence in Russia to assist the courts of another State party to the Convention.

61. Overall, I am satisfied that there are avenues by which it is likely that any restrictions on Mr. Potanin's control of relevant documents can be overcome. Of course, to the extent that they cannot, then this would be a ground on which Mr. Potanin was entitled to refuse disclosure of the particular documents concerned.

62. In addition to the Russian Confidentiality Rules, Ms. Neveeva also points out that a CEO of a joint stock company should follow the limitations, including limitations on disclosure or use of certain types of information found in their employment contract or non-disclosure agreement. However, again, there is no suggestion that a company is not able to consent to the disclosure of information covered by the employment contract or non-disclosure agreement. Further, there is no evidence before me of any relevant restrictions in the employment contract of Mr. Potanin.

The risk that disclosure of documents would expose Mr. Potanin or NN to liability for the unlawful disclosure of information or documents

63. It was common ground between Ms. Neveeva and Mr. Kulkov that if documents were disclosed by Mr. Potanin unlawfully, then under Russian law:

    i) This could expose Mr. Potanin to disciplinary proceedings within NN, to regulatory sanction, potential criminal liability or to a civil liability to NN or its shareholders.

    ii) NN could be subject to regulatory sanction for the unlawful disclosure of information with restricted access and could have a civil liability to personal data subjects for the unlawful transfer of personal data or the disclosure of confidential information.

64. However, while the existence of such liability is agreed as a theoretical possibility, neither Ms. Neveeva nor Mr. Kuleshov have identified any specific risk which would be faced by Mr. Potanin if he were to disclose company documents belonging to NN or one of its subsidiaries in this action. There is no evidence to suggest that there is a real risk of any such liability arising in relation to any documents likely to be disclosed by Mr. Potanin. This is particularly the case given the exceptions to the Russian Confidentiality Rules discussed in paragraphs 58 to 61 above. Further, as Rusal points out:

    i) Any disclosure would be disclosure made within this action and would be subject to collateral use restrictions and to any potential confidentiality orders this Court might make rather than disclosure to the world at large.

ii) NN has not itself raised any concerns about the Russian Confidentiality Rules when providing information to Rusal previously nor have any such concerns been raised in relation to documents held by the Interros Group.

iii) If it becomes apparent that there are Russian law obstacles to the disclosure of particular documents or categories of documents, then there are legal routes by which those obstacles can be overcome, namely consent or redaction.

If Mr. Potanin does not have control over certain documents or categories of documents does this preclude a disclosure order being made against him?

65. Mr. Lord KC submitted that if it is not in NN's interest for a document to be disclosed or if the Russian Confidentiality Rules mean that the document cannot be disclosed, then under Russian law, Mr. Potanin has no right to access the document and therefore no control over that document. Mr. Lord KC contrasted the position with English law where issues of confidentiality or privilege affect the obligation to produce or allow inspection of documents rather than the question of whether a document is disclosable in principle. Mr. Lord KC further submitted that, in circumstances where Rusal is not able at this stage to demonstrate that it is in NN's interest for Mr. Potanin to disclose all documents covered by any disclosure order or that none of the documents are covered by the Russian Confidentiality Rules, Mr. Potanin cannot be made to search for documents over which he has no control and therefore no disclosure order can be made against him.

66. Mr. Pilbrow KC accepted that Mr. Lord KC was correct in principle that under Russian law, the question of whether it is in the interest of NN or its subsidiary to allow access to a document or whether a document cannot be disclosed because of the Russian Confidentiality Rules goes to the question of whether

Mr. Potanin has control of a document rather than to the question of whether that document should be produced or inspected. He disputed, however, that this meant that Mr. Potanin could not search for or require a search to be done for documents even if ultimately Mr. Potanin had no right to access a particular document or category of documents.

67. Mr. Lord KC did not point me to any specific provision of Russian law or any line of cases or academic commentary which suggested that if Mr. Potanin had no right of access to particular documents or categories of documents, that meant he generally had no right in principle to search for or require a search to be done to identify documents which may be disclosable or which might be disclosable with the consent of the owner or subject to measures to protect the confidentiality of information in the documents. Nor is this proposition made good in Ms. Neveeva's expert report.

