Att:

Stockholm District Court

ONLY BY EMAIL: stockholms.tingsrätt@dom.se

Stockholm 18 August 2017

URGENT

APPLICATION FOR EX PARTE ATTACHMENT

Applicant:	**1. Ascom Group S.A.** 75 A. Mateecivi Street Chisinau, MD-2009, Moldavia **2. Anatolie Stati** 20 Dragomirna Street Chisinau, MD-2008, Moldavia **3. Gabriel Stati** 1A Ghioceilor Street Chisinau, MD-2008, Moldavia **4. Terra Raf Trans Traiding Ltd.** Don House, Suite 31 30-38 Main Street, Gibraltar
Counsel:	Lawyers Bo G H Nilsson, Therese Isaksson and Ginta Ahrel Advokatfirman Lindahl KB Box 1065, 101 39 Stockholm bo.nilsson@lindahl.se; therese.isaksson@lindahl.se; ginta.ahrel@lindahl.se
Defendant:	The Republic of Kazakhstan 11 Podeba Avenue Astana 10000 Kazakhstan
Grounds:	Ch. 15, § 5; Ch. 10, § 1 and 3 of the Code for Judicial Procedure
Matter:	Security measure according to Ch. 15 of the Code for Judicial Procedure; **danger of delay**

In our capacity as counsel for each of Ascom Group S.A., Anatolie Stati, Gabriel Stati and Terra Raf Trans Traiding Ltd. (jointly the "**Investors**"), we are authorised to apply for a security measure to be taken against the Republic of Kazakhstan ("**Kazakhstan**"), as follows.

I. CLAIMS

A. *Ex parte* attachment in accordance with Ch. 15, § 1 and 5, para. 3 of the Code for Judicial Procedure

1. The Investors requests that the District Court issues a decision of attachment for as much of Kazakhstan's property that the Investors' claim according to the arbitration in case SCC V (116/2010) amounting to USD 8,975,496.40 and USD 497,685,101 including interest for the latter amount according to an annual interest rate corresponding to the average interest of American bonds during a six-month period from and including 30 April 2009 until the payment date, can be presumed to be covered.

2. *Ex parte* attachment is primarily requested for all property which is located in Sweden belonging to Kazakhstan. Secondarily, *ex parte* attachment is requested for all shares belonging to Kazakhstan that are registered with Euroclear Sweden according to Exhibit 1.

3. The Investors request that the District Court immediately grant the measure – without Kazakhstan being provided prior opportunity to make a statement – in accordance with Ch. 15, § 6, para. 1 or the Code for Judicial Procedure, to apply until the arbitration has been executed in full against Kazakhstan.

4. The Investors request exemption of their obligation to provide security in accordance with Ch. 15, § 6, para. 1 of the Code for Judicial Procedure.

5. In the event of the District Court *sustains* the request for *ex parte* attachment, the Investors also request that the District Court does not notify the defendant until 5 (five) business days after the decision has been made in accordance with § 26, para. 2 of the Regulation (1996:271) for cases and matters in general court.

6. In the event that the District Court *refuses* the request for *ex parte* attachment, the Investors wish that the matter *not* be tried as an ordinary application for attachment

where the defendant is notified. Instead, the Investors intend to appeal the decision to the Court of Appeal requesting approval for the *ex parte* claim or – alternatively – withdrawal of the application. Hence, the Investors request that the District Court does not under any circumstances notify the defendant of a decision of refusal.

B. Legal costs

7. The Investors request reimbursement for their legal costs, amounting to SEK 415,000 as at the application date for work of the law firm Lindahls as well as USD 25,000 for the work of the law firm King & Spaldings (the Investors' international counsel, having represented them at arbitration proceedings and enforcement cases internationally) with regard to enforcement measures.

