Translation from Romanian

6 September 2019

Outgoing No. 70

BY DHL AND EMAIL

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Dear Sirs,

Re: Audit of financial statements of Kazpolmunay LLP ("KPM"), Tolkynneftegaz LLP ("TNG"), and Tristan Oil Ltd ("Tristan Oil") for the years ended 31 December 2007, 2008 and 2009

1. We refer to your letters of 15 February 2016 (your "**February 2016 Letter**")[1] and of 5 August 2019 (your "**First August 2019 Letter**"),[2] by which you sought input from Mr. Stati in respect of the aforementioned financial statements, and to your letter of 21 August 2019 (your "**Second August 2019 Letter**"),[3] by which you informed Mr. Stati that he should "*immediately take all necessary steps to prevent any further, or future, reliance*" on the same.

2. We further refer to our letter of response (our "**February 2016 Response**")[4] dated 26 February 2016, by which we raised a number of important threshold queries in respect of your request for information, including (*inter alia*):

   2.1 the grounds upon which your firm decided to discuss this matter with outside legal counsel for the Republic of Kazakhstan ("**Kazakhstan**"), Norton Rose Fulbright ("**NRF**"), who you say "*approached*" your firm with certain evidence without the prior authorization or consent of your clients;

   2.2 the "*court hearings*" that NRF referred you to when approaching your firm;

   2.3 the supporting evidence allegedly provided to you by HRF in 2016 in the course of your correspondence with it, which your firm chose not to provide to your clients; and

   2.4 the grounds upon which your firm considered Mr. Stati to be an "*eligible party*" to address your queries, along with copies of "*all applicable rules and guidelines in this regard*".

3. We note that you provided no substantive response to the queries set out above, and that (after specific queries were made by ourselves) you belatedly informed us on 29 February 2016 that you were also approached by the General Prosecutor's Office of the Republic of Kazakhstan (the "**GPO**") 7 months prior (on 3 August 2015) to access our confidential audit documentation (the "**GPO's Request**").[5] Your firm has not provided us with the GPO's Request, nor have you provided any details as to what was actually disclosed in 2016.

4. Further, it was only in your subsequent letter of 10 March 2016 (your "**March 2016 Letter**") that you chose to clarify for the first time that it was a month *after* your firm initially "*rejected*" NRF's request for documentation on behalf of its client,

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1 Appendix 1.

2 Appendix 2.

3 Appendix 3.

4 Appendix 4.

5 Appendix 5.

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Kazakhstan, that you were subsequently approached by the GPO.[6] At the very least, these circumstances should have put you on notice to the possibility that the requests for information from NRF and/or Kazakhstan were disingenuous.

5. In the circumstances, we can only assume that for a period of at least seven months leading up to the correspondence in February 2016, you covertly liaised with, and provided client audit documentation to, a party with an adverse interest to your clients (i.e. Kazakhstan). Worse still, your First and Second August 2019 Letters indicate that, some three and a half years after your initial breach of your duties to your clients, you have continued this course of conduct by acting in a way that breaches international standards of auditing ("ISAs") and your duties of independence, objectivity, and professional competence thereunder.

6. For the reasons set out below, we find your conduct to be negligent and in breach of ISAs, client confidentiality, and international best practice. We require a response to the urgent queries that have arisen in respect of your firm's conduct by no later than 20 September 2019.

A. The First August 2019 Letter

7. On 7 August 2019, Mr Stati received your First August 2019 Letter, which (save for certain amendments which will be dealt with in due course) was a restatement of your February 2016 Letter, in that it demanded that Mr. Stati provide information regarding Perkwood Investments Ltd ("Perkwood") within the context of TNG's financial statements for the years ending 31 December 2007, 2008, and 2009.[7]

8. It therefore came as a surprise to us that, over three years after your February 2016 Letter (which your firm did not pursue), your firm chose to resurrect these queries. Your prolonged silence in this regard is particularly surprising given the (as yet unactioned) threat made by your firm in your February 2016 Letter to "*withdraw our audit reports and to inform about such withdrawal all parties who are still, in our view, relying on these reports*". We can only assume that your firm chose to send its First August 2019 Letter because of pressure exerted on it by Kazakhstan.

