

Svea Court of Appeal (*Svea Hovrätt*)

Division 2

## STATEMENT OF CLAIM

**Claimant:** The Republic of Kazakhstan  
Ministry of Justice  
8 Mangilik El Avenue, House of Ministries, 13 Entrance  
010000, Nur-Sultan, Left Bank, Kazakhstan

**sCounsel:** Attorneys Alexander Foerster,  
Fredrik Ringquist and Malin Berggren and *jur. kand.* Daniel Piran  
Mannheimer Swartling Advokatbyrå AB  
Box 1711, 111 87 Stockholm  
Phone: 08-595 060 00  
Email: [alexander.foerster@msa.se](mailto:alexander.foerster@msa.se), [fredrik.ringquist@msa.se](mailto:fredrik.ringquist@msa.se),  
[malin.berggren@msa.se](mailto:malin.berggren@msa.se), [daniel.piran@msa.se](mailto:daniel.piran@msa.se)

**Respondents:** Anatolie Stati  
20 Dragonmirna Street  
Chisinau, MD-2008, Moldova

Gabriel Stati  
1A Ghiocilor Street  
Chisinau, MD-2008, Moldova

Terra Raf Trans Traiding Ltd.  
Don House, Suite 31  
30-38 Main Street, Gibraltar

Ascom Group S.A.  
75 A. Mateevici Street  
Chisinau, MD-2008, Moldova

**Counsel:** Attorneys Ginta Ahrel, Therese Isaksson and Bo G.H. Nilsson and  
*jur.kand.* Kristians Goldsteins  
Westerberg & Partners Advokatbyrå AB  
Box 3101, 103 62 Stockholm  
Phone: 08-578 403 00  
Email: [ginta.ahrel@westerberg.com](mailto:ginta.ahrel@westerberg.com),  
[therese.isaksson@westerberg.com](mailto:therese.isaksson@westerberg.com), [bo.nilsson@westerberg.com](mailto:bo.nilsson@westerberg.com),  
[kristians.goldsteins@westerberg.com](mailto:kristians.goldsteins@westerberg.com)

**The matter:** Action for invalidity according to the Swedish Arbitration Act (Swedish Code of Statutes 1999:116) of the arbitral award rendered by the Arbitration Institute of the Stockholm Chamber of Commerce in case no. V (116/2010), 19 December 2013

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As counsel for the Republic of Kazakhstan (“**Kazakhstan**”), we hereby submit our Statement of Claim against Anatolie Stati, Gabriel Stati, Terra Raf Trading Ltd (“**Terra Raf**”) and Ascom Group S.A. (“**Ascom**”) (jointly referred to as the “**Stati Parties**”) and state the following.

## **I. Introduction**

### **A. The case in a nutshell**

1. In this Statement of Claim, Kazakhstan requests a finding by the Court of Appeal that the arbitral award rendered on 19 December 2013 in SCC case no. V (116/2010), with correction on 17 January 2017, (the “**Arbitral Award**”), is invalid in accordance with section 33, first paragraph, subsection 1 or subsection 2 of the Swedish Arbitration Act.
2. Kazakhstan is aware that this is an exceptional request, but the disclosures which have caused it are even more exceptional and highly troublesome for the Stati Parties. Were the evidence not so compelling and clear, it would be hard to believe that the events described in this submission and which involve grave organised and cross-border economic crimes affecting the arbitral award actually took place. Yet, this is no mere hypothetical situation but, rather, circumstances which – even if subject to such a standard – can be proven beyond reasonable doubt.
3. First, we must step back. The arbitral award was rendered in the course of an arbitration according to the Energy Charter Treaty (the “**ECT**”) which the Stati Parties, headed by the Moldovan-Romanian oligarch, Anatolie Stati, initiated against Kazakhstan on 26 July 2010 (the “**ECT Proceedings**”). The arbitral tribunal accepted the Stati Parties’ assertions that Kazakhstan had violated Article 10(1) of the ECT regarding *fair and equitable treatment* (the so-called “FET standard”) and that Kazakhstan did so by pursuing a number of measures (referred to as a “harassment campaign” by the Stati Parties) against the Stati Parties’ Kazakh companies, which caused the financial problems and which, in turn, finally led Kazakhstan to terminate the companies’ contractual oil and gas exploitation rights. According to the arbitral award, Kazakhstan is obliged to pay compensation to the Stati Parties amounting to approximately USD 500 million.

4. However, the reality was that Anatolie Stati had funnelled hundreds of millions of US dollars from the business in Kazakhstan over several years and that this (and no “harassment campaign” by Kazakhstan) was the cause for the Kazakh companies’ financial distress. The aforementioned financial distress was the result of extraordinarily extensive and systematic, gross financial crimes through which the Kazakh business was looted of enormous amounts through a large number of undisclosed related-party transactions the gift-like nature of which was concealed by sham contracts. Thus, the economic problems were not only self-imposed but were also a consequence of highly intentional, inappropriate transfers of value from the companies in Kazakhstan. Thus, the conclusion upon which the entire arbitral award is based – that Kazakhstan is responsible for the failure of the Stati Parties’ “investment” to achieve a positive outcome – can be labelled *false*.
5. The disposal of assets from the Kazakh business was, *inter alia*, achieved through actions comparable to gross dishonesty to creditors, gross swindling, gross tax crimes, gross bookkeeping fraud, gross fraud as well as gross false certification and gross use of false documents. Thereafter, acts comparable to gross money laundering crimes were committed when funds from these crimes were laundered in Anatolie Stati’s own “laundromat” of bank accounts belonging to undisclosed related companies established in various offshore jurisdictions. Next, Anatolie Stati used the laundered funds, *inter alia*, to make a large number of highly suspicious payments to politicians and state employees around the world, including to the daughter of Kazakhstan’s then Vice Energy and Mineral Resources Minister, as well as for the purchase of luxury cars, luxury watches and similar luxury consumption which regularly follows in the footsteps of organised crime.
6. These circumstances were entirely unknown both to Kazakhstan and to the arbitral tribunal during the ECT Proceedings. However, given what is now known regarding the criminal conduct and its extensive and systematic nature, it does not appear particularly surprising that Anatolie Stati was not only prepared to loot the Kazakh business of assets but to also initiate arbitration against Kazakhstan under the false pretence that Kazakhstan was responsible for the business’ financial distress all the while he was aware that such distress had been caused by his own criminal conduct. Had it been known during the arbitration that the claims were tainted by gross criminal conduct, the arbitral tribunal would in all likelihood have found the Stati Parties’ claims inadmissible or otherwise would not have granted them.

7. It should be emphasised that information which shows the nature and extent of the Stati Parties' criminal activities surfaced only after the first proceedings in the Court of Appeal had been concluded. This occurred because Anatolie Stati's business was concealed by means of what was - for an outsider - an impenetrable web of straw men, shell companies and sham contracts. It has taken Kazakhstan several years and several legal proceedings in various countries to obtain access to the evidence which Anatolie Stati has done his utmost to withhold and conceal. Furthermore, the international audit firm, KPMG, reviewed its previous audits of Anatolie Stati's Kazakh business during the summer of 2019 and discovered such grave flaws in the information provided by its client that it recently found it necessary to take the extraordinary step of withdrawing a large number of previously issued audit reports concerning this business - among them audit reports which the Stati Parties relied on in the ECT Proceedings.
8. The material which was crucial in revealing Anatolie Stati's inappropriate conduct was obtained by Kazakhstan through legal assistance from the Prosecution Office of the Republic of Latvia on the basis of bilateral and multilateral treaties on international cooperation in criminal matters. Through this cooperation, which is still ongoing, Kazakhstan has continuously received access to thousands of pages of transactions involving bank accounts in the scandal-ridden Latvian bank, Rietumu Banka, during the years 2016-2019. After a time-consuming review and analysis of this extensive material, Kazakhstan has been able to map in detail how assets from the business in Kazakhstan were siphoned off as well as where the funds ended up. The documents from Rietumu Banka also made it possible to prove that Anatolie Stati, through straw men, in fact controlled a large number of companies (with which he has previously denied connections) that were crucial in the looting of the Kazakh business and the subsequent efforts to conceal the fact that the assets were derived from criminal activity and to make it possible for Anatolie Stati to make use of these assets.
9. The new disclosures which are described in this submission provide detailed insight into Anatolie Stati's "investment" in Kazakhstan, how it was influenced by extensive and systematic gross criminal conduct, and the close connection between the criminal conduct and the claims in the ECT Proceedings. If the Court of Appeal does not find that the arbitral award is invalid on the basis of these circumstances, it is difficult to imagine what type of circumstances would be required in order for a



Swedish court to reach this conclusion. The rules regarding invalidity were created specifically with situations such as the one at issue in mind, situations in which it would be outrageous to uphold the validity of an arbitral award because of gross criminal or other highly reprehensible conduct.

10. In the event the Court of Appeal upholds the award, the Court of Appeal would, in fact, abet the criminal or otherwise highly reprehensible conduct described in this submission. By virtue of the Arbitral Award, the Stati Parties have “laundered” their claims and made them appear legitimate. This was possible since, at the time of the ECT Proceedings, neither the tribunal nor Kazakhstan were aware of the criminal conduct on which the claims was based. However, the Court of Appeal is now aware of this. In the event the Court of Appeal upholds the award, the Court of Appeal would, in practice, thus abet money laundering by the Stati Parties. In the event the award is upheld. Notwithstanding the same, the Court of Appeal would, furthermore, compel Kazakhstan - which, according to the award, is obligated to perform in accordance therewith - to abet money laundering.
11. In short, the Swedish judicial system must withdraw its protective hand from the arbitral award and declare it invalid.

## **B. Structure**

12. The structure of this submission is as follows. In section II, Kazakhstan’s motions and grounds are presented. Section III contains a background description of the request in which the parties, the background of the ECT Proceedings, and the arbitral award are described. In section IV, the new circumstances which have been revealed and which show that the Stati Parties’ investment in Kazakhstan was characterised by criminal conduct and that the Stati Parties deceived the arbitral tribunal during the ECT Proceedings are described. In section V, the legal grounds on which Kazakhstan bases its claim are presented and, finally, in section VI, the reasons why there is no impediment preventing the Court of Appeal from determining the case are presented.

## **II. Motions and grounds**

### **C. Motions**

13. Kazakhstan moves that the Court of Appeal find the arbitral award rendered on 19 December 2013 in SCC case no. V (116/2010), with correction on 17 January 2014, invalid according to section 33, first paragraph, subsection 1 or subsection 2 of the Swedish Arbitration Act.
14. Furthermore, Kazakhstan moves that the Stati Parties be ordered to joint and severally compensate Kazakhstan for its legal costs which will be stated at a later time.

### **D. Grounds**

15. The arbitral award is invalid because it involves an examination of a question which may not be decided by an arbitral tribunal according to Swedish law.
16. The arbitral award is also invalid given that the manner in which it has come about is clearly incompatible with the basis of the legal system in Sweden.
17. The grounds are stated in greater detail in section V.

## **III. Background**

### **E. The Parties**

#### **E.1 Kazakhstan**

18. Kazakhstan is a republic with approximately 18 million inhabitants. With a surface area of roughly 2,7 million square kilometres, Kazakhstan is the world's ninth largest country. Kazakhstan became an independent state in December 1991. The time after the independence came with great economic challenges for the country. However, considerable gas and oil resources have created strong growth and have been crucial to the stabilisation of Kazakhstan's economy.

19. The considerable natural resources have attracted foreign investors to the Kazakh oil and gas sector. The majority of these investors have them serious and made genuine investments in the country which contributed to the country's development. Unfortunately, these considerable oil and gas resources have also attracted dubious actors who saw an opportunity to profit from the country's natural resources at the expense of Kazakhstan and its population. In some cases, this has also given rise to criminal schemes in which the country's oil and gas resources have been looted by means of improper transfers of value. The Stati Parties' previous business in Kazakhstan belongs to this latter category which should not have enjoyed the protection of the ECT.

## **E.2 The Stati Parties and affiliated companies**

### **E.2.1 The Stati Parties**

20. Anatolie Stati was born in 1952 and is a Moldovan and Romanian citizen. Anatolie Stati's exact date of birth is unknown. According to his Moldovan passport, he was born on 25 October 1952 while, according to his Romanian passport, he was born on 5 October 1952.<sup>1</sup>
21. Before the fall of the Soviet Union, Anatolie Stati worked as a factory manager. Approximately twenty years later, in 2010, Anatolie Stati was considered to be Moldova's richest man.<sup>2</sup> Anatolie Stati founded Ascom and controls a large number of companies situated in several different jurisdictions around the world. The majority of the companies controlled by Anatolie Stati are so-called "offshore companies" registered in the British Virgin Islands or other tax havens where company information is not easily accessible. In addition, most of the companies are registered for straw men. This has meant that it has been nearly impossible to obtain an overview of the Stati group.
22. Owing to the so-called Panama Papers, which were made accessible by the ICIJ Offshore Leaks Database, parts of Anatolie Stati's company structure have been revealed. It follows from the documents that Anatolie Stati and his family control an enormous network of companies around the world. The majority of the companies

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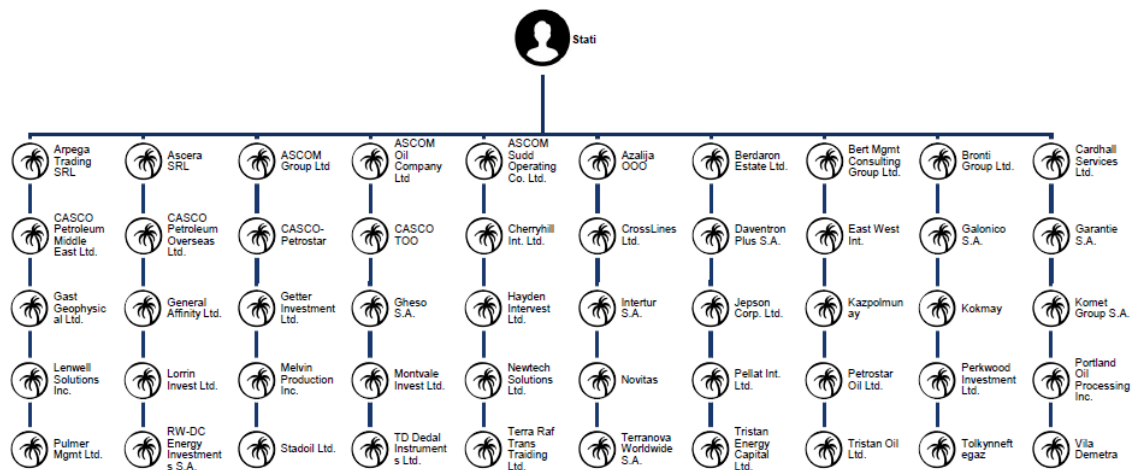
<sup>1</sup> Copies of Anatolie Stati's passport and ID-card, Exhibit K-1.

<sup>2</sup> See, *inter alia*, [https://en.wikipedia.org/wiki/Anatol\\_Stati](https://en.wikipedia.org/wiki/Anatol_Stati).

are directly controlled by Anatolie Stati. Anatolie Stati controls several companies through his wife, Larisa Stati, as well as his children, Gabriel Stati and Nicoletta Stati.

23. Recently, it was revealed that the Stati group of offshore companies is larger than indicated by the Panama Papers. With assistance from the Prosecution Office of the Republic of Latvia, Kazakhstan recently obtained access to a large amount of information concerning accounts in the Latvian bank, Rietumu Banka, which is riddled by scandals. Through this information, Anatolie Stati has been revealed as the actual owner of a large number of companies, in which straw men are used, but in respect of which Anatolie Stati has had not only a general power of attorney but also a right of disposition in respect of the companies' bank accounts.
24. Kazakhstan has currently identified a total of approximately 80 different companies, all of which are owned or controlled by Anatolie Stati. A selection of the companies follows from figure 1 below.