II. INTRODUCTION

8. On 26 July 2010, the Investors called for an arbitration and submitted that Kazakhstan had violated its obligations according to the international Energy Charter Treaty (the "**ECT**") through breaches of the provisions regarding investor protection. The arbitration took place at the Stockholm Chamber of Commerce (the "**SCC**") and the decision was made on 19 December 2013 in the SCC's case no. V (116/2010), and was amended on 17 January 2014, see Exhibit 2.

9. The arbitral tribunal found Kazakhstan guilty of violating its obligations of "*Fair and equitable treatment*" according to section 10 (1) of the ECT. In the arbitration, the Investors were awarded a reimbursement of USD 500 million.

10. On 19 March 2014, Kazakhstan disputed the arbitration to the Svea Court of Appeal and claimed that the arbitration was void and requested the annulment of the arbitration, entirely or in part. On 9 December 2016, the Svea Court of Appeal made its decision and dismissed Kazakhstan's claims, see Exhibit 3. Kazakhstan were obligated to pay for the Investors' legal fees amounting to approximately SEK 30 million. It is also apparent from the decision that Kazakhstan may not bring action against such a decision, in accordance with § 43, para. 2 of the Arbitration Act.

11. Kazakhstan has not made any payment, in non-compliance with both the arbitration and the decision of the Svea Court of Appeal.

12. It has now been brought to the attention of the Investors that Kazakhstan holds assets in Sweden, which – in any event - enables enforcement of the arbitration in part.

III. THE INVESTORS HAVE THE RIGHT TO APPLY FOR ATTACHMENT IN ORDER TO RECEIVE SUFFICIENT SECURITY

13. The Investors intend to apply for the enforcement of the Award with the Swedish Enforcement Authority. A meaningful difference between the enforcement of a Swedish arbitral award and a Swedish court judgment is that the counterparty must be given an opportunity to comment before the measure for enforcement of an arbitral award is made (Ch. 3, § 15 of the Enforcement Code). When it relates to the enforcement of a court judgment, the measure can be made without the counterparty being notified (Ch. 4, § 12, para. 2 of the Enforcement Code). It is vitally important for the Investors to have their claims from an arbitration secured through an order for attachment.

14. In the preparatory work to the arbitration law and procedure, it appears that it is provided that a party, according to the rules in Ch. 15 of the Code of Judicial Procedure may apply for attachment to secure their claims in an arbitration. Some specific rules on attachment have therefore not been included in the arbitration law.[1]

15. With respect to Kazakhstan's actions before, during and after the arbitration, which is described further below, it is extremely urgent for the Investors to secure assets before the expected enforcement proceedings before the Swedish Enforcement Agency.

[1] See prop. 1998/99:35, para. 183, section 13.3 Measures on Security, NJA 1979 para. 698 and NJA 1983 para. 814.

IV. STOCKHOLM DISTRICT COURT IS THE COMPETENT COURT

16. The Republic of Kazakhstan has been residing in Sweden through its embassy (Registration No. 934003-4090) with the address Birger Jarlsgatan 37, 111 45 Stockholm.

17. Moreover, there are some designated assets for attachment within the jurisdiction of the Stockholm District Court. The shares in the audited company in Exhibit 1 are traded on Nasdaq OMX Nordic which is one of the trading venues located in Sweden. It is practical to deal with the shares of Euroclear Sweden AB through the registration in a VPC registry according to the law of accounting and financial instruments. The provider of the shares, meaning the listed company, connects it to Euroclear, which is the central securities depository according to the law of accounting and financial instruments. Euroclear is the only one in Sweden to be responsible for the accounting of these financial instruments.[2]

18. Euroclear Sweden AB (Registration No. 556112-8074) has the registered address Box 191, 101 23 Stockholm. The company's visiting address is Klarabergsviadukten 63, 111 64 Stockholm.

19. The Stockholm District Court is therefore competent to try this request.

V. THE FACTS

A. Background

1. The arbitration and the dispute

20. The background to the arbitration between the parties is a flagrant breach of international law: the Kazakhstan Republic has in the year 2010 without legal grounds and without compensation expropriated the joint Investors' extremely valuable assets in the gas and oil sectors in Kazakhstan. This has given rise to the

[2] The Swedish Enforcement Authority's guide for Seizure, 2016, p. 207-208. The guide is published on the authority's website:

extensive arbitration where the Investors were finally, despite Kazakhstan's persistent opposition, granted USD 500 million in compensation for the expropriated property.

