INTRODUCTION TO APPEAL PROCEEDINGS IN CLAIMS PROCEDURE

1 PLAINTIFF

Appellant in cassation is:

Republic of Kazakhstan (the "**Republic**"),
with registered office in Astana, Kazakhstan,

The Republic chooses domicile at Claude Debussylaan 80, 1082 MD Amsterdam, in the office of J. de Bie Leuveling Tjeenk, LLM (De Brauw Blackstone Westbroek N.V.). The Republic appoints J. de Bie Leuveling Tjeenk, LLM and J.W.M.K. Meijer, LLM as counsel to the Supreme Court.

2 DEFENDANT

Defendants in cassation are:

1. Mr. Anatolie Stati,
   residing in Chisinau, Moldavia,
2. Mr. Gabriel Stati,
   residing in Chisinau, Moldavia,
3. Ascom Group S.A.
   with registered office in Chisinau, Moldavia
4. Terra Raf Trans Trainding LTD.,
   a company under foreign law.
   with registered office in Gibraltar

Defendants are hereinafter jointly referred to as "**Stati**". Stati has chosen domicile in the previous instance at the office of attorney G.J. Meijer (Linklaters LLP), whose office is located at Zuidplein 180, 1077 XV Amsterdam.

3 CONTESTED JUDGMENT

The Republic brings an appeal against the judgment passed by the Court of Appeal of Amsterdam under case number 200.234.096/01 KG between the company under foreign law Samruk-Kazyna JSC

("**Samruk**") as appellant, The Republic as joined party and Stati as respondent and that was pronounced on 7 May 2019.

4 COMPETENT COURT

This appeal in cassation will be handled by the Supreme Court of the Netherlands, Korte Voorhout 8, 2511 EK The Hague.

5 FINAL APPEARANCE DATE

Stati can, represented by an attorney with the Supreme Court of the Netherlands, appear in these proceedings no later than on Wednesday, thirty-one July 2019 (31-7-2019). It is hereby pointed out to Stati in cassation that the single-judge civil section of the Supreme Court will hear the cases, mentioned in the overview of cases referred to in article 15 of the Order of service for courts decision, on Fridays as mentioned in chapter 1 of the Procedural Regulations Supreme Court of the Netherlands at 10:00.

6 GROUND FOR APPEAL IN CASSATION

The Republic puts forward the following ground for appeal in cassation against the judgment:
violation of the right and/or failure to observe formalities under penalty of nullity, because the court of appeal has delivered judgment in the manner described in the operative part of that judgment and on the grounds mentioned in the body of the judgment, this for the following reasons, if necessary to be assessed in conjunction.

Part 1

Part 1 is directed against the opinion of the court in ground 3.6 about immunity from jurisdiction.

The court has rejected the appeal on immunity from jurisdiction in the first instance, because the argument of Samruk in this regard lacks an actual basis. Other than Samruk would have argued, the judge in interlocutory proceedings, according to the court, has not held that the Republic has misused by incorporating Samruk, but he has held

that (it is for the time being plausible that) Samruk has misused its principally existing authority to invoke its legal independence in respect of Stati. Furthermore, the appeal miscarries on immunity from jurisdiction according to the court also because it cannot be derived from the nature of the action of Samruk that it hereby performed a typical government task.

a. By holding in ground 3.6 that the argument of Samruk as regards immunity from jurisdiction lacks actual basis, the court has [sic] from an incomprehensible reading of ground 4.7 the judgment of the judge in interlocutory proceedings and the argument of Samruk directed against it in ground for appeal 13. The argument of ground for appeal 13 is unmistakably aimed at the judgment of the judge in interlocutory proceedings in ground 4.7 that Samruk misuses its principally existing authority to invoke its legal independence in respect of Stati, *because* the Republic has incorporated Samruk to disadvantage creditors. The consideration of the judge in interlocutory proceedings that the Republic has incorporated Samruk to disadvantage creditors therefore supports its decision that there is misuse. Samruk has argued against this supporting consideration that the judge in interlocutory proceedings could not make a judgment about the incorporation of Samruk by the Republic, because immunity from jurisdiction applies in respect of the incorporation.[1] To support this argument of Samruk, the Republic has argued that the question if there is immunity from jurisdiction relates to the manner in which the Republic has incorporated and organized Samruk.[2] In light of this judgment of the judge in interlocutory proceedings and the invoked immunity from jurisdiction against this by Samruk and the Republic, it is incomprehensible that the court holds that ground for appeal 13 lacks an actual basis.

b. Furthermore, the judgment of the court that there is no immunity from jurisdiction because the fact that Samruk invokes its legal independence qualifies as a commercial activity, is also based on

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1 Statement of appeal, no. 147-148.