68. The position for which Mr. Lord KC advocates is an extreme one. In circumstances where it is agreed between the experts that a CEO does have a right to access documents and is responsible for the management of the company, the submission is that individual could not search for or procure a search to be done for documents to determine which can properly be disclosed and which cannot. I am not prepared to accept that Russian law limits the control of a CEO over their company's documents to such an extent. It also sits uneasily with the cases identified by Mr. Kulkov in which a CEO has been able to disclose company documents within litigation brought against that CEO. In other words, I am not satisfied that Mr. Potanin's access to documents belonging to NN or its subsidiaries is so fettered as to prevent any disclosure order being made against him.

69. I find that the fact that certain documents or categories of document may fall outside the control of a CEO is not a basis on which to conclude that Russian

law prevents a CEO from carrying out a search for relevant documents or requiring a search to be carried out in order to identify what documents can properly be said to be within their control and which not. This remains the case even if it is necessary for there to be a review of documents either by the CEO or by another officer of the company to determine which documents the CEO can lawfully access and disclose.

NN's Internal Regulations relevant to issues of Disclosure

NN's Regulations on the Corporate Secretary

70. One of the issues before me was the extent to which Mr. Platov, NN's corporate secretary, exercises control over NN's documents independently of Mr. Potanin. In this regard, I was referred to NN's Regulations on the Corporate Secretary.

71. I note that Regulation 1.2 states that the regulations have been developed in accordance with the legislation, internal documents of NN, recommendations of the Corporate Governance Code as well as being based on best international and Russian corporate governance standards.

72. Regulation 2 sets out the requirements for the position of corporate secretary which make clear that, among other things, the relevant individual will have no less than two (2) years of professional experience in the field of corporate governance or management, knowledge of current legislation, disclosure rules and requirements for public companies and knowledge of best international corporate governance practices.

73. Regulation 4 sets out the Corporate Secretary's function and Regulation 5 provides for their reporting lines. Pursuant to Regulation 4.6, the Corporate Secretary is responsible for the implementation of NN's information disclosure policy as well as ensuring the safekeeping of NN's corporate documents and

provision of documents and information about the company as per shareholder requests. Under Regulation 5.1, the Secretary reports administratively to the CEO but is accountable and answerable to the Board of Directors.

74. Regulation 8 requires the Corporate Secretary to act in the best interests of NN, and to exercise their rights and perform their duties reasonably and in good faith.

75. Also included in the papers before me was a document entitled 'List of Information constituting a commercial secret of NN (as amended on 16 June 2024)'. The preamble to the list states at paragraph 2 that the main criterion that makes it possible to classify information as a trade secret of NN and its subsidiaries is the actual or potential commercial value of the information due to it being unknown to third parties and to which third parties do not legally have free access. Paragraph 4 provides that information which is to be treated as commercially secret is to be stamped "Commercial Secret".

76. What stands out from this list is that within NN's corporate procedures there is a recognised definition of what information is to be treated as commercially secret and mechanisms for ensuring the protection of that information.

77. Overall, there is nothing in NN's internal regulations which operates as a bar to Mr. Potanin searching for or procuring a search to be done for relevant documents held by NN or its subsidiaries. It is also clear that Mr. Potanin can ask Mr. Platov or other members of the Corporate Secretary's team to carry out the search and that when doing so, they will do so subject to their own independent obligation to act in NN's interest.

Does Mr. Potanin have control of documents held by NN or its subsidiaries?

78. Although Rusal initially advanced a case that Mr. Potanin had practical control of documents held by NN even if he did not have legal control, the position

evolved during the hearing such that in reality, Mr. Potanin only has access to NN's documents if he has legal control of those documents as a matter of Russian law.

79. So far as NN's subsidiaries are concerned, it was common ground between Mr. Kulkov and Ms. Neveeva that Mr. Potanin's position as CEO of NN did not give him a legal right to access documents held by NN subsidiaries. The principal issue between the parties was whether he had practical control because either (i) as CEO of NN he was entitled to demand access to documents from the relevant subsidiary or (ii) NN had access to documents belonging to the subsidiary because they were held on a shared document management system or systems and he could obtain access to the documents through that system or systems.