21. In the Award, Exhibit 2, it clearly shows Kazakhstan's legal treatment of the Investors and their employees, including inter alia an innocent person who was incarcerated on the basis of false allegations, see specifically paragraphs 1039-1041, 1047-1049, 1060-1066 in the Award.

22. During the arbitral proceedings, Kazakhstan refused to pay its portion of the advance on costs to the SCC, which means that the Investors were forced to pay almost all of the costs for the arbitration which totalled USD 1,425,449[3]. Kazakhstan refused also to respect its contractual obligation to contribute through payment for the arbitration procedure.

23. The Investors have sent several letters with requests to Kazakhstan that they immediately pay the ordered amount including interest, see Exhibits 4, 5 and 6. Payments still has not been made.

24. Kazakhstan has made the Award capable for enforcement but instead has attacked the Award in the Svea Court of Appeal in Sweden and also opposed enforcement in other enforcement jurisdictions. In any case, Kazakhstan actions are characterized by unusual hesitancy and the applicants have, among other things, been accused of obtaining the Award through fraud.

25. On 19 March 2014, Kazakhstan begun an appeal in the Svea Court of Appeal. Kazakhstan made sure that the case was extremely extensive, costly and drawn out in time. Among other things, Kazakhstan submitted a new lawsuit a year and half after the original one. The appeal lasted almost three years. With the Judgment of 9 December 2016, the Svea Court of Appeal dismissed Kazakhstan's claim. The Court of Appeal's dismissal cannot be appealed.

[3] Very late in the arbitration proceedings, the Republic of Kazakhstan finally payed USD 38,991 as a part of the additional advance payments decided by the SCC.

26. The court fees were, due to Kazakhstan's actions, very high. The Investors' court fees reached up to SEK 30 million which can be compared to Kazakhstan's costs which reached closer to SEK 60 million.

27. In a letter from 21 December 2016, the Investors presented a request to Kazakhstan for the immediate payment of the court fees, including interest, see Exhibit 7. Payment has not been made.

2. Enforcement cases in the UK and USA

28. In February 2014, the Investors sought enforcement of the Award before the courts in London and thereafter even in Washington and New York. These enforcement actions are still ongoing today.

29. According to the applicable laws in both the UK and the USA, there is a possibility for the Respondent to request that the court stay the case in order to wait for the outcome of another close related case, for example the appeal in the Svea Court of Appeal. One condition for the English or American court to make such a decision can be that the Respondent provides a security which corresponds to the size of the claim.

30. Kazakhstan has not made such a request in the enforcement cases, but instead has resorted to other means aside from a stay like delaying the proceedings, which until now has been very successful.

31. Kazakhstan has therefore for four years avoided as many payment obligations as possible attributable to the arbitration, enforcement cases and appeals.

B. Property in Sweden which is owned by Kazakhstan

32. It has come to the Investors' attention that Kazakhstan owns shares in certain Swedish listed companies. It is possible that Kazakhstan even owns shares in other Swedish listed companies or has other assets in the country.

33. According to the attached statement from Euroclear AB's registry, Exhibit 1, the shares are held by

BNYMSANV RE SANVLON RE MINNISTRY OF
BNVYM

11 POBEDA AVENUE
ASTANA 10000
KAZAKSTAN

34. The abbreviation “BNYMSANV” means The Bank of New York Mellons European branch, The Bank of New York SA/NV, see attached print out from the bank’s website, Exhibit 8.

35. The Bank of New York SA/NV is the trustee for “MINISTRY”, which is understood to be the Republic of Kazakhstan’s Ministry of Finance, see attached statement from, for example, Electrolux’s prospectus, Exhibit 9. From the attached extract from the Ministry of Finance’s website, Exhibit 10, it appears that the Ministry’s address is 11 POBEDA AVENUE, ASTANA 10000, Kazakhstan.