**Figure 1: Companies, which are owned or controlled by Anatolie Stati (not complete)**



25. In an attachment order against the Stati Parties rendered in 2014 by the High Court of England and Wales, Justice Cooke stated that Anatolie Stati has a tendency to move assets between his companies. In addition, Justice Cooke observed that

Anatolie Stati and his company, Ascom, tend to give arbitral tribunals and courts the information about assets which they deem best for them at any given time.<sup>3</sup>

“I am satisfied on the basis of all the material put before me that Mr Stati [Anatolie Stati] not only has a propensity to move assets around his group companies as he thinks fit but he and Ascom has a propensity to give information to the tribunal or the court about its assets according to what he or it thinks suits its interests at the time.”<sup>4</sup>

26. Anatolie Stati’s son, *Gabriel Stati*, was born in 1976. Gabriel Stati is also a Moldovan and Romanian citizen. Gabriel Stati was *Vice President* of Ascom from 1999 until 2007 and owns or controls, together with Anatolie Stati, a large number of companies in the Stati group, among them Terra Raf. Like Anatolie Stati, Gabriel Stati’s appears in the ICIJ Offshore Leaks Database (*inter alia*, in the Panama Papers) as well as in the documents from Rietumu Banka which Latvian authorities have provided. In 2009, Gabriel Stati was in being held in custody for his involvement in an attempt to overthrow the Moldovan government. Gabriel Stati has also been charged for having abused state power and for having organised so-called “mass disruptions”. Gabriel Stati is currently involved in an extensive fraud and money laundering investigation in Moldova (in Moldova, the case is known as “*The Theft of the Century Case*”).<sup>5</sup>
27. Ascom is a limited company registered in Moldova. Ascom is one hundred percent owned by Anatolie Stati. Anatolie Stati and Gabriel Stati are both legal representatives of Ascom. Ascom’s subsidiary, Ascom Sudd Operating Company, was placed on the US Department of Commerce’s list of companies reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. According to the US administration, the companies on this list contribute to

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<sup>3</sup> Justice Cooke’s order of 29 August 2014 in the High Court of Justice, Queen’s Bench Division Commercial Court, Royal Court of Justice Strand, London, WC2A 2LL, procedure no. 2014 FOLIO 506, Exhibit K-2, 43.

<sup>4</sup> Justice Cooke’s order of 29 August 2014 in the High Court of Justice, Queen’s Bench Division Commercial Court, Royal Court of Justice Strand, London, WC2A 2LL, procedure no. 2014 FOLIO 506, Exhibit K-2, 43.

<sup>5</sup> See, *inter alia*, excerpt from Accent-TV, Special Commission: *Vlad Plahotniuc is the main beneficiary of the theft of a billion*, published on 20 September 2019, Exhibit K-3 and article from Hromadske International, *Fugitive Oligarch Wanted in Moldova’s “Theft of the Century” Case*, published on 15 October 2019, Exhibit K-4.

the crisis in South Sudan in that they supply the country with significant revenue which, as a consequence of public corruption, is used to finance the purchase of weapons and other materials which undermine peace, security and stability rather than supporting the South Sudan's welfare.<sup>6</sup>

28. Terra Raf is a limited company registered in Gibraltar. Anatolie Stati and Gabriel Stati each own half of Terra Raf. Anatolie Stati is authorised to sign Terra Raf's company name. Terra Raf had a bank account at Rietumu Banka over which Anatolie Stati had the right of disposition. Anatolie Stati and Gabriel Stati used Terra Raf and its account at Rietumu Banka to, *inter alia*, implement and hide improper transfers of value from the business in Kazakhstan.
  
29. As described in this submission, the Stati Parties' "investment" in Kazakhstan was characterised by extensive and systematic criminal or otherwise highly reprehensible acts. The acts corresponded, *inter alia*, to acts which, according to Swedish law, qualify as gross dishonesty to creditors, gross swindling, gross tax crimes, gross bookkeeping crimes, gross money laundering, gross fraud, gross bribery as well as gross false certification or gross use of false documents. The raptor, the Stati Parties deceived the arbitral tribunal in the ECT Proceedings in order to conceal the fundamental impropriety of the "investment". Because of his controlling influence in all involved companies, the responsibility for these acts primarily rests with Anatolie Stati. For this reason, this submission focuses on acts which were committed by Anatolie Stati.

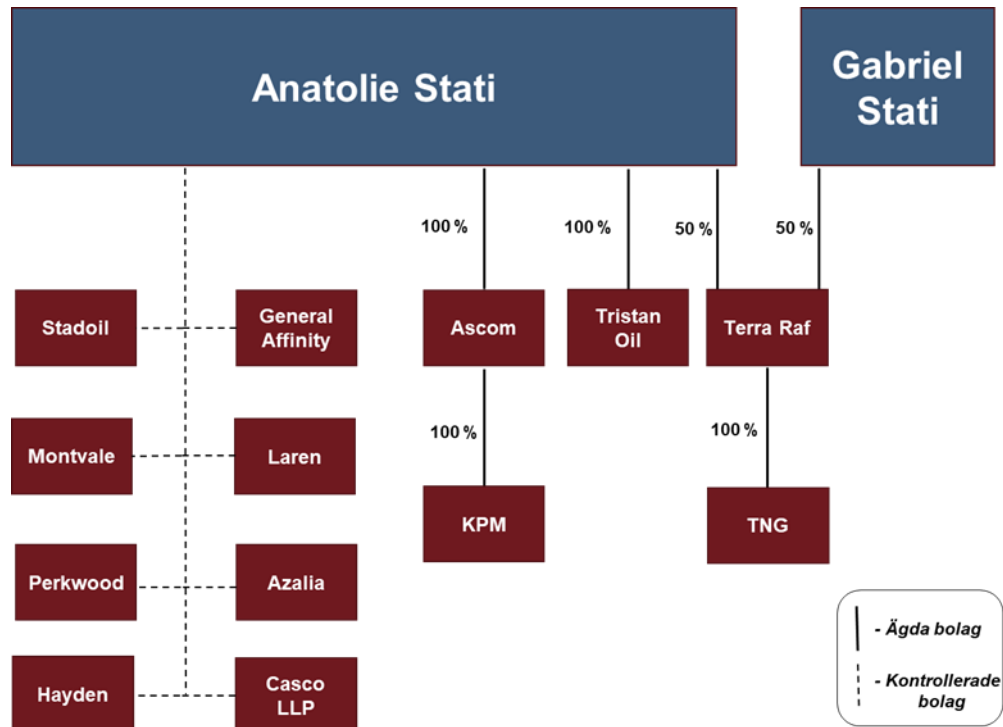
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<sup>6</sup> Federal Register /Vol. 83, No. 56/Thursday, March 22, 2018/Rules and Regulations, Exhibit K-5, s. 12475-12476. "*The Entity List (15 CFR, Subchapter C, part 744, Supplement No. 4) identifies entities reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States.*", as well as the press release on the US Chamber of Commerce's website, <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear/17-regulations>, Exhibit K-6.

E.2.2 Affiliated companies

30. As stated above, Anatolie Stati and family own and control a large number of companies around the world. The picture below shows some affiliated companies which were involved in the business in Kazakhstan.<sup>7</sup>

**Figure 2: Companies which are relevant to the current litigation**



31. *Tolkynneftegaz LLP* (“**TNG**”) is a Kazakh company which was acquired by Terra Ref through a series of transactions between 2000 and 2002. TNG is wholly owned by Anatolie Stati and Gabriel Stati via Terra Raf. TNG was one of two companies in the Stati group that had an actual business in Kazakhstan in form of oil and gas exploitation according to licenses issued by Kazakhstan. Through a series of gift-like transactions with affiliated companies, the company disposed of significant values which resulted in grave financial problems for the company. Since the summer of 2010, TNG has existed as a company without operations and without active company management. Since the company has large tax debts and no tax returns have been

<sup>7</sup> Anatolie Stati and Gabriel Stati own several other companies around the world, but only the companies appearing in the figure above are relevant to the current litigation.

submitted to the Kazakh tax authority during the past year, the company declared bankruptcy in the summer of 2019. The bankruptcy has not yet been concluded.

32. *Kazpolmunay LLP* (“**KPM**”) is a Kazakh company which was acquired by Ascom through a series of transactions between 1999 and 2005. KPM is wholly owned by Anatolie Stati via Ascom. Together with TNG, KPM was one of two companies in the Stati group that had an actual business in Kazakhstan in form of oil and gas exploitation according to licenses issued by Kazakhstan. Like TNG, KPM had grave financial problems as a consequence of a series of gift-like transactions with affiliated companies and through which the company was deprived of significant values. Since the summer of 2010, KPM has existed as a company without operations and without active company management.
33. *Tristan Oil Ltd* (“**Tristan Oil**”) is registered in the British Virgin Islands and is entirely owned by Anatolie Stati. Tristan Oil is a so-called SPV company (“*Special Purpose Vehicle*”), which was founded for the sole purpose of issuing notes in order to raise capital for the financing of KPM and TNG’s business. The funds which Tristan Oil obtained by means of the notes were supposed to be used to finance the business in KPM and TNG, but some of the funds never even reached KPM and TNG or were channelled from the companies through various sorts of improper transfers of value.<sup>8</sup> Tristan Oil did not conduct any business of its own. Other than claims against KPM, TNG and Terra Raf, Tristan Oil had no assets of relevance.<sup>9</sup>
34. *Montvale Invest Ltd* (“**Montvale**”) was registered in the British Virgin Islands on 19 September 2005. Montvale had no business of its own but was a so-called shell company which was entirely controlled by Anatolie Stati, e.g. through a general power of attorney.<sup>10</sup> On 6 November 2005, Gabriel Stati opened a bank account for Montvale at Rietumu Banka. Montvale and its account at Rietumu Banka were used to perform and conceal improper transfers of significant values from KPM and TNG, e.g. in that Montvale was paid for the oil which KPM and TNG exploited and delivered without making payment to these companies.

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<sup>8</sup> KPM and TNG paid annual interest of 17.65 per cent for the loans from Tristan Oil.

<sup>9</sup> Report from Squire Sanders after due diligence, dated 30 July 2009, Exhibit K-7, p. 46.

<sup>10</sup> General power of attorney concerning Montvale for Anatolie Stati and Gabriel Stati for 2006, Exhibit K-8.



35. Several of Anatolie Stati and Gabriel Stati's companies are controlled by a concealed straw man setup. Of these companies, the following are relevant to the current litigation.
36. *Perkwood Investment Ltd* ("**Perkwood**") was registered in England on 14 September 2005 with Sarah Petre-Mears as the only member of the board and Edward Petre-Mears as secretary.<sup>11</sup> Sarah and Edward Petre-Mears are frequently used as straw men. In 2015, they were registered as representatives for over 1,000 different companies.<sup>12</sup> Thus, they were straw men and, in fact, Perkwood was controlled by Anatolie Stati and Gabriel Stati<sup>13</sup> through general powers of attorney according to which they were entitled to represent Perkwood in all matters. In addition, Anatolie Stati had right of disposition in respect of Perkwood's bank account in the Latvian bank, Rietumu Banka.<sup>14</sup> Only Anatolie Stati and Gabriel Stati had access to Perkwood's bank account and they were also the sole beneficiaries of the funds on the bank account.<sup>15</sup>
37. For the years 2006-2009, Perkwood has stated to the English companies house (the equivalent to the Swedish *Bolagsverket* (Companies Registration Office)) that the company was dormant (a so-called "dormant company").<sup>16</sup> According to Perkwood's articles of association, the objects of the company's business was a large number of widely diverse businesses.<sup>17</sup> Perkwood was dissolved on 3 May 2011.<sup>18</sup>
38. Perkwood and its bank account at Rietumu Banka were used, for example, to extract funds of a significant value out of TNG by means of TNG purchasing equipment from

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<sup>11</sup> Excerpt from the Companies House concerning Perkwood, Exhibit K-9, see, *inter alia*, p. 1, which is a certificate of registration for Perkwood and p. 4-5 where it follows that Sarah Petre-Mears was the only board member.

<sup>12</sup> See excerpt from Companies House regarding Edward and Sarah Petre-Mears, dated 12 November 2015, Exhibit K-10. See, also, article from The Guardian, Sham directors: the woman running 1,200 companies from a Caribbean rock, published on 25 November 2012, Exhibit K-11, which presents a similar picture.

<sup>13</sup> In 2009 the general power of attorney was issued only to Anatolie Stati; see general powers of attorney concerning Perkwood for 2005, 2006, 2007, 2008 and 2009, Exhibit K-12.

<sup>14</sup> Information regarding bank accounts at Rietumu Banka, Exhibit K-13.

<sup>15</sup> Certificate of beneficiaries for Perkwood's bank account, Exhibit K-14.

<sup>16</sup> Perkwood provided the "SIC code" 9999, which, according to Companies House's register of SIC codes, means that the company is dormant; see excerpt from the Companies House concerning Perkwood, Exhibit K-9, pp. 18, 25, 32, 39 and 58.

<sup>17</sup> Excerpt from the Companies House concerning Perkwood, Exhibit K-9, p. 6.

<sup>18</sup> Excerpt from the Companies House concerning Perkwood, Exhibit K-9, p. 62.

Perkwood at inflated prices in transactions between affiliated companies which were presented as transactions with external parties.

39. *Azalia OOO* (“**Azalia**”) was a company registered in Russia. On paper, it was owned by Azalia’s sole member of the administrative board, Alexey Nikolaevich Shorin, and a man named Alexander Bryukhanchikov. Neither Alexey Nikolaevich Shorin nor Alexander Bryukhanchikov were involved in the company’s business.<sup>19</sup> The control of Azalia was instead allegedly delegated through powers of attorney to three of Anatolie Statis’ closest co-workers at Ascom, Viorel Railyan, Oleg Zaharia and Sergei Bisultanov.<sup>20</sup> The powers of attorney included the right to open, exercise a right of disposition over, and close bank accounts.<sup>21</sup> Azalia had a bank account at Rietumu Banka which was used to receive payments from Perkwood.<sup>22</sup> Anatolie Stati signed instructions concerning payments from Azalia’s bank account at Rietumu Banka.<sup>23</sup> As far as is known, Azalia did not have assets other than this bank account.<sup>24</sup> Azalia was de-registered on 6 June 2016.<sup>25</sup> Azalia and its bank account at Rietumu Banka were, *inter alia*, used the same arrangement as Perkwood, entailing that substantial funds were extracted from TNG through concealed transactions between affiliated companies in which purchases of equipment were inflated.
40. *Hayden Invest Ltd* (“**Hayden**”) was founded in 2005 and is registered in the British Virgin Islands.<sup>26</sup> Hayden is owned by the company, Delstar Corporate Services Ltd (also registered in a tax haven). Between 5 October 2005 and 5 October 2010, both Anatolie Stati and Gabriel Stati had a general power of attorney to represent Hayden in all matters. Between 5 October 2010 and 5 October 2016, Anatolie Stati had a general power of attorney to exclusively represent Hayden in all matters.<sup>27</sup> In addition, Anatolie Stati and Gabriel Stati were the sole beneficiaries of the funds on Hayden’s

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<sup>19</sup> Expert opinion from Steef Huibregste, 6 February 2019, Exhibit K-15, p. 20.

<sup>20</sup> Powers of attorney concerning Azalia, Exhibit K-16.

<sup>21</sup> Powers of attorney concerning Azalia, Exhibit K-16.

<sup>22</sup> Azalia’s bank statement, Exhibit K-17.

<sup>23</sup> Instruction for payment from Azalia’s bank account on 25 July 2017, Exhibit K-18 and instruction for payment from Azalia’s bank account on 11 June 2008, Exhibit K-19.

<sup>24</sup> Expert opinion from Steef Huibregste, 6 February 2019, Exhibit K-15, p. 21.

<sup>25</sup> Written witness statement from investigator with the Kazakh Department of Finance (unofficial translation), Exhibit K-20, p. 1.

<sup>26</sup> Certificate of registration for Hayden, Exhibit K-21.

<sup>27</sup> Powers of attorney concerning Hayden for the period 5 October 2005 - 5 October 2016, Exhibit K-22.

bank account which was opened at Rietumu Banka in Latvia by Gabriel Stati on 4 November 2005.<sup>28</sup> Anatolie Stati was registered as the owner of Hayden's bank account.<sup>29</sup> Thus, Anatolie Stati and Gabriel Stati exercised full control of Hayden. Anatolie Stati and Gabriel Stati used Hayden and its bank account at Rietumu Banka to conceal the fact that money sent from Kazakhstan was derived from criminal activities and to advance Anatolie Stati and Gabriel Stati's opportunities to make use of these funds. In addition, Anatolie Stati and Gabriel Stati used funds on Hayden's bank account for payments to politicians and state employees in countries in which Anatolie Stati and Gabriel Stati had investments.

41. *Stadoil Ltd* ("**Stadoil**") was registered in Scotland and was owned by Axiano Company Secretaries Ltd. However, based on a *declaration of trust*, it appears that Elena Ozerov was the actual owner of Stadoil.<sup>30</sup> Elena Ozerov was employed by Ascom's financial department and was married to Anatolie Stati's personal driver, Eldar Kasumov. Through a power of attorney, Elena Ozerov represented Perkwood in entering into a contract concerning purchases of equipment for the so-called LPG plant (see, further, paragraph 49 below) and which was entered into between Perkwood and TNG.<sup>31</sup> Since Anatolie Stati controlled Perkwood, there is much to indicate that Elena Ozerov was acting on Anatolie Stati's instructions in her role as representative of both Perkwood and Stadoil. Furthermore, Stadoil had a bank account at Rietumu Banka in respect of which Anatolie Stati had a right of disposition.<sup>32</sup> Stadoil sold the oil, which was produced by KPM's business, but under conditions which were in no way reasonable in light of market conditions and resulted in KPM being deprived of substantial values. Stadoil was a shell company and conducted no business of its own apart from the oil sales. Stadoil was dissolved on 25 April 2014.
42. *General Affinity Ltd* ("**General Affinity**") was registered in England and Wales. The company's owner and sole member of the board was the same straw man as in Perkwood (Sarah Petre-Mears). Anatolie Stati and Gabriel Stati controlled General

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<sup>28</sup> Certificate of beneficiary for Hayden's bank account, Exhibit K-23 and agreement on the opening and servicing of the settlement account for Hayden, Exhibit K-24.