2 Statement after guarantees Republic dated 31 July 2018 ("**Statement after guarantees**"), no. 107.

an incomprehensible explanation of ground for appeal 13. Ground for appeal 13 after all concerns the actions of the Republic, namely the incorporation of Samruk with as goal (according to the judge in interlocutory proceedings) to disadvantage creditors and not the actions of Samruk. The consideration of the court that "*this action of Samruk*" – Samruk invoking its legal independence – qualifies as a commercial activity, is also incomprehensible. These actions after all do not result from any commercial activity of Samruk. It concerns putting up a defense, namely that it is not liable for debts of the Republic, in the dispute with Stati. Insofar as the court actually referred to "this action of the Republic" with the words "this action of Samruk" and has therefore held that this action of the Republic – the incorporation of Samruk – qualifies as a commercial activity, this judgment is insufficiently substantiated (namely not at all). This is all the more relevant since the Republic pointed out that the goal of the incorporation of Samruk was to increase the national welfare of Kazakhstan.[3] The court has failed to respond to this essential assertion.

c. Finally, the judgment of the court in respect of the invoked immunity from jurisdiction is also otherwise incomprehensible. In the present case, Samruk and the Republic have argued that the incorporation and organization of Samruk are extracted from an assessment by the Dutch judge. The court has rejected this argument in ground 3.6 by holding (in short) that not the action of the Republic, but the action of Samruk, is evaluated so that the argument of Samruk lacks an actual basis. Subsequently it has held, however, (in ground 3.10) based on circumstances that concern the manner in which Samruk is incorporated and organized by the Republic that Samruk does not have any factual economic independence and also acts as a means to keep assets of the Republic from claims by its creditors. The court has used these circumstances as a basis for its judgment that there is abuse of rights if Samruk invokes its legal independence. The court has therefore rejected the invoked legal independence by

3 Statement after guarantees, no. 46 and 47.

Samruk based on considerations that concern the circumstance that and the manner in which Samruk is incorporated and organized by the Republic. Its judgment in ground 3.6 that the argument of Samruk lacks an actual basis, because not the action by the Republic but the action by Samruk is under assessment, is therefore incomprehensible.

Part 2

Part 2 is directed against the opinion of the court in ground 3.7 about immunity from jurisdiction and execution. The court has also set aside the invoked immunity from execution. First, the appeal miscarries according to the court, because the condition under which this argument was conducted by Samruk – namely, that it is identified with the Republic – has not been realized. For the sake of completeness, the court adds that the invoked immunity from execution also miscarries otherwise and this because Stati has succeeded in making it plausible that the immediate destination of the goods (i.e. the shares of Samruk in KMGK) is another than public destination, because another explanation would make it actually impossible for individual creditors such as Stati to assert their rights.

a. The rejection of the invoked immunity from execution of the court in ground 3.7 because the condition of identification is not fulfilled, is incomprehensible. Samruk has unmistakably invoked this in case it would be true that Stati could in principle, apart from the invoked immunity, attach Samruk's shares in KMGK as recourse for its (alleged) claim against the Republic.[4] Samruk has hereby assumed that such attachment is only conceivable if identification were accepted. Of course, Samruk did not want to limit its invoked immunity from execution to this case, but invoked this for all cases in which the court would want to confirm the judgment of the judge in interlocutory proceedings, either on the basis of improved grounds or not. This argument therefore also applies to a case such as the present one in which the court has held in ground 3.11 that there is no identification, but has

4 Statement of appeal, no. 149-158.

subsequently held in ground 3.12 (nevertheless) that Stati can principally also claim the assets of Samruk.

b. The considerations used by the court for the rejection of the invoked immunity from execution in ground 3.7 has further also shown an incorrect conception of law. The court has failed to appreciate that in the assessment of immunity from execution, it is not about the immediate, but the final destinations of the goods. It comes down to determining if the goods – *in casu* the KMGK shares – are entirely or partially intended for other than public purposes, which means that it must be established how the (proceeds) of these goods[5] will be eventually spent. The fact that Samruk has a commercial purpose in the opinion of the court is in this respect - other than held by the court - therefore irrelevant and also incomprehensible (see subpart 2.c.).