36. It can be added that there is no uncertainty about the fact that the shares held in trust can be ascertained and thus also attached to the owner’s debts. Trustee registration is a special type of registration form for shareholders in the VPC company (Sv. *avstämningsbolag*) that leave or, in other words, dump their shares in a bank or another securities institution. The provisions which regulate trustee registration are found in Law (1998:1479) for accounting of financial instruments.[4] The provisions stipulate in brief that the securities institution in question may be entered into the VPC registry and the shareholder registry kept by Euroclear Sweden AB instead of the owners of the shares covered by a management assignment. In the VPC registry and in the shareholder registry shall then state that it is a trusteeship on behalf of another party.[5]

37. In other words, it is clear that it is the Republic of Kazakhstan itself who owns the shares in the above audited Swedish listed company.

[4] The following appears in 12 § 1 in the law: “*On request by the central securities depository shall a trustee leave details to the central securities depository of those shareholders whose share are held in trust. The details shall concern the shareholder’s name and social security number, organization number or another identification number and postal address. The trustee shall however provide the number of shares of different types which the shareholder owns. The details shall concern the relationships at a point in time decided by the central securities depository.*” (Emphasis added)

[5] Rolf Skog, *Rodhes aktiebolagsrätt*, published in Zeteo: 2014-08-08, p. 149.

VI. RISK FOR SABOTAGE AND DANGER OF DELAY

38. It can be expected that Kazakhstan evades enforcement by quickly disposing of assets. Foreign debtors' financial assets in Sweden are, according to the nature of things, volatile. It is a moment's work to dispose of them through electronic transactions and thereby make the proceeds forever unavailable for enforcement in Sweden. It may be noted that in Kazakhstan, over the past year, has sold shares in Electrolux worth several million SEK, compare Exhibit 9 and 1 (p. 6)

39. There is every reason to believe that Kazakhstan, in respect of the shares, after any notice regarding the attachment application (or for the confiscation for that matter) immediately would instruct the Bank of New York Mellon to divest its holding in the Swedish joint stock companies and instead acquire the Swedish Enforcement Authority's inaccessible assets in other countries, with comprehensive and irrevocable legal loss for the Investors as a result. The same applies to all assets that can easily be disposed of.

40. The Investors are, of course, aware that the mere possibility for the debtor to evade property is not sufficient enough to deem that a risk of sabotage exists. In Fitger's, and other persons', commentary on the Code for Judicial Procedure Ch. 15 para. 5, there are notes on that evidence of the sabotage risk may be attributed not only to the concrete evidence but also on the debtor's person. The same point of view is developed in Westberg's book regarding the provisional legal protection[6], where he talks about a debtor who views the obstruction as a natural way to safeguard own interests and that, in that respect, attention-grabbing or grave disloyalty manifested during the current dispute can be significant.

41. It would be, according to what is stated in the previous and in the attached documents regarding Kazakhstan's actions, extraordinary naïve to imagine that a notice would not rule out further execution. Since Kazakhstan, so far, in all contexts in relation to the Investors is evading its payment obligations, it would seem

[6] Peter Westberg, *Det provisoriska rättsskyddet i tvistemål. En funktionsstudie över kvarstad och andra civilprocessuella säkerhetsåtgärder*, Book 3, VIII. Sabotage Measures and Risk Analysis, IX. Sabotage Measures and Distinctive Requirements. 2004, p. 69 and NJA 2005 p. 29.

extremely unlikely to allow the claim of the designated property or other volatile property.