<sup>29</sup> Information regarding bank accounts at Rietumu Banka, Exhibit K-13.

<sup>30</sup> Declaration of Trust for Elena Ozerov, Exhibit K-25.

<sup>31</sup> The Perkwood agreement, Exhibit K-26, which is described in more detail in section K.4.3.

<sup>32</sup> Information regarding bank accounts at Rietumu Banka, Exhibit K-13.

Affinity through a power of attorney.<sup>33</sup> General Affinity had a bank account at Rietumu Banka in respect of which Anatolie Stati had right of disposition.<sup>34</sup> General Affinity sold the oil and the gas condensate which was produced by TNG's business. General Affinity was also a shell company and conducted no business of its own apart from the oil sales. Like KPM's sales to Stadoil, TNG's sale to General Affinity was not carried out subject to market conditions and resulted in TNG being deprived of substantial values. General Affinity registered information with the English authorities, according to which it should be regarded as a corporation with limited business, which enjoyed a less stringent obligation pursuant to section 249 a (1) of the English Companies Act 1985. General Affinity had no employees and was dissolved on 14 May 2013.

43. *Laren Holdings Ltd* (“**Laren**”) was a so-called “SPV company” (“*Special Purpose Vehicle*”) registered in the British Virgin Islands. The company was founded in order to enable a loan and note transaction in June 2009, through which, among others, KPM and TNG assumed payment obligations of approximately USD 170 million in exchange for funds which amounted to only USD 55 million.<sup>35</sup> Anatolie Stati has previously denied that he controlled Laren, but circumstances which confirm that Anatolie Stati controlled the company have come to light (*inter alia*, Anatolie Stati performed legal acts on Laren's behalf through his personal chauffeur, Eldar Kasumov).<sup>36</sup>

### **E.3 Companies outside the Stati group which are relevant to this litigation**

44. *Vitol Group* (“**Vitol**”) is a Dutch-Swiss raw materials trading company which trades in petrol, natural gas, coal, emission allowances and bio fuel. Vitol is regarded as the world's largest company in its field.<sup>37</sup> Vitol purchased the majority of the oil and gas condensate which was extracted in KPM and TNG's business, but did so according to contracts with Terra Raf and, subsequently, Montvale (which, in turn, purchased KPM

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<sup>33</sup> Powers of attorney concerning General Affinity for the period 18 May 2006 until 18 May 2009, Exhibit K-27.

<sup>34</sup> Information regarding bank accounts and Rietumu Banka, Exhibit K-13.

<sup>35</sup> Laren's deed of foundation and articles of association, Exhibit K-28, p. 5. The transaction is described in more detail in section M.3.1 below.

<sup>36</sup> See section M.3.2 below.

<sup>37</sup> See, *inter alia*, <https://en.wikipedia.org/wiki/Vitol>.

and TNG's oil and gas condensate via the affiliated companies, Stadoil and General Affinity).<sup>38</sup> Even though Vitol paid Terra Raf and, subsequently, Montvale for the oil and gas condensate three months in advance, KPM and TNG did not receive full payment for their deliveries but, rather, continuously had extensive claims against Stadoil and General Affinity respectively. This was due to the fact that Terra Raf and, subsequently, Montvale used some of the revenue from KPM and TNG's oil and gas condensate for purposes which did not have any connection to the business in Kazakhstan. Substantial sums were *inter alia* transferred to Hayden's account at Rietumu Banka.

45. Rietumu Banka is one of several Latvian banks which, in recent years, have been revealed to have made money laundering on a large scale possible. For example, a French court ordered Rietumu Bank to pay USD 91 million in fines in July 2017, due to its involvement in money laundering in July 2017. According to the court, the bank has facilitated tax evasion for French citizens and small businesses up to an amount corresponding to approximately USD 964 million between 2007 and 2012.<sup>39</sup> Azalia, General Affinity, Hayden, Montvale, Perkwood, Stadoil, Terra Raf, Lenwell Solutions Inc and Komet Group S.A. all had bank accounts at Rietumu Banka in respect of which it was revealed that Anatolie Stati and/or Gabriel Stati, directly or indirectly, had the right of disposition. After a request for legal assistance according to bilateral and multilateral conventions on international cooperation in criminal investigations, Kazakhstan obtained access in 2016-2018 to a large number of documents concerning these companies' accounts at Rietumu Banka through the Prosecution Office of the Republic of Latvia, which included documents that show which transactions were performed during the years 2007-2010. These documents indicate that the Stati Parties' alleged investments in Kazakhstan as well as their claims in the ECT Proceedings have been permeated by criminal or otherwise reprehensible acts. In total, more than 30 companies in the Stati-conglomerate had bank accounts at Rietumu Banka.

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<sup>38</sup> Until June 2007, the oil and natural gas was sold to Terra Raf. After that, from July 2007, Stadoil and General Affinity sold the oil and natural gas to Montvale.

<sup>39</sup> See article from The Baltic Times, *Rietumu Banka hit with heavy fine over laundering scheme in France*, published on 6 July 2017, Exhibit K-29.

## **F. The Stati Parties' business in Kazakhstan**

### **F.1 The Stati Parties' establishment and financing of the business in Kazakhstan**

46. As explained above and as will be described below, between 1999 and 2005, Anatolie Stati and Gabriel Stati purchased 100% of the shares in the two Kazakh companies, TNG and KPM, through the companies, Terra Raf and Ascom. TNG owned the exploitation rights to the Tolkyn gas field as well as the exploration rights to the Tabyl area. KPM owned corresponding rights to the Borankol field. Both KPM and TNG exploited gas condensate and oil.
47. The Stati Parties initially financed the business in Kazakhstan with bank loans from the Kazakh banks, KSC Kazkommertsbank and JSC Halyk Bank. However, a loan agreement between the banks and TNG included several obligations which gave the banks the opportunity to supervise and control the manner in which TNG used its funds including, *inter alia*, conditions according to which TNG was obliged to open a "passport of transaction" - which was required for cross-border transaction according to Kazakh currency legislation - exclusively with JSC Kazkommertsbank and JSC Halyk Bank and which gave the banks full insight in TNG's international transactions.
48. In late 2005, KPM and TNG began to sell their oil and gas condensate to Vitol. The companies did not sell the oil and gas condensate directly to Vitol and KPM and, furthermore, TNG did not receive any payment directly from Vitol. Instead, the Stati Parties used a scheme by which the Kazakh natural resources were sold to Vitol via two routes by non-Kazakh affiliated companies (Vitol first had contracts concerning the purchase of oil and gas condensate with Terra Raf and, subsequently, with Montvale commencing in July 2007). Terra Raf and Montvale, in turn, purchased oil from Stadoil and General Affinity.
49. In 2006, Anatolie Stati and Gabriel Stati started to build an LPG plant at the Borankol field ("**The LPG plant**") through a joint venture between TNG and Vitol.<sup>40</sup> The LPG plant was a gas refining plant for extraction of gas oil from natural gas and was owned by TNG. According to the joint operating agreement between Vitol and TNG regarding the construction of the LPG plant, Vitol would pay part of the cost of the

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<sup>40</sup> *LPG* stands for Liquefied Petroleum Gas.

LPG plant in exchange for some of the revenue that the LPG plant was to generate in the future.<sup>41</sup>

50. In late 2006, the Stati group decided to seek loan financing other than through the Kazakh banks. For this purpose, Tristan Oil was founded. The affiliated company, Tristan oil, began issuing notes on the international note market with the aim of financing the business in Kazakhstan. Such financing was not subjected to the restrictions that the financing from Kazakh banks had been. In addition, the financing establish with Tristan oil did not afford any outside financier the opportunity to monitor and control how the Stati group used their financing any longer.
51. The notes issued by Tristan Oil constituted loans from external investors to the issuing company - Tristan Oil in this case - paid in exchange for which Tristan Oil paid interest and redeemed any notes. Tristan Oil's notes were issued in accordance with a note agreement, referred to as the Tristan Trust Indenture, which was concluded between Tristan Oil, KPM TNG and Wells Fargo Bank N.A on 20 December 2006 (the "**Tristan Indenture**").<sup>42</sup> According to the Tristan Indenture, KPM and TNG were guarantors and therefore liable for payment of Tristan Oil's debts as well as for their own debts to the noteholders.<sup>43</sup> In addition, Tristan Oil's debt was guaranteed by pledges from shareholders of Tristan Oil, KPM and TNG.<sup>44</sup>
52. Tristan Oil's first issue was carried out on 20 December 2006, after which the second issue was carried out on 7 June 2007. Through the issues, notes amounting a total nominal value of USD 420 million were issued.<sup>45</sup> The notes which were issued pursuant to these two issues are referred to in the following as the "**Tristan notes**".

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<sup>41</sup> Joint operating agreement between Vitol and TNG dated 27 June 2006 (the "JOA Agreement"), Appendix K-30.

<sup>42</sup> Wells Fargo Bank was "trustee" for the Tristan Trust Indenture.

<sup>43</sup> Tristan Trust Indenture, section 1.01 and 11.01, Exhibit K-31.

<sup>44</sup> This means that Anatolie Stati pledged his shares in Tristan Oil, Ascom pledged its shares in KPM and Terra Raf pledged its shares in TNG. Anatolie Stati, Ascom and Terra Raf's guarantee undertakings were not personal but limited to their respective shares (see Kazakhstan's first Post-Hearing Brief, dated 8 April 2013, Exhibit K-38 paragraph 1056 and Report from Squire Sanders after due diligence, dated 30 April 2009, Exhibit K-7, p. 188 ff.

<sup>45</sup> The notes matured in 2012. The annual interest rate for the notes amounted to 10.5 percent and was paid biannually. See Tristan Trust Indenture, Exhibit K-31, p. 1 and exhibit A p. 2.

53. Later, in 2009, Tristan Oil also carried out a third issue (the “**New Tristan notes**”). As a consequence of this issue, KPM and TNG assumed payment obligations of approximately USD 111 million in exchange for a loan of only USD 30 million. At the same time, an additional loan USD 30 million was made on conditions according to which KPM and TNG guaranteed and assumed payment obligations of USD 60 million. In total, these transactions, entailed that KPM and TNG guaranteed and assumed payment obligations of USD 171 million for loans corresponding to USD 60 million. Thus, the loan cost was USD 111 million, excluding the interest cost.
54. As a result of the circumstances which have now come to light, Kazakhstan has learned that the financing arrangements described above did not finance the businesses of KPM and TNG to the extent suggested by the Stati group during the ECT Proceedings. Substantial sums never reached the business in Kazakhstan or were channelled out of this business.

**F.2 Kazakhstan investigated (then known) irregularities in connection with the Stati Parties’ business**

55. On 6 October 2008, Moldova’s then President, Vladimir Voronin, wrote to Kazakhstan’s President, Nursultan Nazarbayev, and informed him that Anatolie Stati used revenue from KPM and TNG in order to invest in areas which were subject to the UN’s sanctions, especially in South Sudan.<sup>46</sup> Accordingly, Kazakhstan initiated a number of investigations of KPM and TNG.
56. In the autumn of 2008, *inter alia* Kazakhstan’s tax and customs authority performed tax inspections of KPM and TNG’s businesses. The tax audits led to the imposition of a residual tax of USD 62 million on KPM and TNG since it was revealed that the companies had filed incorrect tax returns.<sup>47</sup> Another issue which was subject of the investigation was the financing of the Stati Parties’ business in Kazakhstan (especially the Stati Parties’ refinancing of previous loans through notes issued by Tristan Oil).
57. In addition, KPM’s General Manager, Serghey Cornegruta, was charged and sentenced to a term of imprisonment because KPM had operated a “trunk pipeline” without the corresponding license. In addition, KPM was ordered to repay the

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<sup>46</sup> Letter from Vladimir Voronin to Nursultan Nazarbayev on 6 October 2008, Exhibit K-33.

<sup>47</sup> The arbitral award dated 19 December 2013, Exhibit K-34, paragraph 582.



illegitimate profits which the company had made by operating a trunk pipeline without a license.<sup>48</sup>

58. As will be described in more detail in section K below, it is now also clear from the information from Rietumu Banka provided by the Prosecution Office of the Republic of Latvia that Moldova's President, Vladimir Voronin, was correct in his suspicion that the Stati Parties used large amounts of KPM and TNG's revenues to finance projects abroad. This was achieved by virtue of gift-like transactions with affiliated companies since KPM and TNG delivered oil for which they were not paid. Instead, the oil revenues were directed to other Stati companies. This criminal or otherwise reprehensible business was concealed by channelling funds from Kazakhstan through a large number of accounts at Rietumu Banka on the basis of several sham contracts between secretly affiliated companies. Some of the funds which were channelled in this way were finally used for private luxury consumption and to pay large sums to politicians and state employees in several countries in which the Stati Parties had investments.

### **F.3 The Stati Parties decided to leave Kazakhstan**

59. Falling oil prices in 2008 led to declining revenues from KPM and TNG's oil and gas production, which meant that the Stati Parties could not transfer the same amounts out of Kazakhstan. In the summer of 2008, the Stati Parties decided to sell their assets in Kazakhstan (KPM, TNG, the LPG plant) and leave the country. The Russian investment bank, Renaissance Capital, was hired as a consultant for the sales project which was referred to as "Project Zenith".
60. However, the Stati Parties needed capital and, in the autumn of 2008, negotiations regarding a loan of USD 150-175 million were initiated with Credit Suisse. As will be described in greater detail in section J, however, no loan agreement was concluded.
61. In January 2009, the international credit rating agency, Fitch Ratings ("**Fitch**"), and Moody's Investors Service ("**Moody's**"), downgraded Tristan Oil's credit rating.

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<sup>48</sup> The decision was appealed by the Stati Parties. The appeal was, however, dismissed and the tax decision was confirmed by Kazakhstan's Supreme Court.

Later in the spring of 2009, Moody's also downgraded Tristan Oil's debt to the noteholders which were guaranteed by KPM and TNG.

62. In order to be able to carry out the sale of TNG and KPM, which required settlement of the companies' tax debts, the Stati Parties concluded a combined loan and note transaction agreement ("**the Laren scheme**") through the newly founded SPV company, Laren, in June 2009. After parts of KPM and TNG's tax debts had been settled, it was planned that the companies should be sold in the course of Project Zenith. As will be described below in section M, it has now been revealed that, had the Laren scheme worked, Anatolie Stati would have earned millions by cashing in on Tristan Oil's notes. However, this was a risky strategy given the fact that the entire plan would fail if the potential purchaser of KPM and TNG withdrew. The Laren scheme did not work out as planned and the Stati Parties instead ended up in a self-imposed financial dilemma which, in practice, was the deathblow for the business in Kazakhstan.

**F.4 Kazakhstan finally withdrew from KPM and TNG's contract regarding exploitation rights**

63. Kazakhstan continued to investigate the Stati Parties' business during the autumn of 2009 and the spring of 2010. During these investigations, it was revealed that the Stati Parties had violated Kazakh law several times through the companies, KPM and TNG (*inter alia*, Kazakh tax law).
64. During the spring of 2009, the Stati Parties had still not paid their substantial tax debts and the fines they had been ordered to pay, as a consequence of which the Kazakh tax authority decided to seize parts of KPM and TNG's assets and freeze their bank accounts. After entering into the Laren scheme, the Stati Parties paid some of the tax debt and the seizure was accordingly terminated.
65. Because of the Stati Parties' breaches of the terms and conditions of the contracts governing exploitation rights (lack of reporting), Kazakhstan decided to rescind KPM and TNG's contracts for exploitation rights with immediate effect on 21 July 2010.

## **G. The Stati Parties initiated the ECT Proceedings against Kazakhstan**

### **G.1 The Stati group based their application in the ECT Proceedings on the assertion that Kazakhstan conducted a “harassment campaign” and that this had caused a grave liquidity crisis**

66. Five days after Kazakhstan’s rescission of the contracts with KPM and TNG, on 26 July 2010, the Stati Parties initiated arbitral proceedings with the SCC and moved that Kazakhstan be ordered to pay approximately USD 3 billion in compensation because of alleged breaches of the ECT.