9. For now, it suffices to say that:

   9.1 The "*new*" materials you rely upon to resurrect your queries do not make Herbert Smith Freehills'[8] allegations of fraud "*any more definitive*": a fact that was acknowledged as recently as July 2019 by Mr Justice Jacobs ("Jacobs J")

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6 Appendix 19.

7 Some parts of the Letters are repeated verbatim such as *"[Under/In accordance with] ISA 560 Subsequent events, we have no obligation to perform any audit procedures regarding those financial statements after the dates of our audit reports. However, if we become aware of facts which may have caused the audit reports to be amended, had such facts been known to us at the audit report date, we shall discuss such matters with management and appropriate persons charged with governance. We are therefore addressing this letter to you as you were acting in the capacity of General Director of Tristan Oil and you were the ultimate controlling party of those Companies at the date of the issue [of] our audit reports on the financial statements... ".*

8 As you are aware, Herbert Smith Freehills ("HSF") replaced NRF as Kazakhstan's global counsel following Ms Patricia Nacimiento's move from NRF to HSF in 2016.

within English High Court proceedings.[9] In short - nothing has changed since your February 2016 Letter.

9.2 Your "*view*" in this respect was and continues to be premature since at all material times you failed to collect "*sufficient and appropriate*" evidence to justify your view that parties were "*relying on these reports*". Had you contacted us when secretly approached by HSF on behalf of Kazakhstan, you would have learnt that neither the Svea Court of Appeal nor Ascom or any of the other claimants to the underlying arbitration award under SCC Arbitration V (116/2010) (the "**ECT Claimants**", "**ECT Award**" and the "**ECT Arbitration**" respectively) are in fact relying upon the disputed audit reports within the context of the aforementioned enforcement proceedings (or any other enforcement proceedings for that matter).

9.3 Further and in any event, your threat to withdraw the audit reports is a serious one. We note that it was taken without due process (as required under ISA) and without due care given the controversial circumstances of this case which, had you properly consulted us upon being approached by NFR, HSF, and/or the Ministry of Justice of Kazakhstan (the "**Kazakhstan MoJ**"), you would have understood.

B. The Second August 2019 Letter

10. By your Second August 2019 Letter, we note that you state:

> *"We have not received a response from you in respect of the [First] Letter or our question regarding whether Perkwood was a related party of Kazpolmunay LLP, Tolkynneftegaz LLP and Tristan Oil LTD within the meaning specified by IAS 24."*

11. This is unsurprising. Your Second August 2019 Letter was sent 10 working days after the receipt of your First August 2019 Letter and the queries therein were not asked of persons who were actually charged with governance in respect of TNG. Your firm, despite recognizing its obligation to "*reach out to those charged with governance at the time of the audits to seek clarification*",[10] has failed to do the same. According to ISA 260, those charged with governance are those "*entrusted with the supervision, control and direction of the entity*" who "*are accountable for ensuring that the entity achieves its objectives, with regard to reliability of financial reporting, effectiveness and efficiency of operations, compliance with applicable laws and reporting to interested parties*"[11] [Emphasis added]. Mr. Stati was not such a person.

12. Further, you chose to address both your February 2016 and First August 2019 Letters to Mr Stati on the basis that "[he] *was acting in the capacity of General Director of Tristan Oil and* [was] *the ultimate controlling party of those Companies at the date of issuance of our audit reports on the financial statements.*" As you well know, this was misconceived. Mr Stati was only involved in the management of Tristan Oil in his

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9 Appendix 6.

10 Appendix 7.

11 ISA 260 (2004) ¶3.

capacity as General Director. He was neither among the "*management*" or "*those charged with governance*" in respect of TNG or KPM. We also note that control over the assets and management of the aforesaid companies have remained with Kazakhstan since their expropriation in July 2010.[12]

13. Even if you had appropriately addressed your First August 2019 Letter, it was untenable to suggest that management and/or "*those charged with governance*" in respect of each company would have been able to properly respond and (if necessary) seek legal advice within 10 working days. In the circumstances, it was unreasonable for your firm to expect a response from Mr. Stati by this deadline.