42. It is to be noted that attachment of shares does not include anything else, or more, than a notice to the Bank of New York Mellon and Euroclear regarding that the shares may not be sold. If Kazakhstan does not intend to dispose of the shares, this means no interference whatsoever in relation to the business activities of the Republic. That means that no damage will be done to Kazakhstan. If, on the other hand, there is an intention to dispose of them it is obviously justified with the action without the debtor's hearing. If, in the unlikely event, Kazakhstan would have a relevant objection to comply with a Swedish arbitration, that Svea Court of Appeal has declared enforceable, such possibility can be offered during enforcement proceedings before the sale of the shares takes place. The ex parte attachment decision will therefore not cause any inconvenience to Kazakhstan.

43. The element "could reasonably be expected" indicates that there is a relatively low level required for the Court to acclaim the application and a milder requirement than, for example, probable cause[7]. It is sufficient that alleged sabotage plot emerges as a real possibility that there is reason to count on[8]. In general, it is difficult to produce written evidence which directly indicates a certain amount of risk and that this sabotage is imminent. Instead, other factors, such as the counterparty previously mismanaging in financial affairs and previously committed improper acts will be accepted as evidence. This is particularly true in cases like this where the other party's unfair conduct is directly related to the claim which is the basis for the attachment application. The Court may not, in the case of *ex parte* attachment, be overly cautious.[9]

44. In this case the risk of sabotage is high. It can be expected that communicating this application will become a trigger for Kazakhstan to immediately design and take

[7] Torkel Gregow, *Kvarstad och andra säkerhetsåtgärder. According to ch. 15 of the Code of Judicial Procedure*, 2014, Norstedts Juridik, p. 70.

[8] Torkel Gregow, *Kvarstad och andra säkerhetsåtgärder. According to ch. 15 of the Code of Judicial Procedure*, 2014, Norstedts Juridik, p. 70.

[9] Torkel Gregow, *Kvarstad och andra säkerhetsåtgärder. According to ch. 15 of the Code of Judicial Procedure*, 2014, Norstedts Juridik, p. 70.

sales actions, which can happen very fast. In addition, the effects of sabotage actions financially significantly harm the Investors.

VII. DETAILS ON SIGNIFICANT REASONS AND FREEDOM FROM PROVIDING SECURITY

45. The Investors have shown particular reasons for their claim. The Investor's claim is based on an arbitration issued in Sweden. The Investor's claim has also been established by Svea Court of Appeal, since the arbitration has given rise to a case of reprimand and invalidity. By denying Kazakhstan's claim, Svea Court of Appeal has clarified that the arbitration is valid and enforceable.

46. There are also reasons to free the Investor's from the obligation to provide security. The main purpose of security measures according to Ch. 15 in the Code for Judicial Procedure, is to ensure the applicant's right during the proceedings, i.e. the period before the applicant's claim is settled in a decision. It is usually not given that the Court will approve the applicant's action. Hence the requirement that, as a general rule, the applicant must show probable reasons for having a claim and provide security for damage that may harm the counterparty (Ch. 15 § 1 and 6 in the Code for Judicial Procedure). The purpose of the security is thus usually to safeguard the defendant's right in case the applicant's claim is dismissed.

47. In the present case, where there is a final decision that determines payment obligation for Kazakhstan, the risk that the Investor's claim in the next enforcement claim will be dismissed – and thus also the risk of Kazakhstan suffering through security measures – is non-existent. Therefore there is no reason to demand security in this case.

48. As a result of the illegal expropriation of the Investor's assets in Kazakhstan that the Republic has exposed the Investors to, and because of the numerous and comprehensive legal processes that the Investors are forced to implement, the Investors lack assets to provide security.

49. In this part, the Investors refer to the arbitration, specifically see the paragraphs 1066-1084, regarding the actions taken against the Investors and their assets from the Kazakh side. Additionally, witness certificates of Anatolie Stati, Exhibit 11 (with

Ascom's and Terra Raf's bank statements), Ascom's Annual Report for 2016 (in partial translation), Exhibit 12, and a decision on the assessment of Ascom's unpaid tax liabilities, Exhibit 13, are claimed. These documents clarify that the Investors do not have the means to provide security for the possible damage that Kazakhstan may cause.