67. In the ECT Proceedings, the Stati Parties based their application on the allegation that Kazakhstan had reached Article 10 (1) of the ECT on *fair and equitable treatment*, the so-called FET standard, by carrying out a “harassment campaign” against KPM and TNG. According to the Stati Parties’ lawsuit, the alleged “harassment campaign” was initiated during the term of 2008 and included, *inter alia*, the measures taken by the authorities described above in section F.2.<sup>49</sup>

68. According to the Stati Parties, Kazakhstan’s “harassment campaign” caused substantial financial problems for KPM and TNG which, in turn, gave rise to a serious solvency crisis in the companies in the spring of 2009. The Stati Parties claim that the following events are direct consequences of Kazakhstan’s alleged “harassment campaign”.

- (i) Moody’s and Fitch’s downgrade of Tristan Oil’s credit rating and Tristan Oil’s debt to the noteholders during the spring of 2009.<sup>50</sup>
- (ii) The loss of the Credit Suisse loan in December 2008, which the Stati Parties claim was necessary for keeping KPM and TNG solvent.<sup>51</sup>

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<sup>49</sup> The arbitral award dated 19 December 2013, Exhibit K-34, *inter alia*, paragraph 683.

<sup>50</sup> The Stati Parties’ first Post-Hearing Brief, dated 8 April 2013, Exhibit K-35, paragraphs 23, 219 and 349 as well as the Stati Parties’ second Post-Hearing Brief, dated 3 June 2013, Exhibit K-36, paragraphs 116, 208, 209 and 239.

<sup>51</sup> The Stati Parties’ first Post-Hearing Brief, dated 8 April 2013, Exhibit K-35, paragraphs 23 and 137 as well as the Stati Parties’ second Post-Hearing Brief, dated 3 June 2013, Exhibit K-36, paragraphs 116.

(iii) Entry into the Laren scheme because the Stati Parties claimed that Kazakhstan's "harassment campaign" prevented lenders from being willing to grant loans to the Stati Parties subject to commercial terms and conditions.<sup>52</sup>

69. In summary, the Stati Parties claimed that Kazakhstan's alleged "harassment campaign" was the reason for KPM and TNG's financial problems which, in turn, prevented the companies from being able to pay their debts and caused Kazakhstan to seize parts of the Stati Parties' assets and, finally, rescinding the contracts with KPM and TNG's regarding exploitation rights on 21 July 2010.

**G.2 Kazakhstan denied that a "harassment campaign" had been carried out, and claimed that the measures were legitimate and had not caused KPM and TNG's financial problems**

70. Kazakhstan denied the Stati Parties' allegations that the state had carried out a "harassment campaign" against KPM and TNG. Kazakhstan mainly asserted that the investigations of KPM and TNG had been legitimate and that these had been initiated because of the legalities and irregularities had been identified in the companies' business.<sup>53</sup>

71. Furthermore, Kazakhstan asserted, *inter alia*, that, in any case, there was no causal connection between the Stati Parties' financial problems and Kazakhstan's alleged actions. Kazakhstan claimed instead that the financial problems had been caused by internal circumstances within the Stati Parties' own company sphere as well as the worldwide financial crisis which emerged in 2008.<sup>54</sup>

**G.3 The arbitral tribunal based the award on the Stati Parties' allegations regarding the cause of KPM and TNG's financial problems**

72. According the award of 19 December 2013, the arbitral tribunal ordered Kazakhstan to pay approximately USD 497 million to the Stati Parties because of violations of the FET standard in the ECT. In this context, the arbitral tribunal based its decision on the

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<sup>52</sup> The Stati Parties' first Post-Hearing Brief, dated 8 April 2013, Exhibit K-35, paragraphs 24, 217, 353 and 335 as well as The Stati Parties' second Post-Hearing Brief, dated 3 June 2013, Exhibit K-36, paragraphs 213.

<sup>53</sup> The arbitral award dated 19 December 2013, Exhibit K-34, paragraph 4.

<sup>54</sup> The arbitral award dated 19 December 2013, Exhibit K-34, paragraph 4.

Stati Parties' allegations regarding the cause for KPM and TNG's financial problems and concluded that Kazakhstan had breached the aforementioned standard.

73. The following is relevant to these invalidity proceedings.
74. The arbitral tribunal accepted the Stati Parties' allegations that KPM and TNG's financial position was good prior to October 2008.<sup>55</sup> The tribunal came to the conclusion that the investigations by the Kazakh authorities which had been initiated during the autumn of 2008 had harmed the Stati group's "investments" and affected their possibilities of receiving the financing which they claimed was necessary to protect them from falling oil and gas prices.<sup>56</sup>
75. Furthermore, the arbitral tribunal accepted the Stati Parties' claim that Kazakhstan's negative influence on the "investment" was confirmed by the fact that Moody's and Fitch downgraded Tristan Oil's credit ratings and Tristan Oil's debt to the noteholders.<sup>57</sup> The arbitral tribunal was also of the opinion that the Stati Parties had shown that Kazakhstan's action undermined the situation on the market for the Tristan notes and that Fitch and Moody's also took this into consideration when they performed the downgrades.<sup>58</sup>
76. In addition, the arbitral tribunal accepted the Stati group's allegation that they had been forced to enter into the Laren scheme, the conditions of which the arbitral tribunal found to be disadvantageous, in order to manage the lack of solvency confronting KPM and TNG during the spring of 2009, and that the Stati Parties would not have needed to enter into the Laren scheme had they received financing from Credit Suisse in December 2008.<sup>59</sup> The arbitral tribunal also accepted the claim that Kazakhstan's actions led to the Stati group's inability to borrow capital from "ordinary" lenders, subject to commercial terms and conditions.<sup>60</sup>
77. In summary, the arbitral tribunal accepted the Stati Parties' claims that the lack of solvency and the financial difficulties within KPM and TNG had been caused by

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<sup>55</sup> The arbitral award, 19 December 2013, Exhibit K-34, paragraph 1456.

<sup>56</sup> The arbitral award, 19 December 2013, Exhibit K-34, paragraphs 1408-1409.

<sup>57</sup> The arbitral award, 19 December 2013, Exhibit K-34, paragraph 1410.

<sup>58</sup> The arbitral award, Exhibit K-34, paragraph 1373.

<sup>59</sup> The arbitral award, Exhibit K-34, paragraph 1415.

<sup>60</sup> The arbitral award, Exhibit K-34, paragraph 1416.

Kazakhstan's alleged "harassment campaign" and, accordingly, these claims are the basis of the arbitral tribunal's decision.

78. As explained in section K below, it is now clear that KPM and TNG's liquidity inadequacy and financial difficulties were caused by criminal or other reprehensible conduct on the part of the Stati Parties and that the Stati Parties misled the tribunal, in respect of material circumstances in the ECT Proceedings in order to conceal the same.

#### **IV. New circumstances have emerged which show that the "investment" in Kazakhstan was characterized by criminal activity**

##### **H. Introduction**

79. Kazakhstan has refused to pay according to the arbitral award in the ECT Proceedings because Kazakhstan is of the position that it is invalid. Accordingly, Kazakhstan initiated challenge and invalidation proceedings in the Svea Court of Appeal on 19 March 2014. However, the Court dismissed Kazakhstan's action in its ruling on 9 December 2016.

80. In recent years, the Stati Parties have initiated various enforcement proceedings against Kazakhstan in, among other jurisdictions, Sweden, England, the US, the Netherlands, Luxemburg, Belgium and Italy. With the exception of the proceedings in England, all enforcement proceedings are currently pending. After the High Court in London found in a detailed, reasoned decision of 6 June 2017 that the arbitral award, following a prima-facie assessment, was the result of a fraudulent scheme concocted by the Stati Parties, the Stati Parties chose to withdraw their request for enforcement in this jurisdiction.<sup>61</sup> Kazakhstan moved that the request for enforcement should still be examined that was granted by the English court which stated in its decision "*that*

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<sup>61</sup> The High Court of Justice of England and Wales' decision of 6 June 2017 in case no. CL-2014-000070 between Stati Parties and Kazakhstan, Exhibit K-37, paragraph 92. High Court found that there was "*a sufficient prima facie case that the Award was obtained by fraud*".

*the real reason for the notice of discontinuance is that the Statis do not wish to take the risk that the trial may lead to findings against them and in favour of the State”.*<sup>62</sup>

81. The Stati Parties appealed the decision to the Court of Appeal which allowed the Stati Parties to withdraw their lawsuit. The Court of Appeal’s decision of 10 August 2018 was rendered on the condition that the Stati Parties (i) undertook to never again attempt to seek enforcement of the award in England, (ii) allowed the initial enforcement decision in England to be voided so that the existence of such decision cannot be used as a support for requests for enforcement in other jurisdictions, and (iii) undertook to bear Kazakhstan’s costs in the proceedings (corresponding to nearly USD 2 million).
82. After 2016, Kazakhstan has, *inter alia*, through these enforcement proceedings, gained access to a large quantity of evidence showing that the Stati Parties’ actions both during and after the “investment” in Kazakhstan were improper in a manner and to an extent previously unknown to Kazakhstan. The evidence relates to circumstances of such a grave sort and is so compelling that Kazakhstan considers it justified and necessary to submit a new request for the arbitration award to be set aside. The new evidence has emerged as follows.
- (a) Through the discovery in 2018-2019 of documents of, *inter alia*, the Stati Parties and the Stati Parties’ consultants in the enforcement proceedings in England and the United States.
  - (b) Through a sworn deposition in 2019 of Artur Lungu (former Vice President in Ascom as well as the Chief Financial Officer of Tristan Oil) in the United States as support for the proceedings outside the United States.
  - (c) Through legal assistance from the Prosecution Office of the Republic of Latvia in 2016-2019 according to bilateral and multilateral conventions on international cooperation in criminal investigations which resulted in

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<sup>62</sup> The High Court of Justice of England and Wales’ decision of 11 June 2018 in case no. CL-2014-000070 between the Stati Parties and Kazakhstan, Exhibit K-38, paragraph 25. It should be noted that the decision was preceded by a complete examination of all relevant questions on the basis of the submissions in the case as well as an examination of all written evidence. Thus, this is not a summary procedure but a first examination of the claimant’s case on the basis of the written evidence, which is characteristic to English litigation.

Kazakhstan obtaining access to large amounts of documentation from Rietumu Banka concerning transactions on bank accounts belonging to or disposed of by the Stati Parties.

- (d) By letter of 21 August 2019 in which the international audit firm, KPMG, stated that KPMG's consolidated annual reports for KPM, TNG and Tristan Oil regarding the years 2007, 2008 and 2009 can no longer be relied upon.
- (e) Through legal proceedings in Almaty in Kazakhstan, where KPMG Audit LLC was ordered to hand over correspondence between KPMG Audit LLC and the Stati Parties during 2016 and 2019 (on 22 October 2019, Kazakh authorities received access to the documentation and, on 25 October 2019, the Kazakh Ministry of Justice allowed the use of the documentation in the proceedings against the Stati Parties).

83. From the evidence now available to Kazakhstan, it appears that the Stati Parties' financial problems were not caused by Kazakhstan's actions as they had asserted during the ECT Proceedings. The scenario that instead clearly emerges is that the problem was a direct consequence of extensive and long-standing economic criminal activity on the part of Anatolie Stati whereby KPM and TNG were intentionally emptied of assets and became indebted. In short, the new circumstances which have emerged are that:

- (a) KPM and TNG already had extensive financial problems during the autumn of 2008 because Anatolie Stati secretly, through several intermediaries, complicated company structures, and sham contracts channelled substantial sums from KPM and TNG to other countries *inter alia* the Kurdistan region of Iraq ("**Kurdistan**") and South Sudan,
- (b) The Stati Parties chose not to pursue the negotiations with credits Wiese in respect of a loan subject to commercial terms and conditions but, rather, pursued the Laren scheme which was a loan subject to horrendous conditions and the result of a well considered plan intended to allow Anatolie Stati to make a profit of several million in the course of the sale of KPM and TNG, and that Laren was controlled by Anatolie Stati.



84. Kazakhstan learned of the new circumstances and the new evidence only after the judgement of the Court of Appeal on 9 December 2016 (the most recent circumstances became known to Kazakhstan only in October 2019). In sections I-M, these new circumstances are described in more detail.

**I. New circumstances show that the Stati Parties knew that KPM and TNG already had serious financial problems before Kazakhstan began to investigate the companies**

85. The facts that KPM and TNG's financial problems began long before Kazakhstan initiated the alleged "harassment campaign" and that the problems mainly were caused by the Stati Parties channelling funds from the business in Kazakhstan in order to use them in other countries are confirmed, *inter alia*, by several documents to which Kazakhstan has recently gained access through discovery.

86. Minutes from a meeting in Ascom of 14 October 2008 state that the meeting dealt with 'the financial situation of the group' and that several people from Ascom's management participated.

87. The minutes shown below in figure 3 further provide that the Ascom group, in October 2008, had a deficit of USD 250-300 million. Most of the deficit was caused by the Stati Parties' transfers of money abroad, mostly to Kurdistan.<sup>63</sup>

**Figure 3: Excerpt from minutes of the board meeting of Ascom of 14 October 2008<sup>64</sup>**

The following was discussed:

1. The financial situation of the group in the short term (year ending 2008) and medium term, its investment needs and financing options;
2. Review of the JOA contract with Vitol.

In this context, it has been established that:

1. There is a short- and medium-term deficit of approximately \$250 - \$300 million of which approximately \$50 million is in relation to the activities foreseen in the 2008 budget and the remainder is from investment activities in Kurdistan/Iraq. In this context, it was decided that:

<sup>63</sup> See, also, the minutes of the meeting of 22 October 2008, Exhibit K-39, during which the Ascom group's financial situation was discussed.

<sup>64</sup> Ascom minutes of meeting, Exhibit K-40, p. 1.

88. Subsequently, on 27 October 2008, Ascom's finance department sent a letter to TNG's Vice General Director and KPM's Finance and Credit Department's Chairperson warning Anatolie Stati that KPM and TNG had accumulated extensive debts which would soon be due for payment.<sup>65</sup> The letter provided that KPM and TNG had urgent debts amounting to a total of USD 55,847,000 which would be due as early as November and December 2008. It also followed that KPM and TNG had further debts amounting to USD 10,000,000 which would require payment in order for the companies to meet their contractual obligations. Thus, at the end of October 2008, KPM and TNG had debts amounting to USD 66,847,000 which were due for payment in the following months.
89. In addition, it was stated in the letter that a sum of USD 94,149,999 would have to be paid back to KPM and TNG in order for the companies to be able to perform their contractual obligations *and* not risk violating Kazakh currency legislation.<sup>66</sup> The aforementioned repayment concerned payment for oil which had not been paid by the affiliated companies, Stadoil and General Affinity. As described above, these companies bought KPM and TNG's oil in order to sell it onward to Vitol via Montvale (another affiliated company). It also followed from the letter that KPM and TNG's total available funds on 27 October 2008 amounted to USD 21,900,000.
90. The scenario confronting the financial situations of the Kazakh companies that appears in the letter of 27 October 2008 is confirmed by a letter from TNG's General Director, A.L. Kiselev, to General Affinity on 20 May 2009 and a letter from KPM's Deputy General Director to Stadoil on 26 May 2009.<sup>67</sup> It is apparent from these letters that the financial crisis within KPM and TNG was so pressing that the companies were insolvent in May 2009.

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<sup>65</sup> Letter from General Coordinator K.G. Salagor, Vice President IFG Ascom JSC S. Bran, Deputy Director General V. Stezhar (TNG), Director for the Finance and Credit Department V. Tsugulva (KPM) as well as Director for the Finance and Accounting Control Department A. Nemerenko to Anatolie Stati of 27 October 2008, Exhibit K-41.

<sup>66</sup> A sum amounting to a total of USD 36,754,000 was to be paid back to KPM (USD 14,754,000 in November 2008 and USD 22,000,000 in December 2008) and a sum amounting to a total of USD 57,395,000 was to be paid back to TNG (USD 32,045,000 in November 2008 and USD 25,350,000 in December 2008).

<sup>67</sup> Letter from TNG's General Director A.L. Kiselev to General Affinity of 20 May 2009 as well as a letter from KPM's Deputy General Director to Stadoil of 26 May 2009, Exhibit K-42, p. 3-4.

91. On 20 May 2009, TNG's General Director described the situation as follows in a letter to General Affinity.<sup>68</sup>

“Tolkynneftegaz TOO has run up significant debts to its suppliers and contractors for goods supplied, work done and services rendered. After the repeated filing of claims with us, several of them have already applied to the courts against the Company for the recovery of the debts.”

[...]

At present the deadline for paying salaries in May is approaching, but it is already clear today that if the situation does not change radically, we shall not be able to honour our obligations to our employees by the deadline stipulated by the law.”