Does Mr. Potanin have legal control of NN's documents?

80. The answer to this question turns essentially on my findings on Russian law as set out above.

81. In brief, it is common ground that as CEO of NN, Mr. Potanin has a legal right under Russian law to access documents belonging to NN provided he is acting in the interest of the company and in good faith. I am also satisfied that:

    i) No reason in principle has been identified as to why it would not be in the interest of NN for Mr. Potanin to search for and disclose relevant disclosable documents within this action.

    ii) The question of whether there are particular documents or categories of document, which it is not in the interest of NN for Mr. Potanin to disclose or which are covered by the Russian Confidentiality Rules is a question

to be answered as part of the process of searching for relevant disclosable documents.

iii) No basis has been established to suggest that Mr. Potanin would be acting in bad faith were he to search for or cause a search to be carried out for documents belonging to NN which are within his control and not covered by an exception to his right of control and to then disclose those relevant disclosable documents which are properly within his control.

82. When one steps back to consider whether it is more broadly in NN's interest for Mr. Potanin to have access to documents from NN and certain of its subsidiaries for the purposes of defending the claims made in this action, I accept that, in principle, the answer is 'yes' for the following reasons:

i) NN has itself previously said expressly in a letter dated 06 December 2024 that NN has no intention of obstructing the trial in this action and believes it is in NN's interests for this litigation to be fairly and expeditiously determined.

ii) The nature of the claims is such that it is in the interests of NN to know whether Mr. Potanin has been using NN's funds and assets for his own personal interests or whether there was negligence on the part of Mr. Potanin and others which led to the events underlying the Industrial Accidents Claims. One of the issues in the present case is whether the breaches of contract alleged by Rusal against Mr. Potanin are remediable and, if so, how. It is the Defendants' position that if wrongdoing is established, the Defendants can remedy such breaches by paying compensation to the NN Group (Amended Defence and Counterclaim of the First and Second Defendants at §157.3).

83. Equally if Rusal's claims are dismissed, then it is in NN's interests to have the claims against Mr. Potanin cleared.

84. I, further, accept the submission made by Rusal in reliance on paragraph 43 of Ms. Bischof's Fifth Witness Statement that there are good reasons to doubt that many relevant documents will fall within the Russian Confidentiality Rules.

    i) NN's internal Commercial Secrecy Regulations contain time limits so that it is unlikely that documents relating to the AF Claim in 2013 or the sale of LC in 2017 would still be covered.

    ii) Insider information is a forward-looking concept concerned with information that could affect an investor's assessment of a company's present or future value so is unlikely to capture historic documents.

    iii) Counter-sanctions information is information about *"foreign trading activities"* by Russian entities which may expose them to sanctions. In contrast, relevant disclosable documents would relate to historical mostly domestic transactions.

85. Certainly, no evidence has been put before me to identify particular documents or categories of document, which are outside Mr. Potanin's control because it would not be in the interests of NN or its subsidiaries to disclose those documents or because they would be caught by the Russian Confidentiality Rules irrespective of any exceptions to those rules.

86. Drawing the points made above together, I accept three points made by Rusal, namely:

    i) On any view, Mr. Potanin has control over substantial NN documentation even if some of the documentation falls outside his

control because he would be in breach of the Russian Confidentiality Rules or acting unreasonably and in bad faith if he sought to access and deploy those documents.

ii) If Mr. Potanin wishes to say that certain documents or categories of documents are not within his control, then it is for him to establish that this is the case.

iii) There is no evidence of any particular documents or categories of documents which are not within Mr. Potanin's control. This is despite Bryan J. indicating at the First CMC that he expected everyone to be getting on with the process of disclosure and ascertaining what the position is.

87. Accordingly, I am satisfied that Mr. Potanin does have a legally enforceable right to possess, inspect and take copies of documents belonging to NN even if there are exceptions to that right for as yet unidentified particular documents or categories of documents.

Does Mr. Potanin have practical control of documents held by NN's subsidiaries?