VIII. FUTURE ENFORCEMENT

50. The Investors will, if the application for the *ex parte* attachment is upheld, as soon as possible apply for enforcement of arbitration at the Swedish Enforcement Authority.

IX. MISCELLANEOUS

51. Authorisation documents for the Investors are attached seperately. The Power of Attorney documents will be sent in original by delivery to the District Court.

52. The application fee of SEK 2,800 has been paid via the Court's web-based payment service, stating "Law firm Lindahl, ex parte attachment" as reference.

53. As above,

Bo G.H. Nilsson

Therese Isaksson

Ginta Ahrel

EXHIBITS

1. Excerpts from Euroclear Sweden AB's public trustee list for Swedbank AB, Hennes & Mauritz AB, Telefonaktiebolaget LM Ericsson, Aktiebolaget Volvo, Telia Company AB, Nordea Bank AB, Atlas Copco Aktiebolag, Sandvik AB, Aktiebolaget Electrolux with the record date 30 June 2017.

2. Arbitration announced in SCC case no. 116/2010 dated 19 December 2013.

3. Svea Court of Appeal's decision in case no. T 2675-14 of 9 December 2016.

4. Letter of 8 January 2014 from the Investors' representative (law firm King & Spalding) to Kazakhstan's representative.

5. Letter of 18 February 2014 from the Investors' representative (law firm King & Spalding) to Kazakhstan's representative.

6. Letter of 15 December 2016 from the Investors' representative (law firm King & Spalding) to Kazakhstan's representative.

7. Letter of 21 December 2016 from the Investors' representative (law firm Lindahl) to Kazakhstan's representative.

8. Print from The Bank of New York Mellon's website regarding the meaning of the abbreviation BNYMSANV.

9. Excerpts from Electrolux Base Prospectus Exhibiting the largest shareholders as of 31 March 2016, including the Ministry of Finance of the Republic of Kazakhstan, p. 62.

10. Excerpts from the Ministry of Finance of the Republic of Kazakhstan's website Exhibiting the Ministry's address.

11. Anatolie Stati's witness certification of 18 August 2017.

12. Ascom's financial statements for 2016 in partial translation.

13. Decision concerning confiscation regarding Ascom dated 25 July 2017.

SPECIFICATION FOR APPEAL – DECISION IN TRIAL (REVIEW PERMIT IS REQUIRED)

Anyone who wants to appeal the District Court's decision shall do so in writing. The note shall be sent or handed over to the District Court. The appeal will be reviewed by the Court of Appeal that is stated at the end of the decision.

The appeal should be received by the District Court within three weeks from the date that the appellant was informed of the decision.

For an appeal to be reviewed by the Court of Appeal, a review permit is required to be notified. The Court of Appeal leaves review permit if

1. there is reason to doubt the accuracy of the decision that the District Court has reached,
2. it is not possible, without giving such permit, to assess the accuracy of the decision that the District Court has reached,
3. it is important for management of the law enforcement that the appeal is being reviewed by higher court, or
4. there are other partciular reasons to review the appeal.

If a review permit is not granted, the decision of the District Court is determined. It is therefore important that it be clearly stated in the appeal to the Court of Appeal why the appellant considers that a review permit should be granted.

The note with the appeal should include details of

1. the decision that is being appealed with the name of the District Court stated, and the date and number of the decision,
2. the names and domicile of the parties, and when possible, their postal addresses, occupations, social security numbers and telephone numbers, and the parties should be referred to as appellant and defendant,
3. the appellant's requested change to the District Court's decision,
4. the grounds for the appeal,
5. the circumstances invoked as basis for the granting of a review permit, and
6. the evidence invoked and what is to be substantiated with each evidence.

Written evidence that has not been submitted earlier must be submitted at the same time as the appeal.

The note must be signed by the appellant or his/her representative.

Further information is provided by the District Court. You can find the address and telephone number on the first page of the decision.

If you have previously been informed that simplified service may be used with you in the case/matter, such service can also be used with you in higher instances if someone appeals the decision.