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## Netherlands Supreme Court rules in favour of Yukos

**In its historic decision of Friday 18 January 2019, the Dutch Supreme Court put an end to the legal battle regarding Yukos' international assets. It ruled that the bankruptcy of Yukos in 2006 was marred by a violation of principles and values that are fundamental to the Dutch legal order, and could not therefore be recognised in the Netherlands. The Russian authorities deliberately pushed Yukos to the brink and into bankruptcy, in a malicious assault upon then-Yukos CEO Mikhail Khodorkovsky, who had become a political adversary of President Putin.**

“We are very pleased that we were able to protect the international assets of Yukos Oil for the benefit of the shareholders of Yukos Oil, the ultimate victims of the Kremlin's expropriation” said Steven Theede, former Yukos CEO and board member of the Yukos Foundations, which had oversight of the litigation.

Commenting on the decision, Yukos' lawyer Eelco Meerdink of De Brauw explained: “The Yukos Foundations are Dutch legal entities formed in 2005 as protective measures. The Foundations were designed to ensure that when Russian authorities tried to expropriate international assets, they could be defended outside of the Russian court system in a fair legal venue.”

Yukos' international assets comprised two branches of the former oil company: the treasury group and the finance group. In 2005, during the Russian authorities attack on Yukos, Yukos' management decided to insert a Dutch *stichting* (foundation) into each of those branches. Last Friday's decision of the Supreme Court dealt with the finance group, headed by Yukos Finance BV. Previously, in 2015, the Yukos Foundations had successfully protected Yukos' treasury group against claims from Russian state-owned oil company Rosneft.

The Yukos-case demonstrates that such protective measures work, and they may become a recipe for other companies seeking to bring and protect assets outside a country where expropriation is feared. Such protective measures allow companies' assets to be protected in a neutral venue outside the jurisdiction of the state that seeks to expropriate. That neutral venue can be the Netherlands, (which, incidentally, now also allows litigation in English), but it could be elsewhere. Once asset litigation is successfully resolved in that neutral venue, those assets can be distributed to the company's legitimate former creditors and shareholders.

Dutch case law shows that reliance on the judgments of the courts of the expropriating state will often be to no avail. In another recent Yukos-case, the Amsterdam District Court,

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on 5 December 2018, rendered a judgment highly critical of the lack of impartiality and independence of Russian courts, which in cases against Yukos served the interests of the Russian government. Accordingly, Russian court judgments rendered against subsidiaries of Yukos could not stand in the way of the pursuit of their rights in the Dutch courts.

De Brauw represented the Yukos foundations, companies and management in these various proceedings.