88. As noted above, Rusal accepts that there is a fundamental overlap between the question of Mr. Potanin's legal control of NN and his practical control over the documents of NN. It is legal control of NN as CEO which means that he will be provided with documents when he wants them because NN's employees are obliged to comply with his lawful mandatory orders.

89. I am satisfied that in principle Mr. Potanin will have practical control of documents held by NN's subsidiaries. This is because the balance of the evidence favours the conclusion that NN and its subsidiaries will comply with requests for documents made by Mr. Potanin. In particular:

i) There is evidence that NN Group is an integrated business in which the subsidiaries operate to support the profitable business of NN. So, for example, Mr. Kuleshov gives evidence at paragraph 56.3(b) of his First Witness Statement that the NN subsidiary, NTEC, exists to supply power to the NN Group and 73% of the energy it generates goes directly to the NN Group. While he suggests that the remaining 27% goes to the wider market, the only market which he identifies is in Norilsk and in satellite towns supporting NN's operations in a remote and otherwise uninhabitable part of the Arctic. Further, he gives evidence that NN's subsidiaries' budgets are based on budgeting assumptions established by NN and production programmes approved by NN and based on NN Group's business objectives.

ii) NN has access to those documents held by its subsidiaries held on shared document or information management systems to which both NN and its subsidiaries have access. In this regard, Mr. Kuleshov acknowledges at paragraph 70.2 of his witness statement, for example, that the KASUD system used by NN and its subsidiaries is accessible in its entirety to particular departments of NN including the Internal Audit Department which answers directly to Mr. Potanin. Although Mr. Kuleshov takes issue with the extent of the shared access given to employees of NN for documents held by subsidiaries on shared document management systems, it is evident that employees of NN do have substantial access to the shared management systems and would be able to access documents on those systems at Mr. Potanin's instruction.

iii) Some of the documents that the Defendants have to date obtained from the NN Group have come from NN subsidiaries; see annex C to the Fourth Witness Statement of Ms. Bischof. These documents include

budget information, contracts, tender documents, invoices, technical documentation and reports of subsidiaries.

iv) Documents from NN's subsidiaries have already been provided to Rusal pursuant to shareholder requests made to NN. I accept Rusal's submission that this demonstrates that NN's senior management have the ability to access subsidiaries' documents despite the formal separation between NN and the subsidiaries.

v) Although NN's subsidiaries have their own separate legal personality and management, I accept that they form part of a group of businesses which Mr. Potanin runs and that he has sufficient control that he could demand and obtain documents should he wish to do so. In this regard, the evidence of Ms. Bischof is that the former financial controller of NN, Alexandra Zakharova, was not aware of a single instance when a subsidiary's management would refuse a request by Mr. Potanin for documents.

90. Having considered both the evidence of Mr. Kuleshov and Ms. Bischof, I am satisfied that Mr. Potanin and Whiteleave have been able to access substantial documentation from NN and its subsidiaries including the ten categories of documents listed in paragraph 21 of Ms. Bischof's Fifth Witness Statement whether those documents have been obtained during interviews with employees of NN and its subsidiaries, ad hoc requests or specific document requests.

91. Overall, notwithstanding the points made by Mr. Kuleshov in his witness statement, I am satisfied that the evidence does establish that Mr. Potanin has practical control of documents belonging to NN's subsidiaries.

Is there a real risk of prosecution of Mr. Potanin, NN or any of its subsidiary companies or their officers?

92. Mr. Kulkov and Ms. Neveeva agree that Russian law provides in certain circumstances for one or both of civil or criminal liability for individuals or companies which unlawfully disclose documents falling within the scope of the Russian Confidentiality Rules. As set out in paragraphs 63 and 64 above, neither expert nor Mr. Kuleshov or Ms. Bischof identify any specific reasons to believe that compliance with a disclosure order made by this Court would result in Mr. Potanin, NN or any of its subsidiary companies or their officers incurring such criminal or civil liability. I am satisfied, therefore, that there is no real risk in practice of Mr. Potanin or NN, its subsidiaries or their officers incurring any liability as a consequence of Mr. Potanin's compliance with a disclosure order. Certainly, there is not a risk which outweighs the importance of the fair disposal of these proceedings.