14. By your Second August 2019 Letter, your firm asserted that:

> "*Having concluded an independent assessment of the documents provided by Herbert Smith Freehills and our own workpapers, we consider this omission* [that TNG undertook transactions with Perkwood in 2007, 2008 and 2009] *to be material, both to the financial statements of Tolkynneftegaz LLP the years* [sic] *ended 31 December 2007, 2008 and 2009, and to the combined financial statements of Kazpolmunay LLP, Tolknneftegaz LLP and Tristan Oil Ltd for said periods.*"

15. With respect, it is difficult to see how you could have "*concluded*" any "*independent assessment*" on the basis of a handful of documents hand-picked by a party with an opposing interest to your clients, without your clients' knowledge and input.

16. Finally, in your Second August 2019 Letter, we note that you did not withdraw the 18 audit reports set out therein, but rather that you required Mr Stati to "*take all necessary steps to prevent any further, or future, reliance on the following audit reports…*"

C. Inappropriate Correspondence between Your Firm and HSF

17. It was only on the afternoon of 22 August 2019 that Mr. Stati and the other ECT Claimants were alerted, through their Dutch counsel in Dutch proceedings to enforce the ECT Award, to the extensive correspondence between yourselves and HSF of this year to which we were not in copy, namely:

    17.1 Letter from HSF to KPMG dated 5 July 2019;[13]

    17.2 Letter from KPMG to HSF dated 17 July 2019;[14]

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12 ECT Award, available online at https://www.italaw.com/sites/default/files/case-documents/italaw3083.pdf, which states at paragraph 1534 that: "*between 21 and 22 July 2010, the Prime Minister and the Minister of Oil and Gas publicly declared the takeover and abrogation of the Claimants' Subsoil Use Contracts, seizure of the assets of KPM and TNG and caused them, in due course, to be transferred to KMG, which later appointed its subsidiary KMT as "trust manager" for the companies.*" See also paragraphs 620, 1084, 1092 and 1128 in respect of the July 2010 events.

13 Appendix 8.

14 Appendix 7.

17.3 Email from HSF to KPMG dated 23 July 2019;[15]

17.4 Email from HSF to KPMG dated 28 July 2019;[16]

17.5 Email from HSF to KPMG dated 29 July 2019;[17]

17.6 Email from HSF to KPMG dated 2 August 2019;[18]

17.7 Letter from HSF to KPMG dated 15 August 2019;[19] and

17.8 Letter from KPMG to HSF dated 21 August 2019.[20]

(Together, referred to as the "New Correspondence").

The content of the New Correspondence is truly shocking and raises serious concerns, as explained below.

18. Your course of conduct in privately liaising with HSF – who in its letter to you of 5 July 2019 were clear in (re-)introducing themselves as representing the opposing party in ongoing legal proceedings against your clients – without copying your clients in to the same can only be regarded as a wholesale and uncritical adoption of Kazakhstan's case, and in clear breach of your duties of objectivity, integrity, and professional judgment.

19. In particular, we have a number of concerns arising out of the New Correspondence:

19.1 First, at no material time did your firm inform HSF of the impropriety of corresponding privately with it – as legal representative of an adverse party in proceedings – in respect of confidential matters concerning your clients. This is surprising, in light of your own acknowledgement of the impropriety and illegality of such confidentiality breaches in your March 2016 Letter.

19.2 Second, your firm was aware that Kazakhstan's allegations (made through HSF) were serious in nature. However, at no material time did you include or copy us in to your correspondence with HSF so that we might be given a fair opportunity to respond. As such, your actions show an overt lack of professional scepticism and independence. Our observations at paragraph 9 above are repeated.

19.3 Third, your firm failed to consider whether the documents provided by HSF portrayed an accurate depiction of events between the parties – particularly given the context of the ongoing legal proceedings. Had we been party to this correspondence, we would have been given an opportunity to respond to these assertions, and the events represented by HSF would have been subject to

15 Appendix 9.

16 Appendix 10.

17 Appendix 11.

18 Appendix 12.

19 Appendix 13.

20 Appendix 14.

proper scrutiny.

19.4 Fourth, the correspondence indicates that your firm continues to withhold correspondence between your firm and HSF, including but not limited to the period between 2 August 2015 and 15 August 2019. In particular, we find it striking that your firm imposes the same deadline of 16 August 2019 upon Mr. Stati that is replicated – to the day – by HSF in its letter to your firm of 15 August 2019. In the circumstances, we can only assume that your firm wrongly ceded to pressure from Kazakhstan to impose an unreasonably short deadline within your First August 2019 Letter. This demonstrates (again) a pattern of subservience by your firm to the pressures applied by Kazakhstan and its lawyers.