c. The judgment of the court that Samruk has a commercial purpose is incomprehensible. The Republic has argued – and Stati has not disputed this – that the purpose of Samruk is to increase the national welfare of Kazakhstan. The statements of Samruk and the Republic referred to by the court in ground 3.7 do not change this. At the locations in the procedural documents quoted by the court, Samruk and the Republic have only described that Samruk was established to manage the companies in its portfolio as efficiently as possible, to bring the growth of these companies to an international level and to increase their long-term value. These statements show that Samruk is professionally managed with a goal to increase the value of its participations. The eventual goal remains to generate revenue for the Republic.

d. Furthermore, the judgment of the court in ground 3.7 that Stati has made it plausible that the destination of the shares of Samruk in KMGK is another than public destination is incomprehensible, or at least insufficiently substantiated. Between the parties it is *in confesso* that when determining the destination of the shares it

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5 The fact that it concerns the proceeds of the shares is at issue between the parties. See Statement of appeal, no. 154; Statement of defense on appeal, no. 154.

concerns the destination of its proceeds.[6] These proceeds eventually benefit the state treasury. This is all the more true in light of the argument of the Republic (not contested by Stati) that the purpose of Samruk is to increase the national welfare of Kazakhstan and from which it follows that the purpose of Samruk – other than held by the court – is not commercial.[7]

Part 3

Part 3 is directed against the opinion of the court in ground 3.8 through 3.12, in which the court has held, in short, that according to Kazakh law, there is an exception here on the principal rule that a company such as Samruk is not liable for claims on its shareholders and/or directors (the Republic) because the court considers it plausible for the time being that Samruk according to Kazakh law misuses its (principally existing) authority to invoke its legal independence in respect of Stati and this in view of the determination by the court that (i) Samruk lacks factual economic independence in its relation to the Republic and (ii) according to the court, Samruk in any case materially (also) acts as a means to keep substantial assets of the Republic out of the hands of creditors. According to the court, this means that it has been established that (also) the assets of Samruk, although no creditor of Stati, can in principle be claimed by Stati, and Stati also has no enforceable title against Samruk.

a. This opinion is first of all insufficiently substantiated, because it does not offer insight in the standard used by the court to assess that there is abuse of rights according to Kazakh law. The court establishes that, according to Kazakh law, there can be an exception on the principal rule that a legal person is not liable for the debts of its shareholder(s) and/or director(s), namely in case of abuse of rights. The court subsequently concludes that this exception is applicable here, because Samruk lacks factual economic independence in its relation to the Republic and Samruk (also) acts materially in any case as a means to keep

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6 Statement of appeal, no. 154; Statement of defense on appeal, no. 154.

7 Statement after guarantees Republic dated 31 July 2018 ("**Statement after guarantees**"), no. 46 and 47. See also no. 33 and 34 and 44.

substantial assets of the Republic out of the hands of creditors. The court, however, fails to explain on the basis of which rule of Kazakh law there is abuse of rights under these circumstances. The judgment of the court is also insufficiently substantiated since the court explicitly does not consider it relevant for the assessment of what was the (official) purpose of the incorporation of Samruk (and it must therefore be assumed in cassation that there is no purpose to keep the assets from the claims of creditors) and has furthermore concluded that there are no conflating identities between Samruk and the Republic. In light of these judgments, it cannot be understood without any further explanation, which is lacking, that there would be abuse of rights (according to Kazakh law).

Insofar as the judgment of the court must therefore be understood as meaning that the few circumstances (i) that the lack of factual economic independence; and (ii) that Samruk (also) acts as a means to keep substantial assets of the Republic out of the hands of creditors are sufficient to assume the abuse, it is also insufficiently substantiated. This judgment is based on the facts and circumstances included in ground 4.6 of the judgment of the judge in interlocutory proceedings (as quoted in the contested decision, ground 3.10), as well as on the consideration that it is true that the Republic does not manage Samruk, but that it incorporated Samruk and that as sole shareholder and via the Board of Directors and the Management Board has a decisive influence on the policy of Samruk, so that it also has final control over the assets of Samruk and how they are spent. These are, however, all facts and circumstances that directly result from Kazakh legislation[8] and rules of governance that are internationally accepted and approved by the OECD.[9] Without further explanation that is missing, it is incomprehensible how circumstances that directly result from Kazakh law and

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8 The fact that Samruk is not liable for debts of the Republic results from the Kazakhstan Civil Code ("**Civil Code**") and the Kazakhstan Law on JSCs. See the summons in interlocutory proceedings dated 24 November 2017, no. 13 and following. The circumstance that only the Republic can hold shares in Samruk follows from art. 3 Sovereign Wealth Fund Act.