93. The Disclosure Order I propose to make requires Mr. Potanin to carry out a reasonable search for relevant disclosable documents. If there are particular documents or categories of documents held by NN, which fall outside his control because, for example, notwithstanding the exceptions to the Russian Confidentiality Rules, he has no right under Russian law to those documents or categories of document, then that would prima facie be a good answer to why he has not included those documents or categories of document in his disclosure in this action.

94. It may be, of course, that if documents are not disclosed, questions arise as to whether Mr. Potanin could reasonably have done more to procure documents from NN or its subsidiaries, for example, by seeking redacted copies of documents, but those are questions which, if they arise, are for later in the disclosure process.

Would a disclosure order be reasonable and proportionate?

95. Mr. Kuleshov raises a number of reasons why he says a disclosure order would not be reasonable and proportionate. In summary, those are:

    i) That the proposed order would place Mr. Potanin, NN, the NN Group subsidiaries' General Directors and each of the NN Group subsidiaries in breach of Russian law.

    ii) The orders sought are redundant and premature in circumstances where Rusal and the Defendants are agreed that it would be appropriate to make a request for voluntary disclosure from NN. NN should be provided with an opportunity to respond to any joint document request before any expansive disclosure orders are made.

    iii) Rusal has extensive access to NN documents through its appointed financial controller, and by virtue of its status as a substantial shareholder of NN and its representation on NN's board of directors and used these rights to obtain extensive documents from NN.

    iv) Any disclosure order would exponentially increase the cost and timeframe for the disclosure process.

96. In support of their submission that a disclosure order would be disproportionate, the Defendants point to the fact that Rusal already has access to at least 120,000 pages of documents provided to Rusal pursuant to its requests as a shareholder. Further details of these documents are set out at paragraph 100 of Mr. Kuleshov's statement. Mr. Kuleshov also points to examples of Rusal having access to NN internal correspondence.

97. Subject to one point discussed in paragraph 105 below, I do not accept the submission that a disclosure order would not be reasonable or proportionate.

98. This a case in which serious allegations of fraud, misconduct and negligence are made in relation to the management of NN and its subsidiaries. It is set down for a 14-week trial starting in April 2027. Substantial time, cost and resources will be expended by the parties both in the preparation for and conduct of the trial. It is clearly necessary that, so far as reasonably possible, the trial judge should, where this is possible, be provided with the evidence to enable them to determine the allegations made by each party rather than having to draw inferences from the absence of documents.

99. Rusal is not asking for a search to be made of documents held by NN and all of its subsidiaries. The draft order limits the search to NN and 11 named subsidiaries. It is correct that Rusal also included a catch-all provision in its draft order, but, as set out below, I propose to remove that catch-all provision from the order.

100. Rusal has prepared as Annex A to Ms. Bischof's Fifth Witness Statement an outline of what it considers a reasonable search of documents held by NN and relevant subsidiaries might look like. The Defendants have not presented any alternative scope for the search or provided any specific reasons to believe that the scope of the search sought by Rusal is disproportionate. Nor have the Defendants provided any specific evidence as to why a search of documents held by NN and the named subsidiaries would be unduly burdensome. This is despite Bright J. commenting at CMC 2 that *"If I were the judge in December, I know one of the things, I'd want to think about is: what practical difference does it make in terms of the likely number of documents"*.

101. The Defendants did point to the fact that any search would necessarily require the cooperation of NN and its subsidiaries and would necessarily involve those companies in incurring costs. While I accept this submission in principle, I have no evidence to establish either that NN and its subsidiaries would be unwilling to do the work or that it would involve them in a level of unreasonable costs. In circumstances where NN has indicated a willingness to cooperate in the resolution of this litigation and where the Defendants propose as an alternative to a disclosure order, a request for documents by shareholders which will itself involve significant cost, I do not accept that practically the work required for any search or the associated costs incurred by the parties, or by NN and its subsidiaries, mean that it would be unjust or disproportionate to make a disclosure order.

102. The Defendants suggest that a practical alternative to an order for disclosure by Mr. Potanin is a mutually agreed document request to NN pursuant to Article 91 of the JSC Law.