19.5 Fifth, your firm, and in particular Oleg Goshchansky, Claus Nielson, Saken Zhumashev, and Sean Michael Tieman, acquiesced in a persistent and inappropriate course of conduct by Ms. Patricia Nacimiento ("Ms Nacimiento") of HSF in seeking to arrange an in-person meeting with the representatives of KPMG between 5 July 2019 and 29 July 2019 without representatives of your clients present.[21]

19.6 Sixth, your firm, and in particular Oleg Goshchansky, Claus Nielson, Saken Zhumashev, and Sean Michael Tieman, participated in a telephone call with Ms. Nacimiento of HSF on 1 August 2019 without your clients being given the opportunity to attend and without your clients' authorization or consent, with the result that your clients were denied the opportunity to participate in the proceeding and/or respond to protect their legitimate interests.[22] It is further noted that you have provided no minutes of that meeting (or of any further meeting(s) between your firm and HSF) to us.

20. In light of the above, your firm has failed to provide us with a reasonable opportunity to address the allegations made by HSF, which finally resulted in your Second August 2019 Letter to us. Had we been copied to the foregoing correspondence and given a fair opportunity to respond, we (at the very least) would have been able to make the following corrections.

21. For example, HSF asserted by its letter to your firm of 5 July 2019 that it had "*obtained evidence that proves that material misstatements exist in the financial statements audited by KPMG*" which included the testimony of Mr. Lungu in the US courts. HSF failed to mention that, on the very same day of its letter, Jacobs J came to the exact opposite view in English High Court proceedings and noted that the additional disclosure made by Kazakhstan (including the deposition of Mr. Lungu) made no difference to the strength of Kazakhstan's allegation of fraud.[23]

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21 See Appendix 9-11.

22 Appendix 12.

23 Appendix 6, ¶21.

22. In this respect, we note that Kazakhstan specifically submitted to Jacobs J that their allegations of fraud were (in essence) revived as a result of additional disclosure, including that:[24]

> *"Mr. Artur Lungu, a member of the senior management of the Statis' group of companies, has recently given a deposition in the US. This contradicts evidence given by Mr. Anatolie Stati in his second witness statement served in opposition to the application for indemnity costs, where he sought to maintain his case that there had been no intention to mislead KMPG as to whether Perkwood Investment Ltd. was a company related to the Statis."* [Emphasis added]

23. Jacobs J unequivocally rejected this submission on the basis that this additional disclosure added nothing to Kazakhstan's case. He found as follows:[25]

> *"I do not consider that these materials now mean that the court can be any more definitive about the strength of the allegation of fraud than was Robin Knowles J. in 2017."* [Emphasis added]

24. A further correction which would have been made by us concerns the emphasis placed by HSF on the judgment of Mr. Justice Knowles ("Knowles J") dated 6 June 2017. In support of their proposition that the "*alleged misstatements are still relevant today*", HSF asserted by their email of 23 July 2019 that "*the fraudulent scheme and the role of the financial statements*" was as described in the aforesaid decision of Knowles J. Crucially, what HSF does not say is that two weeks prior to their email, Jacobs J confirmed that "*Knowles J went no further than saying that there was a prima facie case of fraud, and that this merited trial*"[26] – a trial which has since been discontinued with the permission of the English Court of Appeal. Insofar as your firm therefore relies upon the assertions of HSF in this regard, it should be noted that (contrary to the misleading impression given by HSF) no decision has been made as to any "*fraudulent schedule*" and the role of financial statements therein. Further and as set out in Section E below, HSF's volte-face in respect of key aspects of its facts case casts considerable doubt upon the extent to which weight can still be given to Knowles J's judgment.

25. HSF also states that "*the Stati parties have repeatedly relied upon the role played by KPMG in the audit of their companies in support of their position*" and refers to a single statement within Luxembourg proceedings in support of that position. Again, this proposition is misconceived. At no material time have we relied upon the audit reports in issue to disprove HSF's case on fraud. As such, the assumption to the contrary that HSF has espoused and that has been adopted by your firm is simply misconceived.