92. On 26 May 2009, KPM's Deputy General Director sent a corresponding letter to Stadoil which stated the following.<sup>69</sup>

“Kazpolmunay TOO has already been encountering serious financial difficulties for several months. At present our payment of taxes and other mandatory payments to the State Treasury of the Republic of Kazakhstan is overdue. The tax authorities of the Republic of Kazakhstan have blocked the Company's bank accounts and issued collection orders on them.

Suppliers and contractors that have been working with Kazpolmunay TOO have been filing claims on a massive scale, while some of them have already applied to the courts in connection with the fact that we have fallen behind on our payments for goods supplied, work done and services rendered.

[...]

The payment of salaries for the month of May remains in doubt, and it is extremely likely that we shall not have the funds to make them.”

93. Thus, in May 2009, neither KPM or TNG could pay their debts, which is why several creditors had turned to courts at this time. Nor could KPM and TNG pay their tax debts or other debts to the Kazakh state, and the companies found that they could not pay salaries to the employees in the following months.

94. It was also apparent from the letters that the financial problems within KPM and TNG were largely caused by the failure of Stadoil and General to pay for the oil they bought

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<sup>68</sup> Letter from TNG's General Director A.L. Kiselev to General Affinity of 20 May 2009, Exhibit K-42, p. 3.

<sup>69</sup> Letter from KPM's Deputy General Director to Stadoil on 26 May 2009, Exhibit K-42, p. 4.

and the fact that Stadoil and General Affinity repeatedly requested longer payment periods for the oil payments.<sup>70</sup> Nothing is said in the letters according to which those financial difficulties were caused by some “harassment campaign” on the part of Kazakhstan.

95. Approximately one week later, on 29 May 2009, KPM and TNG, again sent letters to Stadoil and General Affinity in which they requested that Stadoil and General Affinity’s payment periods for the oil should be shortened to 45-60 banking days (from the previous 325 days) and that late payments would lead to a penalty payments.<sup>71</sup>
96. The fact that KPM and TNG had financial problems before the alleged “harassment campaign” was initiated is also evinced by the fact that Ascom’s Vice President, who also was Tristan Oil’s Deputy Chairman of the Administrative Board, Artur Lungu, investigated possibilities to obtain external capital for Tristan Oil as early as the summer of 2008.<sup>72</sup> As described above,<sup>73</sup> Tristan Oil’s sole purpose was to finance KPM and TNG’s business, and Tristan had, as recently as 2006-2007, received a total of USD 420 million for this purpose through the Tristan notes. However, it has now been learned that the Stati Parties used some of these funds for other purposes (see, further, section K.2 below).
97. Artur Lungu’s attempts in the summer of 2008 did not, however, result in external financing, which is why he, once again, investigated the possibility of obtaining external capital for Tristan Oil in the of 2008, this time in the form of a credit facility amounting to USD 60 million from Standard Bank.
98. As follows from figure 4 below that Standard Bank considered the overture but decided not to lend any money to Tristan Oil because of the fact, *inter alia*, that Tristan Oil needed the loan because the company was unable to satisfy its financial

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<sup>70</sup> Letter from TNG’s General Director A.L. Kiselev to General Affinity on 20 May 2009 as well as a letter from KPM’s Deputy General Director to Stadoil on 26 May 2009, Exhibit K-42, pp. 3-4.

<sup>71</sup> Letter from TNG’s General Director A.L. Kiselev to General Affinity of 29 May 2009 as well as a letter from KPM’s Deputy General Director to Stadoil on 29 May 2009, Exhibit K-42, pp. 1-2.

<sup>72</sup> Email from Christopher C. Auld (Jefferies Financial Group (The Stati Parties’ financial consultant) to Artur Lungu of 28 August 2008, Exhibit K-43.

<sup>73</sup> See section E.2.2 above.

commitment to KPM and TNG<sup>74</sup> given that Tristan Oil had used the funds from the Tristan notes for, *inter alia*, purchases of assets in Kurdistan and Moldova.<sup>75</sup>

**Figure 4: Excerpt from internal email between Standard Bank employees of 25 November 2008<sup>76</sup>**

> refining). The company has made two requests:  
 >  
 > 1) A \$60m working capital facility structured as a prepayment for a  
 > nine month duration. It is proposed that we are repaid in an  
 > amortised structure commencing after six months grace period. This  
 > coincides with the company being able to give dividends under the  
 > terms of the indenture of the bonds. Standard would have funds pass  
 > through a charged bank account from Vitol as offtaker to the companies  
 >  
 > offshore company in BVI. There are a couple of wrinkles with this.  
 > One is that the reason they need this facility is because they have  
 > previously used cash from the BVI company to acquire other assets (a  
 > service company in Kurdistan, oil equipment for their refinery in  
 > Kurdistan, land in Moldova) and hence cannot pay the monies owed to  
 > their local Kazakh companies that hold the fields to carry out OpEx  
 > and CapEx requirements. Second is that they would like this cash  
 > before the year end. Tristan understands and is willing to pay well  
 > for this facility.

99. In summary, the new documents show that KPM and TNG already had economic problems and an extensive financial deficit before the autumn of 2008, i.e. before Kazakhstan had initiated the alleged “harassment campaign”. The reason for this was that KPM and TNG did not receive payment for the oil that was delivered to the affiliated companies, and at the funds intended for KPM and TNG were used in order to finance projects abroad, including in Kurdistan and Moldova. Furthermore, KPM and TNG had extensive debts which were due for payment in the following months. The new circumstances show that the Stati Parties’ claims in the ECT Proceedings according to which the KPM and TNG’s financial problems were caused by the “harassment campaign” contradict the position regarding the causes of these problems asserted by the Stati group prior to the ECT Proceedings.

<sup>74</sup> As described in section E.2.2 above, KPM and TNG were financed by Tristan Oil and their businesses were thus dependent on the loan financing which Tristan Oil rendered.

<sup>75</sup> Compare, also, printout of Artur Lungu’s witness statement of 3 April 2019, Exhibit K-44, pp. 251-252.

<sup>76</sup> Email from John Hanson (Standard Bank) to Roderick Fraser and Jonathan Wood of 25 November 2008, Exhibit K-45.

**J. New circumstance shows that the Stati Parties themselves decided not to enter into the loan agreement with Credit Suisse**

100. New circumstances have also been revealed which show that the Stati Parties' allegations during the ECT Proceedings according to which Kazakhstan's "harassment campaign" caused the Stati Parties and their Kazakh business to be unable to obtain a loan with Credit Suisse are incorrect.<sup>77</sup>

101. As follows from figure 5, Ascom's financial department explicitly advised Anatolie Stati against the execution of the loan agreement with Credit Suisse because the loan was deemed too expensive and restrictive.

**Figure 5: Excerpt from Ascom's financial department's internal report concerning the potential Credit Suisse loan on 11 December 2008, addressed to Anatolie Stati<sup>78</sup>**

**Conclusion: Following the analysis of the financing offer launched by Credit Suisse and the incorporation of all costs related to this transaction (cash, PIK, underwriting and other costs), it is concluded that the default interest rate (the actual cost of transaction) perceived by the lender amounts to approximately 44.7% per year. We believe that this funding offer is very expensive and restrictive as a structure. In light of the current constraints and the uncertainty surrounding the subsequent evolution of oil prices on international stock exchanges, and implicitly our income and loan repayability, we recommend rejecting it.**

102. Thus, the Stati Parties' claim in the ECT Proceedings that they entered into the Laren scheme because Credit Suisse previously had withdrawn from the negotiations is incorrect.<sup>79</sup> Instead, the Stati Parties actively decided against the loan from Credit Suisse. It was Ascom's finance department's explicit recommendation that Credit Suisse's loan offer should be declined.

103. It should be noted that the Stati Parties claimed during the ECT Proceedings that the inability to obtain the Credit Suisse loan was a key event which was crucial for KPM

<sup>77</sup> The arbitral award dated 19 December 2013, Exhibit K-34, paragraph 642 and the Stati Parties' first Post-Hearing Brief dated 8 April 2013, Exhibit K-35, paragraph 137.

<sup>78</sup> Internal report concerning the potential loan from Credit Suisse and email from Adrian Golomoz (Ascom) to Artur Lungu (Ascom) on 11 December 2008, Exhibit K-46.

<sup>79</sup> The Stati Parties' first Post-Hearing Brief dated 8 April 2013, Exhibit K-35, paragraphs 137 and 217, Anatolie Stati's second witness statement in the ECT Proceedings dated 7 May 2012, Exhibit K-47, paragraph 43, as well as the minutes from the first day of the hearing in the ECT Proceedings, 1 October 2012, Exhibit K-48, p. 110.

and TNG's financial development. The arbitral tribunal accepted the Stati Parties' claim and was deceived into believing that Kazakhstan was the cause why the Credit Suisse loan could not be obtained.

**K. New circumstances show how the Stati Parties systematically drained their business in Kazakhstan of funds through improper value transfers**

**K.1 Introduction**

104. As described above, new circumstances show that KPM and TNG already had severe financial difficulties before Kazakhstan's alleged "harassment campaign". It is also clear now that those financial difficulties were not a result of an acceptable assumption of commercial risk but, rather, an immediate consequence of a long-standing, extensive and systematic criminal conduct by the Stati Parties.

105. This conduct has involved transferring substantial value from, or intended for, the Kazakh businesses to Anatolie Stati and Gabriel Stati's businesses in other countries. The looting was made and concealed through complicated arrangements that generally included affiliated companies and fictitious transactions in several stages.

106. It is only due to the new circumstances, primarily the extensive material that the Prosecution Office of the Republic of Latvia has provided regarding the Stati group's transactions through Rietumu Bank, that it has been possible to understand and prove how the looting of KPM and TNG occurred. But now this is possible.

107. The true cause of KPM and TNG's financial difficulties and economic dilemma was the companies' disposal of assets of substantial value through arrangements including the following:

- (a) Substantial funds from the Tristan Notes, the purpose of which was to finance the businesses of KPM and TNG, never reached the Kazakh companies since the funds were immediately transferred to businesses in other countries,
- (b) KPM and TNG were deprived of assets of substantial value through an arrangement of transactions between affiliated companies in which KPM and TNG did not receive full payment for the oil they delivered

notwithstanding that affiliated companies had received advance payments in full for the same oil from the actual buyer of the oil (Vitol), and

- (c) TNG was dispossessed of assets of substantial value through fictitious costs and the acquisition at an inflated price of equipment which already had been acquired by affiliated companies.

**K.2 All of the funds from the issuance of the Tristan Notes were not transferred by Tristan Oil to the business in Kazakhstan**

108. As described in section I, Artur Lungu (at that time, Vice President of Ascom and Chief Financial Officer of Tristan Oil) investigated the possibilities to raise external capital for Tristan Oil during the of 2008 at which time a request for a USD 60 million working capital facility was sent to Standard Bank. Tristan Oil needed *inter alia* this financing because the company had used its funds to acquire assets in Kurdistan and Moldova, which was why Tristan Oil could not pay the money owed to KPM and TNG (see email in figure 4 above).<sup>80</sup>
109. As described in section E.2.2, Tristan Oil was an SPV with the sole purpose of issuing notes in order to finance KPM and TNG's businesses. Notwithstanding the same, Tristan Oil, in violation of the funding's purpose and Tristan Oil's business, did not use all of the funds received from the Tristan notes for the financing of KPM and TNG. Instead, the money was used, *inter alia*, to invest in other countries.
110. The investments were made *inter alia* via Terra Raf. From the consolidated financial statements of Tristan Oil, KPM and TNG for 2007, it is apparent that Tristan Oil loaned Terra Raf USD 76 million and that the loan was interest free. The loan was funded by the funds Tristan Oil received from the first issuance of notes on 20 December 2006.<sup>81</sup> Owing to the information to which Kazakhstan obtained access through the discovery proceedings, it is now clear in any case that USD 6 million of the loan was never received by KPM or TNG.
111. The loan of USD 76 million to Terra Raf was transferred in three instalments. The first two instalments totalled USD 6 million and were paid approximately one week

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<sup>80</sup> Internal e-mails sent between colleagues at Standard Bank on 25 November 2008, Exhibit K-45.

<sup>81</sup> Tristan Oil, KPM and TNG's audited financial statements for the 2007 financial year, Appendix K-49, p. F-32.



after the first issuance of the Tristan Notes on 27-28 December 2006. From the bank statements of Terra Raf (see figure 6 below), it is apparent that Terra Raf transferred these funds to Getter Investment Limited and Melvin Production Ltd on the same day as Terra Raf received each instalment.<sup>82</sup> Accordingly, KPM and TNG never received the funds.

**Figure 6: Bank statements of Terra Raf on 27–28 December 2006**

27.12.2006	II0612271764946 R-03 Iekšbankas pārskaitījums	<b>TRISTAN OIL LIMITED</b> 1058545 LV39RTMB0000607806522 Pmt. as per Promissory Note dd 20.12.2006; For financing	3 000 000,00	USD	3 213 671,
27.12.2006	II0612271764970 R-3595 Iekšbankas pārskaitījums	<b>GETTER INVESTMENT LIMITED</b> 556572 LV62RTMB0000156806645 Перевод средств внутри холдинга	-3 000 000,00	USD	213 671,
28.12.2006	II0612281761657 R-04 Iekšbankas pārskaitījums	<b>TRISTAN OIL LIMITED</b> 1058545 LV39RTMB0000607806522 Pmt. as per Promissory Note dd 20.12.2006; For financing	3 000 000,00	USD	3 093 640,
28.12.2006	II0612281761671 R-3597 Iekšbankas pārskaitījums	<b>MELVIN PRODUCTION INC</b> 516283 LV43RTMB0000155806044 перевод средств внутри холдинга	-3 000 000,00	USD	93 640,

112. Approximately two weeks after the issuance of the Tristan Notes, on 8 January 2007, Tristan Oil paid the remaining USD 70 million to Terra Raf (see figure 7).<sup>83</sup>

**Figure 7: Bank statements of Terra Raf on 8 January 2007**

08.01.2007	II0701081762205 R-05 Iekšbankas pārskaitījums	<b>TRISTAN OIL LIMITED</b> 1058545 LV39RTMB0000607806522 Pmt. as per Promissory Note dd 20.12.2006; For financing	70 000 000,00	USD	70 033 601,
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113. These funds were then transferred by Terra Raf to Ascom Group Limited (a company which Anatolie Stati controlled through the notorious straw men, Sarah and Edward Petre-Mears).<sup>84</sup> It is apparent from Ascom Group Limited's bank statements that this company, on the same day it received the respective transfers from Terra Raf, in turn

<sup>82</sup> Bank statements of Terra Raf, Exhibit K-50, p. 838.

<sup>83</sup> Bank statements of Terra Raf, Exhibit K-50, p. 842.

<sup>84</sup> Bank statement of Terra Raf, Exhibit K-50, pp. 842-904. Anatolie Stati had a general power of attorney to represent Ascom Group Limited; see powers of attorney concerning Ascom Group Limited, Exhibit K-51.

directly transferred the funds to Ascom Sudd Operating Company.<sup>85</sup> The company, Ascom Sudd Operating Company Limited, was controlled by Anatolie Stati, and the business he conducted in South Sudan (see, also, paragraph 25 above), were mainly handled through these companies. Accordingly, not all of the USD 70 million was received by KPM and TNG.

114. In summary, it can be concluded that not all of the funds that Tristan Oil received from the Tristan notes - all of which were purchased by the American investment bank, Jefferies & Company, and then distributed amongst, *inter alia*, American investors - were not received by KPM and TNG. Instead, the money was used *inter alia* to invest in Anatolie Stati's business in South Sudan. As described in section F.1, KPM and TNG were guarantors of Tristan Oil's debt to the noteholders. Since KPM and TNG did not receive all of the funds which the noteholders paid for the Tristan Notes, KPM and TNG's liability pursuant to the guarantee was significantly higher than the funds which the companies received in exchange. Therefore, the liability pursuant to the guarantee was very unfavourable for KPM and TNG. The Stati Parties' withholding of funds contributed to the financial distress of KPM and TNG.

### **K.3 The Stati Parties secretly transferred substantial oil sales revenue to Hayden**

#### **K.3.1 Introduction**

115. Among the companies through which the Stati Parties secretly channelled Kazakh revenues is Montvale. As described above in section E.2.2, among other sections, KPM and TNG sold the oil which was extracted in their respective business to Stadoil and General Affinity which, in turn, sold the oil to Vitol. Commencing July 2017, the sales were carried out via Montvale.<sup>86</sup> Previously, the sales were carried out via Terra Raf. Thus, it was Montvale (Terra Raf), which finally sold the oil to Vitol, and Vitol then made its payments in advance to Montvale (Terra Raf).
116. In order to govern KPM and TNG's sales to Stadoil and General Affinity, three contracts were concluded. On 15 August 2005, a contract concerning the sale of oil

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<sup>85</sup> Bank statement from Ascom Group Limited, Exhibit K-52; see, for example, pp. 53-56.