9 Statement after guarantees, no. 24, 70, 73 through 75, 91 (first bullet) and 94.

internationally accepted rules with regard to governance produce in themselves abuse of rights according to Kazakh law.

b. The judgment of the court is furthermore insufficiently substantiated, because it also follows from the statements of the parties that (i) the lack of factual economic independence and (ii) the circumstance that Samruk (also) acts as a means to keep substantial assets of the Republic out of the hands of creditors, (in itself) does *not* suffice to assume abuse of rights according to Kazakh law.

   (i) Samruk pointed out that "having a decisive influence as shareholder who directs management as regards the policy of the company and exercising final control over the assets of this company cannot lead to the qualification 'actually economically dependent'" and that this is certainly no reason to actually undo the legal personality of a company. Samruk pointed out that this applies for most legal persons that form part of an (international) concern. If the circumstances deemed relevant by the court were sufficient for the abuse judgment, this would actually mean the end of the legal personality of companies.[10]

   (ii) Furthermore, Samruk has alleged that the fact that the Republic has final control over the assets of Samruk and how these are spent (i) is usual; (ii) with guarantees in place; (iii) is in line with the standards applicable for *Sovereign Wealth Funds* (such as Samruk); and (iv) is also comparable to the final control which a shareholder of, for example, a Dutch private company can exercise over the assets of this company.[11]

   (iii) The Republic has pointed out that the incorporation of a legal entity such as Samruk serves a completely legitimate purpose and is internationally accepted. This purpose

10 Plea notes Samruk in appeal, no. 37.
11 Statement of appeal, no. 75 through 119, 130 through 132.

concerns the increase of the national property of Kazakhstan by the effective management of the shares in Kazakh state participations held by Samruk. Also the OECD confirms that increasing the value for the society is a completely legitimate purpose for state participations and the control over these participations must be centralized as much as possible in one entity, as also occurred at Samruk.[12] Increasing the value for society justifies, according to the OECD, that the state is a shareholder.[13] The Republic further pointed out that the governance structure – where the Republic as shareholder has final control over the assets of the company – is normal and logical.[14]

(iv) Furthermore, Samruk has alleged that, pursuant to article 8 Civil Code – the determination of Kazakh law on which the court has based its judgment that also, under Kazakh law, a legal person can abuse its rights to invoke legal independence – "*bad faith and the specific actions that involve the abuse*" must be proven.[15] Subject to proof of the contrary by the party that invokes abuse, good faith and/or the absence of abuse must be assumed under Kazakh law.[16]

(v) Samruk also pointed out that there is no case law under Kazakh law from which it results that the circumstances alleged by the court are sufficient to conclude that invoking legal independence constitutes abuse of rights.[17]

(vi) It also follows from the documents that Stati has submitted in these proceedings that more is required to assume abuse of rights than the above-mentioned circumstances deemed relevant by the court. In the first expert opinion of

12 Statement after guarantees, no. 47 and 48.
13 Statement after guarantees, no. 87 and 88.
14 Statement after guarantees, no. 88, 89, 92, 95 and 96.
15 Statement of appeal, no. 120-128 (specifically no. 123 and 124 where a passage from the expert opinion of Suleimenov is included). See also Plea notes Samruk in appeal, no. 60.
16 Statement of appeal, no. 123-124 and 127.
17 Plea notes Samruk in appeal, no. 21, 40, 56 and 62.

Mr. Vataev who was introduced in the case by Stati he notes the following:[18]

"in circumstances such as those referred to in the Judgment [the judgment of the judge in interlocutory proceedings] *(see 4.6-4.8), including the company (i) being a mere extension from the shareholder from a factual-economic perspective and (ii) having been founded by the shareholder (in part) for purposes of allowing the shareholder to protect its assets from recourse by its creditors, the court may apply Article 8 CCRK in order to deny the company's protection of the right to be treated as a separate entity claimed by that company, as has been done in the Judgment (see 4.9)."*

[underlining added]

In his second expert opinion, Mr. Vataev subsequently considers the following:[19]

"If the right to establish a separate legal entity is exercised not with a genuine and good-faith purpose of limitation of liability, but for the goal of – e.g. – hiding assets and hindering creditors' efforts to recover debts, or the like, this would be an example of exercising the right in contradiction to its purpose, that is, an instance of abuse of the right".