26. We will deal with the balance of the allegations made by HSF in due course.

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24 Appendix 6, ¶17(g).

25 Appendix 6, ¶21.

26 Appendix 6, ¶19.

D. ISA Obligations

27. We note that you say that "*our audits are conducted in accordance with International Standards on Auditing ("ISA")*".[27]

(1) Ethical obligations

28. As such, at all material times your firm was and continues to be required to comply with certain ethical obligations,[28] including (*inter alia*) fundamental principles of integrity, objectivity, professional competence, confidentiality and professional behaviour.[29] These obligations require that your firm:

28.1 be "*independent*" in "*mind and appearance*" to "*enable the professional accountant in public practice to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest or undue influence of others*[30];

28.2 be "*straightforward and honest in professional and business relationships*"[31];

28.3 "*not be associated with reports, returns, communications or other information where they believe that the information (a) contains a materially false or misleading statement; (b) contains statements or information furnished recklessly; or (c) omits or obscures information required to be included where such omission or obscurity would be misleading*" [32];

28.4 "*not…compromise professional or business judgment because of bias, conflict of interest or undue influence of others*"[33]; and

28.5 "*evaluate any threats to compliance with the fundamental principles when the professional accountant knows, or could reasonably be expected to know, of circumstances or relationships that may compromise compliance with the fundamental principles.*" [34]

29. Further, we note withdrawing an audit report should be considered a last step reserved for circumstances where the auditor has been unable to obtain sufficient appropriate evidence to amend the report, and that an order of the court is required under the law of Kazakhstan. Your firm has fulfilled neither requirement in this case, and we do not understand your Second August 2019 Letter to be advising us of the same.

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27 February 2016 Letter and First August 2019 Letter.

28 ISA 200 (2006), ¶4.

29 ISA 200 (2006) ¶5; IESBA Code of Ethics for Professional Accountants (2006) (the "IESBA Code") ¶100.4.

30 IESBA Code, ¶280.2.

31 IESBA Code, ¶110.1.

32 IESBA Code, ¶110.2.

33 IESBA Code, ¶1120.1.

34 IESBA Code, ¶100.6.

30. In light of the foregoing, it came as a surprise to us to discover that, in the Kazakhstan Government's official press release of 27 August 2019 (the "MOJ Press Release"),[35] your firm is repeatedly described as having "*withdrawn*" the 18 audit reports set out in your Second August 2019 Letter. Your duties of objectivity and integrity require you to be "*straightforward and honest*" in your relationships with businesses and the public, and to maintain the appearance of independence. Both values have been compromised by your firm's failure to issue any correcting statement and/or comment in this regard, despite being approached by a representative of mass media to do so.

31. For the reasons at paragraphs 17-30 above, we consider your firm to be in breach of the aforesaid obligations, including your ethical obligations of integrity, objectivity, and "*independence of appearance*".

(2) Sufficient and appropriate evidence

32. Further, the applicable professional standards require your firm to design and perform audit procedures to obtain sufficient and appropriate audit evidence to draw "*reasonable*" conclusions.[36] In particular, your firm is required to ensure that it has a "*sufficient*" quantity of evidence, and that the evidence is "*appropriate*" in providing reasonable support for the conclusions upon which you base your firm's opinion.[37] Further, it is reasonable to expect your firm to exercise its professional judgment to consult "*on difficult or contentious matters during the course of the audit...[to] assist the auditor in making informed and reasonable judgments.*"[38]

33. Further to the above and in breach of the aforesaid obligations, we note that your firm:

33.1 failed to obtain adequate audit evidence before reaching its conclusion, as expressed in your Second August 2019 Letter;

33.2 failed to consider sufficiently or at all the reliability of the information provided to it by HSF in light of the ongoing legal proceedings; and

33.3 failed to consult us in any way on the difficult and/or contentious matters which arose in respect of the allegations of fraud made by HSF.

(3) Communication with those in charge of governance

34. Subject to what is set out above, if and when your firm identified information that indicated a fraud may exist, it should have communicated the same to those charged at the appropriate level of management "*as soon as practicable*".[39] Further, your firm was and continues to be required to determine the relevant persons who are charged with governance and with whom audit matters of governance interest should be communicated.[40]

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35 Appendix 15.