<sup>86</sup> Before July 2017, the oil was sold via Terra Raf. See agreement between Terra Raf and Vitol of 19 January 2006, (TNG COMSA), Exhibit K-53, and agreement between Terra Raf and Vitol concerning purchase of oil which was exploited by KPM dated 11 November 2005 (KPM COMSA), Exhibit K-54, as well as novation agreements in which Montvale replaces Terra Raf dated 30 June 2007, Exhibit K-56.

was concluded between KPM and Stadoil.<sup>87</sup> On 8 August 2005, a corresponding contract was concluded between TNG and General Affinity.<sup>88</sup> According to the contracts, KPM was to sell oil to Stadoil and TNG was to sell oil and gas condensate to General Affinity. The total value of the contract between KPM and Stadoil was USD 157.5 million. The value of the contract between TNG and General Affinity was USD 175 million. According to the contracts, Stadoil and General Affinity were to pay for the oil within 170 calendar days of the delivery. The respective contracts expired on 31 December 2006, after which supplement contracts were entered into.

117. On 2 May 2009, an additional agreement was concluded between KPM and Stadoil according to which the payment periods for the oil were extended from 170 days to 325 days. On 5 May 2009, TNG and General Affinity concluded a corresponding contract.<sup>89</sup>
118. The sales arrangement and the long payment periods meant that Stadoil and General Affinity systematically accumulated extensive debts to KPM and TNG for the oil and gas condensate purchased by Stadoil and General Affinity. These debts could have been paid. Had Stadoil and General Affinity received the oil revenues from Vitol (and the debts had not had to be accumulated if the Stati Parties had transferred the revenues directly to KPM and TNG instead of using intermediaries, where money was taken through shell companies). As described above, however, it has now become known that the Stati Parties did not transfer the oil revenues from Vitol to Stadoil and General Affinity. Instead, the majority of the revenues were channelled from Montvale to Hayden. Therefore, Stadoil and General Affinity could not pay their debts to KPM and TNG. Instead, these debts continued to grow and created the financial difficulties on which the Stati Parties base their claims in the ECT Proceedings. Although KPM and TNG were not paid for the oil, they continued to deliver oil to Stadoil and General Affinity.

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<sup>87</sup> Agreement between KPM and Stadoil dated 15 August 2005, Exhibit K-57.

<sup>88</sup> Agreement between TNG and General Affinity dated 8 August 2005 Exhibit K-58.

<sup>89</sup> Agreement between KPM and Stadoil regarding extended payment period dated 2 May 2009, Exhibit K-59 and contract between TNG and General Affinity regarding extended payment period dated 5 May 2009, Exhibit K-60.

119. As early as 2008, Stadoil and General Affinity had extensive debt to KPM and TNG for unpaid oil and gas condensate. By the end of 2008/beginning of 2009, Stadoil and General Affinity's debt to KPM and TNG amounted to over USD 135 million.<sup>90</sup>
120. One year later, on 31 December 2009, Stadoil and General Affinity's debt to KPM and TNG exceeded USD 162 million.<sup>91</sup> In 2009, the debt thus increased by USD 27 million. The fact that Stadoil and General Affinity's debt to KPM and TNG was extensive was also noted by KPMG in the consolidated annual report for KPM, TNG and Tristan Oil in 2009.<sup>92</sup>
121. Owing to the bank statements from Rietumu Banka which have become accessible to Kazakhstan through the legal assistance provided by Prosecution Office of the Republic of Latvia, Kazakhstan has been able to trace the oil payments from Vitol. It clearly follows from the bank statements that the majority of the revenues from Vitol was never received by KPM and TNG. Instead, the Stati Parties transferred the money to Hayden in order to then, *inter alia*, use them for travel, luxury consumption and to make payments to politicians and state employees (see further section L below). In the following, several examples are given regarding the manner in which the Stati Parties channelled revenues from Vitol to Hayden during the period from December 2007 until October 2008, i.e. during the same period in which the Stati Parties claimed in the ECT Proceedings that Kazakhstan had caused a financial crisis in the companies. By means of its "harassment campaign". As follows below, the Stati Parties themselves caused KPM and TNG's financial crisis by transferring the oil revenues out of the country instead of making sure that KPM and TNG were paid for the oil which they had extracted.
- K.3.2 The Stati Parties themselves caused KPM and TNG's financial crisis redirecting the oil payments from Vitol
- K.3.2.1 *Introductory remarks*
122. Set forth below are a number of examples regarding the manner in which Vitol's oil revenues were distributed amongst Montvale, Stadoil, General Affinity, KPM and

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<sup>90</sup> Consolidated accounts for Tristan Oil, KPM and TNG for 2009 financial year, Exhibit K-61, p. F-52.

<sup>91</sup> Consolidated accounts for Tristan Oil, KPM and TNG for 2009 financial year, Exhibit K-61, p. F-52.

<sup>92</sup> Consolidated accounts for Tristan Oil, KPM and TNG for 2009 financial year, Exhibit K-61, p. 3.

TNG during the years 2007-2008, i.e. during the same period which the Stati Parties claimed in the ECT Proceedings that Kazakhstan's "harassment campaign" caused KPM and TNG's financial crisis.<sup>93</sup> All information has been taken from Montvale's, Stadoil and General Affinity's bank statements from Rietumu Banka. As regards the review, the following is worth noting.

123. Where a payment concerns oil which has been extracted by KPM, the item on the bank statement is "*KPM Crude Oil Marketing Services Agreement*".<sup>94</sup> For payments concerning oil, which has been extracted by TNG, the item on the bank statement is "*TNG Crude Oil Marketing Services Agreement*".<sup>95</sup> The amount of the respective transfer is set forth in the penultimate column on the right side of the bank statement. The account balance after the respective transfer is stated furthest to the right.

K.3.2.2 *Vitol's payments on 7 December 2007*

124. On 7 December 2007, Vitol made two payments to Montvale amounting to a total of USD 25 million (see figure 8).<sup>96</sup> One payment amounted to USD 16 million and concerned oil from TNG. The other payment amounted to USD 9 million and concerned oil from KPM.

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<sup>93</sup> Kazakhstan reserves its right to present further evidence concerning the manner by which the Stati Parties deprived KPM and TNG of oil revenues from Vitol in the event the Stati Parties deny that they created the financial problems within KPM and TNG by channelling revenues.

<sup>94</sup> Agreement between Terra Raf and Vitol concerning the purchase of oil, which was exploited by TNG dated 19 January 2006 (TNG COMSA), Exhibit K-53. Montvale took over Terra Raf's part in the agreement from July 2007 according to a novation agreement between Terra Raf, Montvale and Vitol, dated 30 June 2007, Exhibit K-55.

<sup>95</sup> Agreement between Terra Raf and Vitol concerning the purchase of oil, which was exploited by KPM dated 11 November 2005 (KPM COMSA), Exhibit K-54. Montvale took over Terra Raf's part in the agreement from July 2007 according to a novation agreement between Terra Raf, Montvale and Vitol dated 30 June 2007, Exhibit K-56.

<sup>96</sup> Montvale's bank statement, Exhibit K-62, p. 10.

**Figure 8: Montvale's bank statement of 7 December 2007**

07.12.2007	SA0712081753807 712081753580 Ienākošais maksājums	<b>VITOL SA</b> 0015058805, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF073294 AF073294 PREPAY COD D29 UN DER TNG CRUDE OIL MARKETING SERVICE S AGREEMENT DATED 20 JAN 2006	16 000 000,00	USD	16 000 558,95
07.12.2007	SA0712081753741 712081753739 Ienākošais maksājums	<b>VITOL SA</b> 0015058805, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF073275 AF073275 PREPAY VAK/KPM D2 8 UNDER KPM CRUDE OIL MARKETING SERVICES AGREEMENT DATED 11 NOV 2005	9 000 000,00	USD	25 000 558,95

125. The same day Montvale received payments from Vitol amounting to a total of USD 25 million, the Stati Parties transferred USD 8,914,200 (from Montvale) to Stadoil, USD 4,200,600 to General Affinity and USD 11,700,000 to Hayden (see figure 9 below). The money which was transferred to Hayden was then used *inter alia* for projects in other countries, luxury consumption as well as to make improper payments to politicians and state employees (see section L below). Thus, in total, the Stati Parties transferred USD 24,814,800 from Montvale. In total, KPM and TNG were deprived of USD 11,885,200 (which corresponds to the difference between the amount which Vitol paid to Montvale and the amount which Montvale transferred to Stadoil and General Affinity). After the transfers, Montvale had USD 9,648.20 left in its bank account.

**Figure 9: Montvale's bank statement of 7 December 2007**

07.12.2007	I10712071762111 R-26 Iekšbankas pārskaitījums	<b>STADOIL LIMITED 283888</b> LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-8 914 200,00	USD	15 910 251,12
07.12.2007	I10712071762138 R-27 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD 5342689</b> LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-4 200 600,00	USD	11 709 649,66
07.12.2007	I10712071762151 R-28 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-11 700 000,00	USD	9 648,20

126. Both Stadoil and General Affinity transferred the money from Montvale to KPM and TNG on the same day.<sup>97</sup>

K.3.2.3 *Vitol's payment on 15 January 2008*

127. On 15 January 2008, Vitol made a payment to Montvale amounting to USD 16 million (see figure 10).<sup>98</sup> The payment concerned oil which had been extracted by TNG.

**Figure 10: Montvale's Bank Statement of 15 January 2008**

15.01.2008	SA0801151750032 801151750030 Ienākošais maksājums	<b>VITOL SA</b> 0015058805, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF080095 AF080095 PREPAY COD D30 UN DER TNG CRUDE OIL MARKETING SERVICE S AGREEMENT DATED 20 JAN 2008	16 000 000,00	USD	17 117 556,05
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128. A couple of days later, on 23 January 2008, the Stati Parties transferred USD 9,056,400 to Stadoil and USD 5,302,000 to General Affinity from Montvale (see figure 11). Stadoil and General Affinity, in turn, transferred this money to KPM and TNG respectively on the same day.<sup>99</sup> Furthermore, on 25 January 2008, the Stati Parties transferred USD 2,580,000 to Hayden through Montvale in order to use the funds for projects in other countries, luxury consumption as well as to make payments to politicians and state employees.<sup>100</sup> At this time, the Stati Parties deprived KPM and TNG of USD 1,641,600.

**Figure 11: Montvale's bank statement of 23 and 25 January 2008**

23.01.2008	I10801231761563 R-32 Iekšbankas pārskaitījums	<b>STADOIL LIMITED</b> 283888 LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-9 056 400,00	USD	8 069 288,30
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<sup>97</sup> Stadoil transferred the money to KPM and General Affinity transferred the money to TNG; see Stadoil's bank statement Exhibit K-63, p. 16 as well as General Affinity's bank statement, Exhibit K-64, p. 12.

<sup>98</sup> Montvale's bank statement for the period, Exhibit K-62, p. 12.

<sup>99</sup> Stadoil's bank statement, Exhibit K-63, p. 17 as well as General Affinity's bank statement, Exhibit K-64, p. 13.

<sup>100</sup> Montvale's bank statement, Exhibit K-62, p. 14.

23.01.2008	II0801231761565 R-33 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD</b> 5342669 LV89RTMB0000604806382 Pmt. As per Novation Agreement dd01.05.2007; Contract No. TER_GEN01; for crude oil	-5 302 000,00	USD	2 767 286,86
25.01.2008	II0801241762409 R-35 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_01 dd 01.05.2007; loan	-2 580 000,00	USD	810,35

#### K.3.2.4 *Payment from Vitol on 7 February 2008*

129. On 7 February 2008, Vitol made two payments to Montvale amounting to a total of USD 33 million (see figure 12). One payment amounted to USD 24 million and concerned oil from TNG. The other payment amounted to USD 9 million and concerned oil from KPM.<sup>101</sup>

**Figure 12: Montvale's bank statement of 7 February 2008**

07.02.2008	SA0802061753605 802061753602 Ienākošais maksājums	<b>VITOL SA</b> 0015058605, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF080389 PREPAY COD D30 UNDER TNG C RUDE OIL MARKETING SERVICES AGREEMENT DATED 20 JAN 2008	24 000 000,00	USD	24 025 183,56
07.02.2008	SA0802061753606 802061753603 Ienākošais maksājums	<b>VITOL SA</b> 0015058605, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF080390 PREPAY VAK/KPM D28 UNDER K PM CRUDE OIL MARKETING SERVICES AGREEMENT DATED 11 NOV 2005	9 000 000,00	USD	33 025 183,56

130. On 15 February 2008, the Stati Parties transferred USD 10,528,900 to Stadoil via Montvale. The same day, Stadoil transferred this money to KPM.<sup>102</sup> Furthermore, the Stati Parties transferred USD 17,921,400 to General Affinity via Montvale, divided into two payments on 15 February (USD 9,934,300), and 22 February (USD 7,987,100) respectively (see figure 13). General Affinity, in turn, transferred the money to TNG.<sup>103</sup> Thus, at this time, KPM and TNG were deprived of USD 4,549,700.

131. Furthermore, between 11 February and 19 February 2008, the Stati Parties transferred more than USD 7 million to Hayden. A couple of days later, Hayden transferred back

<sup>101</sup> Montvale's bank statement, Exhibit K-62, p. 15.

<sup>102</sup> Stadoil's bank statement, Exhibit K-63, p. 17.

<sup>103</sup> General Affinity's bank statement, Exhibit K-64, pp. 13-14.



USD 2,723,500 to Montvale (see figure 13). The reason why the Stati Parties transferred money back to Montvale likely was that Montvale needed these funds to be able to make the transfer of USD 7,987,100 to General Affinity on 22 February 2008. After the aforementioned transfer, the balance on Montvale's bank account was USD 261.45.

132. The money which the Stati Parties transferred to Hayden was later used for projects in other countries, luxury consumption as well as to make payments to politicians and state employees (see section L below).

**Figure 13: Montvale's bank statement of 11-22 February 2008**

11.02.2008	I10802111763445 R-39 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-3 000 000,00	USD	29 717 704,52
12.02.2008	I10802121761876 R-40 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806379 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-2 000 000,00	USD	27 719 467,51
15.02.2008	I10802151760076 R-41 Iekšbankas pārskaitījums	<b>STADOIL LIMITED</b> 283888 LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-10 528 900,00	USD	17 195 503,80
15.02.2008	I10802151760105 R-42 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD</b> 5342669 LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-9 934 300,00	USD	7 261 202,34
19.02.2008	I10802191761934 R-43 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-2 000 000,00	USD	5 262 925,50
22.02.2008	I10802221760777 R-537 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Return Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	2 723 500,00	USD	7 987 361,45
22.02.2008	I10802221760748 R-44 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD</b> 5342669 LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-7 987 100,00	USD	261,45

K.3.2.5 *Payments from Vitol on 6 June 2008*

133. On 6 June 2008, Vitol made two payments to Montvale amounting to a total of USD 67 million (see figure 14).<sup>104</sup> The payment from TNG amounted to USD 48 million. The payment from KPM amounted to USD 19 million.

**Figure 14: Montvale's bank statement of 6 June 2008**

06.06.2008	SA0806051752226 806051752222 Ienākošais maksājums	<b>VITOL SA</b> 0015058605, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF082060 PREPAY COD D36 UNDER TNG C RUDE OIL MARKETING SERVICES AGREEMENT DATED 20 JAN 2008	48 000 000,00	USD	96 945 316,94
06.06.2008	SA0806051752227 806051752223 Ienākošais maksājums	<b>VITOL SA</b> 0015058605, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF082059 PREPAY VAK/KPM D33 UNDER KPM CRUDE OIL MARKETING SERVICES AGREEMENT DATED 11 NOV 2005	19 000 000,00	USD	115 945 316,94

134. On 6 June and 17 June 2008, the Stati Parties transferred a total of USD 36,823,000 to General Affinity (see figure 15) from Montvale which, in turn, transferred this money to TNG.<sup>105</sup> Furthermore, the Stati Parties transferred a total of USD 14,533,100 to Stadoil from Montvale, divided into two transfers (see figure 15). Stadoil transferred this money to KPM on the same day it received the respective payments from Montvale.<sup>106</sup> In total, KPM and TNG were deprived of USD 15,643,900 at this time.
135. As part of this, the Stati Parties transferred a total of USD 61 million to Hayden between 9 June and 3 July 2008. Once the money had been received by Hayden, the Stati Parties used these funds for projects in other countries, luxury consumption, and to make payments to politicians and state employees (see section L below).

<sup>104</sup> Montvale's bank statement, Exhibit K-62, pp. 38-39.

<sup>105</sup> General Affinity's bank statement, Exhibit K-64, pp. 18-19.

<sup>106</sup> Stadoil's bank statement, Exhibit K-63, p. 19.