[underlining added]

According to the expert introduced by Stati, there must be an action not with a genuine and good-faith purpose of limitation of liability when incorporating the legal person (i.e. Samruk); hindering creditor's efforts to recover debts; and/or the company is founded for purposes of allowing the shareholder (i.e. the Republic) to protect its assets from recourse by its creditors or the like for there to be abuse of the right. Samruk has explicitly pointed out these statements of Stati and his expert Vataev.[20]

It follows from the statement of both parties that the circumstances on which the court bases its judgment are insufficient to assume abuse under Kazakh law. More is required

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18 First expert opinion Vataev dated 19 June 2018, (exhibit 35 Stati), no. 47, also quoted in Statement of defense on appeal, no. 99.

19 Second expert opinion Vataev, presented as exhibit 59 by Stati, no. 39. Plea notes Samruk in appeal, no. 50.

20 Plea notes Samruk in appeal, no. 48 - 52.

for this. According to the expert of Stati, the incorporation of the company must be intended (in short) to frustrate the recourse of the creditors. Such intent has not appeared in this case. The court explicitly leaves unanswered what the intention was of the incorporation of Samruk,[21] so that it is certain in cassation that the Republic did not have the intention here to disadvantage creditors (such as Stati). Furthermore, no illegal actions have been established otherwise by the court, as a result of which – as also argued by Samruk – good faith and/or absence of abuse must be assumed. In light of these statements, the judgment of the court that (nevertheless) there is abuse of rights needed further substantiation.

c. Insofar as the consideration of the court in ground 3.10 – that whatever the (official) purpose of the incorporation of Samruk, it certainly materially (also) acts as means to keep substantial assets of Kazakhstan out of the hands of creditors – must be interpreted as meaning that the court intended to state here that the Republic had a specific (improper) purpose with the incorporation, the judgment of the court is incomprehensible, or at least insufficiently substantiated. The judgment of the court is then first of all inherently contradictory, since the court explicitly considered in ground 3.10 that it does not make a judgment about the purpose of the incorporation of Samruk ("*whatever the (official) purpose of the incorporation of this company may be).* Furthermore, the judgment is insufficiently substantiated in light of the detailed statements of Samruk about the purpose of its incorporation, namely to manage the companies in its portfolio as efficiently as possible and to streamline and expand this portfolio, this with a view to long-term investment results.[22] It follows from this that the incorporation of Samruk was by no means prompted with the purpose of frustrating the recourse by creditors of the Republic.

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21 See the contested judgment, ground 3.10.

22 Statement of appeal, no. 128, chapter III.1. See also Plea notes of Samruk in first instance, no. 10.

d. Furthermore, the opinion of the court in 3.10 that Samruk lacks factual economic independence in its relation to the Republic in the sense that Samruk can invoke its legal independence in respect of the Republic to conduct its own policy that deviates from (the political representatives in) Kazakhstan, is also insufficiently substantiated. Samruk and the Republic have both extensively substantiated that Samruk does have independence in respect of the Republic within the normal and internationally accepted limits. They have stated the following to this effect.

(vii) In the provisions on the governance of Samruk – laid down in a specific agreement with a view to good governance between Samruk and the Republic (the Agreement on Cooperation ("**AoC**")) and in a Corporate Governance Code prepared with the assistance of PwC and approved by the OECD – it is laid down that the Republic cannot engage in the management of Samruk other than as shareholder or through its representatives on the Board of Directors of Samruk:[23]

"The Government governs the Fund solely through exercising its powers of the Sole Shareholder of the Fund […] and through its representation on the Fund's Board of Directors"

(viii) It is also stipulated in the AoC that the Board of Directors of Samruk is completely independent in taking decisions and performing actions within its authorities.[24]

(ix) The strategy of Samruk is defined by the Board of Directors of Samruk and only after this submitted for approval to the shareholder.[25]

(x) Samruk has complete operational autonomy and does not get involved in daily activities:[26]

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23 Statement after guarantees, no. 91 (first bullet). See further no. 24, 70, 73 through 75 and 94.