36 ISA 200 (2006), ¶24.

37 ISA 200 (2006), ¶24.

38 As recognised by ISA 200 (2009), ¶A25.

39 ISA 240 (2004), ¶93.

40 ISA 260 (2004), ¶5.

35. As such, we consider your February 2016, First August 2019, and Second August 2019 Letters to be in breach of the communications requirements imposed by ISA for the reasons set out above. Further, we note that, had your firm had any genuine concern as to the allegations of fraud made by HSF in respect of TNG's financial statements of 2007, 2008, and 2009, your firm was required to communicate and resolve those concerns in "*as soon as practicable*" in 2016. We can only draw an adverse inference from your firm's failure to act accordingly.

(4) Processes in respect of subsequent matters

36. Finally, the procedure in respect of subsequent matters under ISA 560 requires that, upon learning of a "*subsequent matter*", the auditor must:[41]

36.1 discuss the matter with management and, where appropriate, those charged with governance;

36.2 discuss whether the financial statements need amendment; and, if so,

36.3 inquire how management intends to address the matter in the financial statements.

37. In light of paragraph 36 above, it is necessarily "*appropriate*" for an auditor to discuss the matter with those charged with governance if it concerns fraud.

38. It is only when, following discussions with the relevant persons, management does <u>not</u> take sufficient necessary steps to address the matter, that the auditor should "*notify those charged with governance of the entity that action will be taken by the auditor to prevent future reliance on the auditor's report.*"[42]

39. As such, for the reasons set out above, we consider your Second August 2019 Letter to be premature, at the very least, and we request your firm to withdraw the same with immediate effect.

E. Other Relevant Circumstances

40. We appreciate the seriousness of the allegations made by HSF, and the interest your firm has in being alive to allegations of fraud or any other subsequent matters that may affect the integrity of your work and/or reputation. However, we must urge you to adopt a degree of caution in this matter, not least due to the serious questions that have arisen within the context of recent enforcement proceedings as to HSF's allegations and HSF's conduct generally.

(1) Non-disclosure by HSF

41. We note that you have been referred to the judgment of Knowles J dated 6 June 2017, in which Knowles J determined that Kazakhstan's allegations gave rise to a *prima facie* case of fraud – i.e. a case that "*at first sight*" could have been true. Instrumental to his determination was the question of whether Kazakhstan should have discovered the evidence it relied upon in respect of the alleged fraud *prior* to the ECT Award,

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41 ISA 560 (2006), ¶14-¶16

42 ISA 560 (2006), ¶18.

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such that the allegations (had they been genuine) could have been raised within the ECT Arbitration.

42. As recorded by Knowles J in his judgment, it was Kazakhstan's case that it only obtained the relevant documents in 2015. Further, not only was it Kazakhstan's case that the Perkwood Contract was *one* of the documents that allowed Kazakhstan to "*discover*" the alleged fraud – they submitted (and Knowles J agreed) that it was "*a very significant document*"[43] in respect of the alleged fraud, and that it was the "*key document that enabled [Kazakhstan] to begin to discover*" the same.[44]

43. Further, it should be noted that the crucial evidence before Knowles J in respect of Kazakhstan's factual case was derived from the written evidence of Ms. Nacimiento. In his judgment, Knowles J recognised that his judgment relied upon the veracity of the evidence put before him; as such, he took care to emphasise Ms. Nacimiento's ethical duties of candour to the court within his judgment as follows:

> *"I proceed on the basis that Ms Nacimiento has taken every care in the written evidence that she gives, under a statement of truth. She is to be taken to know that this Court will have high expectations in these respects, especially in a case of this nature involving very serious allegations."*[45]

44. It was on this basis and in light of Ms. Nacimiento's evidence (as summarised above) that Knowles J held that:

> *"I am satisfied that the State did not have access before the Award to the evidence of the alleged fraud on which it now seeks to rely, and that the evidence of the alleged fraud could not with reasonable diligence have been discovered before the Award..."*[46] [Emphasis added]

45. This finding was essential to Knowles J's decision that Kazakhstan's allegations gave rise to a *prima facie* case of fraud. However, the finding has been comprehensively disproved by Kazakhstan – through its counsel HSF –by its own "*corrections*" to its evidence – corrections which were issued 6 and then 10 months after the fact.[47] There is (at the very least) a seriously arguable case that Ms. Nacimiento's duties to the court were not, in fact, complied with.