**Figure 15: Montvale's bank statement of 6 June – 7 June 2008**

06.06.2008	II0806061762241 R-69 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD 5342669</b> LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-14 733 000,00	USD	101 021 580,16
06.06.2008	II0806061762293 R-70 Iekšbankas pārskaitījums	<b>STADOIL LIMITED 283888</b> LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-12 351 100,00	USD	88 670 478,82
09.06.2008	II0806091762116 R-71 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-12 000 000,00	USD	76 686 272,38
13.06.2008	II0806131762115 R-74 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-2 000 000,00	USD	74 307 521,96
16.06.2008	II0806161763340 R-75 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD 5342669</b> LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-10 590 000,00	USD	63 730 757,12
16.06.2008	II0806161763343 R-75 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD 5342669</b> LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-10 000 000,00	USD	53 730 755,58
17.06.2008	II0806171762606 R-76 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD 5342669</b> LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-1 500 000,00	USD	52 233 944,26
18.06.2008	II0806181762215 R-77 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-2 000 000,00	USD	50 237 044,05
25.06.2008	II0806251764134 R-78 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-3 000 000,00	USD	47 257 925,76

26.06.2008	I10806261760418 R-79 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-15 000 000,00	USD	32 280 730,09
01.07.2008	I10807011760450 R-80 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-3 000 000,00	USD	29 270 306,91
01.07.2008	I10807011762665 R-81 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-12 000 000,00	USD	17 270 305,33
02.07.2008	I10807021762655 R-82 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-8 000 000,00	USD	9 271 329,16
03.07.2008	I10807031762347 R-83 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-4 000 000,00	USD	5 271 878,05
07.07.2008	I10807071763204 R-84 Iekšbankas pārskaitījums	<b>STADOIL LIMITED</b> 283888 LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-2 182 100,00	USD	3 091 028,50

### K.3.2.6 *Payments from Vitol on 8 July 2008*

136. On 8 July 2008, Vitol made two payments to Montvale amounting to a total of USD 80 million (see figure 16).<sup>107</sup> One payment amounted to USD 47 million and concerned oil from TNG while the other payment amounted to 33 USD million and concerned oil from KPM.

<sup>107</sup> Montvale's bank statement, Exhibit K-62, p. 47.

**Figure 16: Montvale's bank statement of 8 July 2008**

08.07.2008	SA0807071754282 807071754248 Ienākošais maksājums	<b>VITOL SA</b> 0015058805, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF082488 PREPAY COD D37 UNDER TNG C RUDE OIL MARKETING SERVICES AGREEMENT DATED 20 JAN 2006	47 000 000,00	USD	50 091 210,46
08.07.2008	SA0807071754283 807071754247 Ienākošais maksājums	<b>VITOL SA</b> 0015058805, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF082487 PREPAY VAK/KPM D34 UNDER K PM CRUDE OIL MARKETING SERVICES AGREEMENT DATED 11 NOV 2005	33 000 000,00	USD	83 091 210,46

137. Between 9 July and 5 August 2008, the Stati Parties transferred a total of USD 48 million to Hayden from Montvale. Then, the Stati Parties used these funds for projects in other countries, luxury consumption, and to make payments to politicians and state employees (see section L below). In addition, Montvale transferred USD 17 million to Stadoil as well as a total of USD 10,474,700 to General Affinity (see figure 17). Both Stadoil and General Affinity transferred the money which they received from Montvale to KPM and TNG respectively.<sup>108</sup> Thus, of the USD 80 million which Vitol paid, only USD 27,474,700 was transferred to Stadoil and General Affinity and, thus, KPM and TNG were deprived of USD 52,525,300.

**Figure 17: Montvale's bank statement of 9 July- 5 August 2008**

10.07.2008	I10807101760493 R-86 Iekšbankas pārskaitījums	<b>STADOIL LIMITED 283888</b> LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-10 000 000,00	USD	68 100 779,37
09.07.2008	I10807091762529 R-85 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-5 000 000,00	USD	78 096 143,99
10.07.2008	I10807101760493 R-86 Iekšbankas pārskaitījums	<b>STADOIL LIMITED 283888</b> LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-10 000 000,00	USD	68 100 779,37

<sup>108</sup> Stadoil's bank statement, Exhibit K-63, pp. 19-20 as well as General Affinity's bank statement, Exhibit K-64, pp. 19-20.

10.07.2008	II0807101760766 R-87 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD</b> 5342669 LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-4 000 000,00	USD	57 100 776,23
14.07.2008	II0807141763295 R-88 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-3 000 000,00	USD	54 114 337,16
18.07.2008	II0807181761141 R-89 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD</b> 5342669 LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-6 474 700,00	USD	47 652 488,72
18.07.2008	II0807181761143 R-90 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-3 000 000,00	USD	44 652 487,13
21.07.2008	II0807211763168 R-91 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-4 000 000,00	USD	40 652 485,54
23.07.2008	II0807231760763 R-93 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-5 000 000,00	USD	35 463 456,10
30.07.2008	II0807301761827 R-96 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-2 000 000,00	USD	33 285 204,49
04.08.2008	II0808041763067 R-97 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-15 000 000,00	USD	18 299 613,89
04.08.2008	II0808041763069 R-97_1 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-10 000 000,00	USD	8 299 612,34

05.08.2008	I10808051762050 R-99 Iekšbankas pārskaitījums	HAYDEN INTERVEST LIMITED 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-1 000 000,00	USD	7 056 747,24
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### K.3.2.7 Payments from Vitol on 6 August 2008

138. On 6 August 2008, Montvale received two payments from Vitol amounting to a total of USD 30 million (see figure 18).<sup>109</sup> One payment amounted to USD 20 million and concerned oil from KPM while the other payment amounted to USD 10 million and concerned oil from TNG.

**Figure 18: Montvale's bank statement of 6 August 2008**

06.08.2008	SA0808051753842 808051753837 Ienākošais maksājums	VITOL SA 0015058605, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF082868 PREPAY VAK/KPM D35 UNDER K PM CRUDE OIL MARKETING SERVICES AGREEMENT DATED 11 NOV 2005	20 000 000,00	USD	27 056 745,68
06.08.2008	SA0808051753843 808051753838 Ienākošais maksājums	VITOL SA 0015058605, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF082869 AF082488 PREPAY COD D38 UN DER TNG CRUDE OIL MARKETING SERVICE S AGREEMENT DATED 20 JAN 2006	10 000 000,00	USD	37 056 745,68

139. During the period 6-12 August 2008, the Stati Parties transferred a total of USD 22.7 million to Hayden through Montvale. The Stati Parties later used these funds for projects in other countries, luxury consumption, and to make payments to politicians and state employees. Furthermore, on 8 August 2008, USD 2,311,000 was transferred to General Affinity which, in turn, transferred the money to TNG.<sup>110</sup> Thus, in total, KPM and TNG were deprived of USD 27,689,000 .

**Figure 19: Montvale's bank statement of 6-12 August 2008**

06.08.2008	I10808061761949 R-100 Iekšbankas pārskaitījums	HAYDEN INTERVEST LIMITED 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-12 000 000,00	USD	25 056 745,68
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<sup>109</sup> Montvale's bank statement, Exhibit K-62, p. 51.

<sup>110</sup> General Affinity's bank statement, Exhibit K-64, p. 20.

06.08.2008	I10808061761950 R-100_1 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-10 000 000,00	USD	15 056 744,13
07.08.2008	I10808071762195 R-101 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-1 000 000,00	USD	14 056 742,58
08.08.2008	I10808081762204 R-102 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD</b> 5342669 LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-2 311 000,00	USD	11 745 741,03
11.08.2008	I10808111763153 R-103 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-5 000 000,00	USD	6 745 739,49
12.08.2008	I10808121762026 R-104 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-6 700 000,00	USD	45 737,97

### K.3.2.8 *Payment from Vitol on 13 August 2008*

140. On 13 August 2008, Vitol paid USD 35 million to Montvale (see figure 20).<sup>111</sup> The payment concerned oil from TNG.

**Figure 20: Montvale's bank statement of 13 August 2008**

13.08.2008	SA0808121754409 808121754403 Ienākošais maksājums	<b>VITOL SA</b> 0015058605, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF083020 PREPAY COD D39 UNDER TNG C RUDE OIL MARKETING SERVICES AGREEME NT DATED 20 JAN 2006	35 000 000,00	USD	35 045 736,47
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141. Between 14 August and 20 August 2008, the Stati Parties, through Montvale, transferred USD 8 million to Hayden (see figure 21). Once the money had been received by Hayden, the Stati Parties used the money for projects in other countries, luxury consumption, and to make payments to politicians and state employees. In

<sup>111</sup> Montvale's bank statement, Exhibit K-62, p. 52.



addition, Montvale transferred USD 10,217,600 to Stadoil and USD 7,769,700 to General Affinity (see figure 21). This money then was transferred to KPM and TNG.<sup>112</sup> Thus, KPM and TNG were deprived of USD 17,012,700.

**Figure 21: Montvale's bank statement of 14-20 August 2008**

14.08.2008	I10808141760690 R-106 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-4 000 000,00	USD	30 447 184,60
14.08.2008	I10808141762366 R-107 Iekšbankas pārskaitījums	<b>STADOIL LIMITED</b> 283888 LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-10 217 600,00	USD	20 229 583,11
14.08.2008	I10808141762414 R-108 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD</b> 5342669 LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-7 769 700,00	USD	12 459 881,82
18.08.2008	I10808181760140 R-111 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-2 000 000,00	USD	10 298 076,19
20.08.2008	I10808201760074 R-112 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-2 000 000,00	USD	8 298 074,71

#### K.3.2.9 *Payment from Vitol on 27 August 2008*

142. On 27 August 2008, Vitol paid USD 15 million to Montvale (see figure 22).<sup>113</sup> The payment concerned oil from TNG.

<sup>112</sup> Stadoil's bank statement, Exhibit K-63, p. 20, as well as General Affinity's bank statement, Exhibit K-64, pp. 20-21.

<sup>113</sup> Montvale's bank statement, Exhibit K-62, p. 53.

**Figure 22: Montvale's bank statement of 27 August 2008**

27.08.2008	SA0808261753540 808261753532 Ienākošais maksājums	<b>VITOL SA</b> 0015058805, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF083186 PREPAY COD D40 UNDER TNG C RUDE OIL MARKETING SERVICES AGREEMENT DATED 20 JAN 2006	15 000 000,00	USD	23 298 073,24
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143. Between 28 August and 10 September 2008, the Stati Parties, through Montvale, transferred a total of USD 16,843,000 to Hayden, after which the Stati Parties used these funds for projects in other countries, luxury consumption, and to make payments to politicians and state employees (see figure 23). On 5 September 2008, the Stati Parties, through Montvale, transferred USD 3,707,000 to General Affinity and USD 2,500,000 to Stadoil. General Affinity and Stadoil, in turn, transferred the money to TNG and KPM respectively on the same day.<sup>114</sup> Thus, at this time, KPM and TNG were deprived of USD 8,793,000.

**Figure 23: Montvale's bank statement of 28 August – 10 September 2008**

28.08.2008	I10808281760200 R-113 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY-01 dd 01.05.2007; loan	-2 000 000,00	USD	21 298 073,24
29.08.2008	I10808291762386 R-114 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_01 dd 01.05.2007; loan	-5 000 000,00	USD	16 298 071,77
03.09.2008	I10809031760132 R-115 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_01 dd 01.05.2007; loan	-4 000 000,00	USD	12 310 273,73
05.09.2008	I10809051762135 R-116 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD 5342669</b> LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-3 707 000,00	USD	8 603 272,27

<sup>114</sup> General Affinity's bank statement, Exhibit K-64, p. 21, as well as Stadoil's bank statement, Exhibit K-63, p. 20.

05.09.2008	I10809051762137 R-117 Iekšbankas pārskaitījums	<b>STADOIL LIMITED 283888</b> LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-2 500 000,00	USD	6 103 270,82
10.09.2008	I10809101760734 R-119 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED 676567</b> LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-5 843 000,00	USD	552,88

### K.3.2.10 *Payment from Vitol on 16 September 2008*

144. On 16 September 2008, Vitol made a payment of USD 15,900,000 to Montvale for oil from KPM (see figure 24).<sup>115</sup>

**Figure 24: Montvale's bank statement of 16 September 2008**

16.09.2008	SA0809151754430 809151754424 Ienākošais maksājums	<b>VITOL SA</b> 0015058805, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF083388 PREPAY VAK/KPM D36 UNDER K PM CRUDE OIL MARKETING SERVICES AGR EEMENT DATED 11 NOV 2005	15 900 000,00	USD	15 901 078,67
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145. The same day, the Stati Parties, via Montvale, transferred USD 8 million to Stadoil and USD 4 million to General Affinity and USD 3,545,000 to Hayden (see figure 25). As described in more detail in section L below, the Stati Parties used the funds which were transferred to Hayden for projects in other countries, luxury consumption, and to make payments to politicians and state employees. Stadoil and General Affinity, in turn, transferred the money to KPM and TNG respectively.<sup>116</sup> Of the USD 15,900,000 which Montvale received from Vitol, KPM and TNG only received USD 12,000,000. Thus, in total, KPM and TNG were deprived of USD 3,900,000.

**Figure 25: Montvale's bank statement of 16 September 2008**

16.09.2008	I10809161761823 R-122 Iekšbankas pārskaitījums	<b>STADOIL LIMITED 283888</b> LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-8 000 000,00	USD	7 901 078,67
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<sup>115</sup> Montvale's bank statement, Exhibit K-62, p. 54.

<sup>116</sup> Stadoil's bank statement, Exhibit K-63, p. 20, as well as General Affinity's bank statement, Exhibit K-64, p. 22.

16.09.2008	I10809161761873 R-123 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD</b> 5342669 LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-4 000 000,00	USD	3 901 077,23
16.09.2008	I10809161761947 R-125 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-3 545 000,00	USD	4 578,79

### K.3.2.11 *Payment from Vitol on 22 October 2008*

146. On 22 October 2008, Vitol made a payment of USD 31 million to Montvale for oil from TNG (see figure 26).<sup>117</sup>

**Figure 26: Montvale's bank statement of 22 October 2008**

22.10.2008	SA0810211753936 810211753931 Ienākošais maksājums	<b>VITOL SA</b> 0015058605, JPMORGAN CHASE BANK, N.A., CHASGB2LXXX AF084113 PREPAY COD D41 UNDER TNG C RUDE OIL MARKETING SERVICES AGREEMENT DATED 20 JAN 2006	31 000 000,00	USD	31 003 829,49
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147. On the same day, the Stati Parties, through Montvale, transferred USD 7,285,000 to General Affinity, USD 16,309,500 to Stadoil and USD 6,726,000 to Hayden (see figure 27). The money which General Affinity and Stadoil received was transferred to TNG and KPM.<sup>118</sup> The funds, which were transferred to Hayden, were later used by the Stati Parties for projects in other countries, luxury consumption, and to make payments to politicians and state employees (see further section L below). Since KPM and TNG only received USD 23,594,500 of the USD 31 million which Vitol paid, the companies were deprived of a total amount of USD 7,405,500.

**Figure 27: Montvale's bank statement of 22 October 2008**

22.10.2008	I10810221760974 R-131 Iekšbankas pārskaitījums	<b>GENERAL AFFINITY LTD</b> 5342669 LV89RTMB0000604806382 Pmt. As per Novation Agreement dd 01.05.2007; Contract No. TER_GEN 01; for crude oil	-7 285 000,00	USD	23 718 829,49
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<sup>117</sup> Montvale's bank statement, Exhibit K-62, p. 56.

<sup>118</sup> General Affinity's bank statement, Exhibit K-64, p. 26, as well as Stadoil's bank statement, Exhibit K-63, pp. 21-22.

22.10.2008	I10810221761016 R-132 Iekšbankas pārskaitījums	<b>STADOIL LIMITED</b> 283888 LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-10 000 000,00	USD	13 718 828,16
22.10.2008	I10810221761023 R-132_1 Iekšbankas pārskaitījums	<b>STADOIL LIMITED</b> 283888 LV73RTMB0000604806379 Pmt. As per Novation Agreement dd 01.05.2007; Pmt. as per contract STAD_TER_CRO_01; for crude oil	-6 309 500,00	USD	7 409 328,83
22.10.2008	I10810221761239 R-134 Iekšbankas pārskaitījums	<b>HAYDEN INTERVEST LIMITED</b> 676567 LV22RTMB0000604806230 Pmt. as per Contract No. MON HAY_ 01 dd 01.05.2007; loan	-6 726 000,00	USD	468,68

### K.3.3 The Stati Parties channelling of money to Hayden led to KPM and TNG ending up in financial and economic problems

148. Above, a sampling of the payments which Montvale received from Vitol has been described. During the period from 11 July 2007 until 3 November 2010, Montvale received a total of approximately USD 713,719,833 from Vitol.<sup>119</sup> During the same period, the Stati Parties transferred a total of approximately USD 304 million from Montvale to General Affinity<sup>120</sup> and approximately USD 224 million to Stadoil.<sup>121</sup> General Affinity and Stadoil transferred back approximately USD 3 million each to Montvale.<sup>122</sup> Considering these repayments, a total net amount of USD 522 million was transferred to General Affinity and Stadoil of the USD 713 million which Montvale received as payment for the oil received by KPM and TNG. Thus, in total,

<sup>119</sup> In total, Montvale received approximately USD 723 million from Vitol and Vitol's subsidiary, Arkham SA. However, Montvale paid back approximately USD 10 million to Vitol, which is why the net amount which Montvale received from Vitol was approximately USD 713 million. See bank statement from Montvale, Exhibit K-62.