103. For reasons set out above, I do not consider that a mutually agreed document request to NN is a suitable alternative to an order for disclosure made against Mr. Potanin. However, as I raised during the hearing, in circumstances where the parties have been cooperating on the terms of a joint document request to be put to NN by Whiteleave and Rusal and, as I understand it, the terms of that joint request are close to being agreed, it does seem that a joint request could sensibly supplement the process of disclosure not least because it provides another route by which NN can be encouraged to cooperate with the necessary searches for documents. Neither party identified any specific reason why a search by NN for documents in response to such a joint request would conflict with a search for documents made in response to a request for documents made by Mr. Potanin. Further, given the cooperation to-date between the parties, I

would expect that it should be possible for both document enquiries to be managed in a way that minimises any duplication of work or provision of documents.

104. I do not, however, propose to make any order at this time setting a deadline for the parties to agree the terms of a joint request unless the parties consider that it would be appropriate and helpful for me to do so.

The Scope of the Disclosure Order

105. Rusal seeks an order which requires Mr. Potanin to carry out a search for documents which are relevant and disclosable within NN and then at paragraph 2.1 of the draft Order eleven named subsidiaries and a final 'catch-all' category at sub-paragraph 2.1(12) of 'other subsidiaries known by the First and Second Defendants to have been involved in the matters in dispute' (**"the catch-all provision")**.

106. During the oral hearing, I asked Mr. Lord KC whether, if a disclosure order were made, there were any specific reasons relating to any of the named subsidiaries why a disclosure order was not appropriate against that subsidiary. Mr. Lord KC did not identify any such specific reasons and I am therefore content that it is appropriate to include all of the 11 named companies in the disclosure order I make. However, I do not consider it appropriate to make any order for disclosure in the general terms sought in the catch-all provision. Such an order would, in my view, be disproportionate. If, having considered documents provided by Mr. Potanin pursuant to the disclosure order I am prepared to make, Rusal identifies a need for a disclosure order in respect of other named subsidiaries, then this will need to be the subject of a separate application.

Final Points

107. Both at paragraph 14 of Mr. Kuleshov's witness statement and in the oral submissions of Mr. Lord KC, it was suggested that the order sought against Mr. Potanin is an order which would not be made against the CEO of any other high-profile and publicly traded company. I do not agree with this suggestion. For the reasons set out above, I find that as a matter of Russian law Mr. Potanin does have legal control of documents belonging to NN and, as a consequence, also has practical control of documents belonging to the 11 subsidiaries of NN specifically named in the draft order before me. Accordingly, it follows that in the ordinary way an order for disclosure made against Mr. Potanin is an order which is appropriate as matter of English law and is consistent both with the provisions of PD57AD and the overriding objective. This is not third-party disclosure by the back door.

108. In his oral submissions, Mr. Lord KC went further and suggested that were a disclosure order to be made, it would be treating the NN Group corporate governance structure as a sham. I reject this submission. A finding that Mr. Potanin's position as CEO of NN gives him control in principle over documents belonging to NN and its subsidiaries does not interfere with the proper operation of NN's compliance procedures to verify whether there are specific documents or categories of documents over which he does not have control and are therefore not disclosable. Further, I am satisfied that the order I propose to make is consistent with the applicable principles of both English and Russian law.

Conclusion

109. For the reasons set out above, I grant Rusal's application for a disclosure order against Mr. Potanin. As Mr. Pilbrow KC acknowledged the final terms of that order will need to be tailored to reflect the terms of this judgment. In particular,

my present view, subject to sight of any revised draft order, is that the draft will need to include terms which acknowledge the possibility that there may be relevant documents which Mr. Potanin is not able to disclose because he does not have control of them but also provide for a witness statement from Mr. Potanin or his authorised representative confirming what steps have been taken to carry out the search required by the disclosure order for documents held by NN and the eleven named subsidiaries.

110. I would be grateful if the parties would endeavour to agree a final order for my approval. If this is not possible, then the parties should provide me with their respective proposals for the terms of the final order and liaise with the Commercial Court Listing Office to fix a short hearing to deal with consequential matters.

111. I thank both counsel teams, their instructing solicitors and the parties for their careful and skilful preparation for and presentation of this third CMC.