46. By its corrections, HSF revealed that Kazakhstan did in fact have the Perkwood Contract in its possession at the time of the ECT arbitration.[48] As indicated above, this undermined the foundations of Knowles J's judgment – a fact recognised by Jacobs J when he observed in July 2019 that:[49]

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43 Available online at http://www.bailii.org/ew/cases/EWHC/Comm/2017/1348.html, ¶75.

44 Appendix 16, ¶21.

45 Available online at http://www.bailii.org/ew/cases/EWHC/Comm/2017/1348.html, ¶25.

46 See fn. 46, ¶79.

47 Appendix 16.

48 Appendix 16, ¶12 *et seq*.

49 Appendix 6, ¶21.

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> *"there remained a live issue* [following the judgment of Knowles J]*...concerning whether or not the alleged fraud was discoverable by the exercise of due diligence. The Court cannot form a final view on that issue."* [Emphasis added]

47. In light of the above, any reliance by your firm in respect of the judgment of Knowles J should therefore be tempered with considerable scepticism.

(2) Further Concerns in Respect of HSF Employees

48. Mr. Phillip Maitland Carrington, a Partner in the London office of HSF, has given evidence that upon HSF making enquiries of a *"former employee of the MoJ involved in the conduct of the arbitration"*, it appeared that the Perkwood Contract *"might have been received from the General Prosecutor's Office of the Republic of Kazakhstan (the "GPO") during the course of the Arbitration"*.[50]

49. Mr Carrington concluded:

> *"It is therefore possible that this former MoJ employee might have had an electronic copy of the Perkwood Contract in his possession during the Arbitration."*[51]

50. This *"former MoJ employee"* – since identified as Mr. Gani Bitenov – is now employed by HSF as a consultant within its practice area in Germany, and practices alongside Ms. Nacimiento.[52] He continues to form part of the HSF legal team in respect of this matter, as illustrated by his presence on the call with your firm on 2 August 2019 and his involvement in the correspondence thereafter.[53]

51. In the circumstances, the ECT Claimants have obvious concerns in respect of Kazakhstan's conduct, as well as the conduct of its legal representatives.

F. Conclusion

52. In light of the foregoing and given the seriousness of the concerns set out above, we request that you withdraw your Second August 2019 Letter with immediate effect and provide the following to us by **20 September 2019**:

52.1 all correspondence between your firm and Kazakhstan and/or HSF and NRF in respect of this matter;

52.2 confirmation that you were referred to by HSF and have read the judgment of Mr. Justice Jacobs of 2 July 2019, referred to above;

52.3 confirmation that you were referred to by HSF and have read the evidence referred to by Mr. Justice Jacobs at para. 17(g) of his judgment of 2 July 2019, referred to above;

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50 Appendix 17, ¶48.

51 *Ibid.*

52 Appendix 18.

53 Appendix 12 and 18.

52.4 an explanation as to why you failed to correct the MoJ Press Release referred to at paragraph 30 above; and

52.5 details of any "*approaches*" that have been made to your firm in respect of this matter between 1 April 2019 to date, including:

52.5.1 details of any individuals from HSF, NRF, and/or any other legal representative acting for Kazakhstan;

52.5.2 details of any employees, officers, and/or agents of any state bodies of Kazakhstan including but not limited to Kazakhstan MoJ and GOP; and

52.5.3 the time and circumstances of each approach, together with any contemporaneous documents or correspondence which document the same.

53. We look forward to hearing from you in relation to the above and remind you of your professional obligations and duties owed to your clients.

54. In the meantime, we reserve all our rights in respect of the above.

Yours Sincerely,

Grigore Pisica */signature/*

Head of Legal Department

Encs

Cc:

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I, the undersigned, Svetlana Varanita, licensed in foreign languages (holder of Diploma in English language and literature Series AL no. 0030328), translator at Ascom-Grup S.A., certify the authenticity of the translation with the text of the document, which was signed by me.

06 September 2019 *Signature:*

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