24 Statement after guarantees, no. 72, 91 (third and fourth bullet) and 94.

25 Statement after guarantees, no. 91 (second bullet).

26 Statement after guarantees, no. 24, 71 and 94. The quote is included in no. 71 and comes from the AoC, art. 3.2.

"The Government grants the Fund [Samruk] *as commercial shareholder/company complete operational autonomy within limitations provided in the legislation of the Republic of Kazakhstan and the Bye-Laws of the Fund.*"

(xi) Samruk is managed by a Board of Directors, of which 40% are independent managing directors who also determine the strategy of Samruk. These are currently three independent managing directors with a strong track record in international business life.[27]

(xii) Witness statements of the three independent managing directors show that if there were objections or concerns in the past with regard to intended decisions, these decisions were not made before they were corrected or adjusted to address the objections or concerns.[28]

(xiii) It further follows from the articles of incorporation of Samruk that the purpose of Samruk is "*to increase the national welfare of the Republic of Kazakhstan by increasing the long-term value (value) of the organizations that are members of the Fund Group* [Samruk] *and effectively managing the assets are part of the Fund group"*.[29] It also follows from this that Samruk has a factual-economic independent purpose, namely to increase and effectively manage the long-term value of the interests held (cfr. Article 4 of the Kazakhstan Law on the National Welfare Fund).[30] The fact that the Republic eventually profits from this, does not affect this purpose.

(xiv) Finally, Samruk pointed out that the Republic is not entitled to the assets of Samruk. This also follows from article 3.1 (second sentence) which Samruk also pointed out and which provides that "[th]*e company*

27 Statement after guarantees, no. 25, 62 through 64 and 94.

28 Plea notes Republic in appeal dated 13 March 2019, no. 26.

29 Statement after guarantees, no. 91 (fifth bullet).

30 As also quoted in the written pleading of Samruk in first instance dated 05 December 2017, no. 10.

> [read: Samruk] […] [has] *properties that are separate from the property of its shareholders* (read: the Republic).[31]

It follows from the statements of Samruk and the Republic that Samruk has a factual-economic independent purpose and that it also operates economically independently in practice. The Republic has of course a large influence as sole shareholder, but this influence occurs in the usual way – as shareholder. This is all completely common – both in Kazakhstan, the Netherlands and internationally – and approved by the OECD, and is not different from that applicable for all companies with a major or sole shareholder. Without further explanation that is missing, it is therefore incomprehensible that the court has nevertheless accepted that Samruk lacks factual economic independence. Also insufficiently substantiated is the judgment of the court that Samruk also acts as a means to keep substantial assets of the Republic out of the hands of creditors by holding shares in a number of important Kazakh state participations which, if Samruk can invoke its legal independence in respect of a creditor of the Republic, are not eligible for recourse by this creditor, although the Republic exercises final control, since this builds on the insufficiently substantiated opinion that Samruk lacks legal independence.

e. The opinion of the court in ground 3.12 that the assets of Samruk, although it is not a debtor of Stati, are in principle eligible for recourse by Stati even though it has no enforceable title in respect of Samruk builds on the opinion of the court in ground 3.8 through 3.11 and cannot therefore be upheld either. This opinion is also incomprehensible. Without further explanation, which is missing, it is incomprehensible on which legal provision of Kazakh law the court has based its opinion that abuse leads to the fact that Stati could also have recourse to the assets of Samruk without enforceable title. As also recognized by the court and alleged by Samruk and the Republic, Kazakh law

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31 Summons in interlocutory proceedings, no. 22.

does not know any legal concept that would make such a story possible. On the contrary, Samruk has pointed out – and Stati has also recognized[32] – that, according to Kazakh law, no single basis exists for, nor is it known based on Kazakh law that a Joint Stock Company – such as Samruk – is liable for debts of its shareholder.[33] Samruk has also pointed out that a JSC such as Samruk is not liable for the debts of its shareholder.[34] Without further explanation, which is missing, it is incomprehensible that the court nevertheless held that abuse of an invoked legal independence leads to the fact (under Kazakh law) that Stati can have recourse on the assets of Samruk even though it has no enforceable title against it.

7 CONCLUSION

Based on this ground, the Republic demands that the Supreme Court sets aside the contested judgment and decides further as it deems appropriate. The Republic further demands that Stati is jointly and severally ordered to pay the procedural costs, to be increased with the statutory interest as referred to in article 6:119 Civil Code as of fourteen days after the date of the judgment.

32 Plea notes Stati in first instance, no. 47.
33 Statement of appeal, no. 71 through 73 and 121.
34 Statement of appeal, no. 48 through 58.

This case is handled by J. de Bie Leuveling Tjeenk, LLM and J.W.M.K. Meijer, LLM, De Brauw Blackstone Westbroek N.V., PO Box 75084, 1070 AB Amsterdam, T +31 20 577 1661, F +31 20 577 1775, E jan.tjeenk@debrauw.com.