<sup>120</sup> Furthermore, approximately USD 21 million was transferred from Montvale to General Affinity during this period but, since these funds were transferred shortly after the conclusion of the Laren scheme, there is much to indicate that these funds originated from the investors in the Laren scheme and not from the oil sales. Accordingly, these funds have been disregarded here. See bank statement from Montvale, Exhibit K-62, pp. 72-73.

<sup>121</sup> Furthermore, approximately USD 24 million was transferred from Montvale to General Affinity during this period but, since these funds were transferred shortly after the conclusion of the Laren scheme, there is much to indicate that these funds originated from the investors in the Laren scheme and not from the oil sales. Accordingly, these funds have been disregarded here. See bank statement from Montvale, Exhibit K-62, p. 72.73.

<sup>122</sup> Bank statement from Montvale, Exhibit K-62, pp. 54-55 and 72-73.

KPM and TNG were deprived of oil revenues amounting to USD 191 million. This revenue should have rightly been received by KPM and TNG.

149. In addition to the oil payments to Stadoil and General Affinity, the Stati Parties also transferred large amounts of Montvale's funds to Hayden. During the period from 17 July 2007 until 2 November 2010, the Stati Parties transferred approximately USD 311 million to Hayden, of which Hayden transferred back approximately USD 153 to Montvale. Thus, the Stati Parties transferred a net amount of approximately USD 158 million to Hayden.<sup>123</sup>
150. According to Hayden's bank statement, all payments from Montvale are related to "*Pmt. As per Contract No. MON HAY\_01 dd 01.05.2007;loan*". However, as described in paragraph 40 above, Hayden was a shell company which had neither employees nor offices. Hayden did not conduct any business of its own. Although Gabriel Stati opened Hayden's bank account as early as November 2005, the bank account was first used on 3 July 2007 when Terra Raf transferred USD 3,480,300 to Hayden.<sup>124</sup> Before the transfer from Terra Raf, Hayden had no assets of its own or any funds.<sup>125</sup> Furthermore, the money which was channelled to Hayden was quickly transferred to other companies or private individuals, often in other countries.<sup>126</sup> It is therefore unlikely that Hayden had a lending business and that the payments to Hayden actually related to loan payments.
151. Hayden was controlled by Anatolie Stati and Gabriel Stati who also were beneficiaries of the funds on Hayden's bank account at Rietumu Banka.<sup>127</sup> Thus, there is much to indicate that Montvale's loan payments to Hayden were in fact a way for the Stati Parties to channel money from the Kazakh business to Hayden via several intermediaries in order to then be able to use the money for luxury consumption and to make payments to politicians and state employees (see, further, section L below).

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<sup>123</sup> See bank statement from Montvale, Exhibit K-62.

<sup>124</sup> On 4 November 2005, Gabriel Stati opened a bank account for Hayden; see agreement regarding the opening of a bank account for Hayden, Exhibit K-24.

<sup>125</sup> Bank statement from Hayden, Exhibit K-65, p. 1.

<sup>126</sup> See section L below.

<sup>127</sup> Anatolie Stati and Gabriel Stati had a general power of attorney to represent Hayden in all matters. Furthermore, they were sole beneficiaries of the funds which were deposited on Hayden's bank account at Rietumu Banka.

As follows from section K.4 below, Hayden also played a crucial role in the Perkwood arrangement.

152. In summary, it can be stated that the Stati Parties, during the same period of time the Stati Parties claimed in the ECT Proceedings that KPM and TNG had been in a financial crisis, deprived KPM and TNG of substantial amounts of the oil revenues from Vitol. Most of these oil revenues were transferred to Hayden. The transfers to Hayden began in 2007 and was ongoing until 2010. The financial crisis within KPM and TNG was thus caused by the Stati Parties themselves.

**K.4 The Stati Parties used fictitious and inflated purchases of equipment in order to channel substantial sums from the business in Kazakhstan**

**K.4.1 Introduction**

153. As mentioned above in paragraph 49, the Stati Parties arranged for an LPG plant to be constructed on the Borankol field by means of a contract between TNG and Vitol from 2006 to 2009 in respect of which Vitol was obliged to pay a part of the construction costs.<sup>128</sup>
154. The LPG plant was never completed, but the manner by which was appraised became an important issue during the ECT Proceedings.
155. In order to be able to construct the LPG plant, advanced technical equipment was required which had to be ordered and delivered specially for the LPG plant. In other words, the equipment could not be bought as a stock product.<sup>129</sup> The order process for the components was complicated and required special expert knowledge.
156. As described below in section K.4.2, the components for the LPG plant were bought from the German company, TGE Gas Engineering GmbH, formerly Tractebel Gas Engineering (“TGE”).
157. As described in greater detail in section K.4.3, TNG also concluded a contract with Perkwood concerning the purchase of components for the LPG plant. As described below, it has become known that at least some of the alleged purchase transactions

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<sup>128</sup> Cooperation agreement between Vitol and TNG dated 27 June 2006 (the JOA contract), Exhibit K-30.

<sup>129</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66, p. 12.

between TNG and Perkwood were sham contracts. The purpose of which was to secretly channel large sums of money out of TNG.

158. In order to understand the scheme, it is useful to know the parts of which the LPG plant consisted and which functions the respective parts were supposed to fulfil.
159. The first part of the LPG plant is called gas de-carbonisation and de-sulphurisation unit. In this part, unwanted substances such as water and carbon dioxide are removed from the natural gas.<sup>130</sup> The gas which leaves the gas de-carbonisation and de-sulphurisation unit is then dried in the so-called drying module. The dry gas is then led to the part for mercury removal, where mercury is removed from the gas.<sup>131</sup> The gas is then treated in the LPG recovery unit which consists of two parts in which lighter hydrocarbons such as methane and ethane are separated from heavier hydrocarbons such as propane and butane. This is the last step of the gas grafting process.<sup>132</sup> In order to reach pressure in the pipelines and thus make sale of the gas possible, the gas is compressed on what is referred to as the sales gas compression unit.<sup>133</sup>

#### K.4.2 The main parts of the LPG plant were purchased from TGE

160. The main parts of the LPG plant were bought from TGE for approximately USD 34 million according to an “Engineering Procurement and Supervision Agreement” which was concluded between Ascom, Azalia and TGE on 31 January 2006 (the “**TGE contract**”).<sup>134</sup> It is apparent from the background section of the TGE contract that TGE was assigned to purchase and deliver the main parts of the LPG plant, namely the gas de-carbonisation and de-sulphurisation unit, LPG recovery unit, and

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<sup>130</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66, p. 5.

<sup>131</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66, p. 7.

<sup>132</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66, p. 8.

<sup>133</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66, p. 11.

<sup>134</sup> Agreement between TGE, Ascom and Azalia, 31 January 2006, Exhibit K-67. It follows also from other documents that TGE was the party mainly responsible for the delivery and supervision of the main parts of the LPG plant. Cooperation agreement between Vitol and TNG dated 27 June 2006 (the JOA contract), Exhibit K-24 as well as Ascom’s business plan, Exhibit K-68.



sales gas compression unit according to detailed technical specifications consisting of more than 100 pages.<sup>135</sup>

161. In order to be able to deliver the part of the LPG plant, TGE set up a project group consisting of approximately 20 people, mainly engineers, who possessed expert knowledge within different fields. Their task was, *inter alia*, to calculate the requirement specifications for the equipment for the LPG plant. As is usual within the industry, each part of the LPG plant was given a “TAG number”. The TAG numbers appear, among other places, in orders and are also physically noted on the equipment, which enables the identification of the parts throughout the entire process and after the installation on site.
162. The majority of the equipment was delivered by to Burgas in Bulgaria by TGE.<sup>136</sup> From there, the equipment was then delivered to Opornaya in Kazakhstan. The engineer, Franjo Zaja, who was project manager at TGE, has confirmed in a witness testimony that the equipment, which had been ordered and delivered by TGE, was installed in the LPG plant.<sup>137</sup>
- K.4.3 After TGE’s delivery, the main parts were purchased for a second time from Perkwood at a much higher price
163. Less than one month after the conclusion of the TGE contract, a further contract concerning the purchase of part of the LPG plant was concluded, this time between TNG and Perkwood, which is controlled by Anatolie Stati (the “**Perkwood contract**”).<sup>138</sup> The total contract value of the Perkwood contract was approximately USD 191 million.
164. In the Perkwood contract, the equipment which Perkwood was assigned to purchase and deliver is specified in different annexes.<sup>139</sup> The Perkwood contract later came to

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<sup>135</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66 p. 12 and agreement between TGE, Ascom and Azalia, 31 January 2006, Exhibit K-67.

<sup>136</sup> Printout of Ernst Kallenweit’s witness testimony, 16 September 2016, Exhibit K-69 p. 12.

<sup>137</sup> Printout from Franjo Zaja’s witness testimony, 16 September, Exhibit K-69, p. 46.

<sup>138</sup> The Perkwood contract, 17 February 2006, Exhibit K-26.

<sup>139</sup> The Perkwood contract, 17 February 2006, Exhibit K-26, section 1.1.

consist of more than 25 annexes and additional agreements. However, the following shows that Perkwood never delivered any equipment for the LPG plant.<sup>140</sup>

165. Firstly, as described in more detail in section K.4.4 below, identical equipment had already been ordered from TGE according to the TGE contract (and, in some cases, was ordered from Perkwood several times).

166. Secondly, the Perkwood contract and the annexes contained no technical specifications of the allegedly purchased components. It is not possible to order these specially manufactured components without such detailed technical specifications.<sup>141</sup> In the TGE contract, the technical specifications for the identical equipment cover more than 100 pages.

167. Thirdly, as described in paragraph 37 above, Perkwood was registered as a dormant company for the period during which TNG allegedly purchased equipment from Perkwood which did not conduct any business. In addition, Perkwood did not have any employees and the company therefore possessed no expertise which was required to deliver equipment for the LPG plant.

168. In summary, it appears unlikely to say the least that Perkwood in fact delivered parts for the LPG plant. Instead, it appears that the Perkwood contract was a sham contract which was concluded in an attempt to camouflage the large inappropriate transfers of value from TNG to the affiliated company, Perkwood, as the legitimate purchase price for technical equipment.

#### K.4.4 Particularly regarding Annex 2 and Annex 4 to the Perkwood contract

169. Through annex 2 to the Perkwood contract ("**Annex 2**") of 27 March 2006, for example, the following parts, which are identical to the parts which already had been purchased from TGE, were purchased: one gas de-carbonisation unit for USD 19.5 million, an LPG recovery unit for USD 38.6 million as well as a sales gas compression unit for USD 34.8 million.<sup>142</sup> The fact that the components are identical to the parts which were purchased from TGE has also been confirmed in an expert statement from

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<sup>140</sup> Azalia's role is described in section K.4.7.

<sup>141</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66 p. 18.

<sup>142</sup> Annex no. 2 dated 27 March 2006 to the Perkwood contract, 17 February 2006, Exhibit K-26.

TGE which was submitted in the challenge and invalidity proceedings which were initiated in the Svea Court of Appeal on 19 March 2014.<sup>143</sup> In the expert opinion, it is confirmed that there was no need to have double the components in the LPG plant.<sup>144</sup>

170. The total purchase price for the three parts amounted to USD 93,095,908 according to Annex 2, i.e. USD 59 million more than was paid to TGE for these parts according to the TGE contract. This renders a price difference of almost SEK 500 million. This price difference could not be explained by the Stati Parties.<sup>145</sup> Accordingly, without explanation, the Stati Parties have taken USD 59 million from TNG before the alleged harassment campaign began in October 2008.
171. Through annex 14 to the Perkwood contract (“**Annex 14**”), which was concluded on 2 December 2008, equipment for the LPG plant was once again purchased.
172. The first item in Annex 14 is “Heat exchangers (coolers) of stainless steel cold area”<sup>146</sup> and relates to equipment for the LPG recovery unit. For these parts, TNG paid approximately USD 12 million to Perkwood. Identical parts for the LPG recovery unit had, however, already been purchased from TGE two years earlier for approximately EUR 787,000 (equal to USD 887,000).<sup>147</sup> Since identical components had already been purchased from TGE although they only were needed once and were purchased again from Perkwood through Annex 2, the purchase price of USD 12 million appears to be a fictitious investment cost.
173. The second item in Annex 14 is *gas turbo compressors* SOLAR, which were purchased for USD 6.7 million. The TGE contract contains three gas turbo compressors for a total cost of USD 12.8 million, which makes for a per-item price of approximately USD 4.27 million.<sup>148</sup> This renders a price difference of approximately USD 2.43 million. Gas turbo compressors also are part of the module sales gas

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<sup>143</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66 pp. 19-24.

<sup>144</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66 p. 27.

<sup>145</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66 pp. 23-24 as well as expert opinion of Steef Huijbregtse on 6 February 2019, Exhibit K-13, pp. 21-27.

<sup>146</sup> Annex no. 14 dated 2 December 2008 to the Perkwood contract on 17 February 2006, Exhibit K-26.

<sup>147</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66 p. 24. TGE claims in its report that the description is not sufficiently specified but that it likely concerns the main exchanger, E3001, sub cooler E3002 and de-ethanizer condenser E3003.

<sup>148</sup> Agreement between TGE, Ascom and Azalia, 31 January 2006, Exhibit K-67 Appendix 1, section 3.5.

compression unit which was also purchased from Perkwood through Annex 2.<sup>149</sup> Since all these parts had already been delivered by TGE and had already been purchased from Perkwood by virtue of Annex 2 although they were only needed once, the entire purchase price of USD 6.7 million appears to be a fictitious investment cost.

174. The third item in Annex 14 is *turboexpander Mafi-Trench*, which is part of the module LPG recovery unit. The component is therefore included in both Annex 2 and the TGE contract.<sup>150</sup> The price in Annex 14 is USD 3,095,173, which is to be compared to the price in the TGE contract, which was EUR 2,308,000, equal to approximately USD 2,610,000. Since the equipment had been delivered by TGE and was included in the Perkwood contract twice, the total cost of USD 3,095,173 appears to be a fictitious investment cost.
175. It should also be mentioned that TGE has confirmed in its expert statement that it is impossible that items 1-3 in Annex 14 could relate to spare parts for the parts which Perkwood is stated to have delivered for the LPG plant through Annex 2. The equipment in question is so-called “static equipment” that does not wear out, which is why there is no need for spare parts (except for those spare parts which already had been delivered by TGE).<sup>151</sup> For the purpose of a comparison, TGE has made a list of all the spare parts, which were ordered for the LPG plant. The total cost for all spare parts amounted to EUR 550,000.<sup>152</sup> It seems impossible that Perkwood could have delivered spare parts for USD 12 million for only the equipment which is listed in Annex 2.
176. As far as the components which Perkwood claims to have sold to TNG through Annex 14 are concerned, the engineer, Franjo Zaja, who was employed by TGE and *in te alia* had the task of supervising the electrical installation of the LPG plant, has confirmed that all relevant parts of the LPG plant were installed in October 2008, i.e. almost two months before Annex 14 was signed.<sup>153</sup> It is therefore clear that Perkwood, in fact,

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<sup>149</sup> Annex no. 2 dated 27 March 2006 to the Perkwood contract on 17 February 2006, Exhibit K-26.

<sup>150</sup> Annex no. 2 dated 27 March 2006 to the Perkwood contract on 17 February 2006, Exhibit K-26 number 2 and agreement between TGE, Ascom and Azalia, 31 January 2006, Exhibit K-67, Appendix 1, section 3.4.

<sup>151</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66, p. 27.

<sup>152</sup> TGE's list of spare parts, Exhibit K-70.

<sup>153</sup> Printout of Franjo Zaja's witness testimony of 16 September 2016, Exhibit K-69, pp. 45-46.

neither planned to deliver nor actually delivered these parts for the LPG plant.<sup>154</sup> In spite of this, TNG paid approximately USD 26.5 million in advance for Annex 14, which is described in more detail in section K.4.7, at the same time as the companies were close to bankruptcy according to Ascom's internal reports.<sup>155</sup>

K.4.5 The price difference between the Perkwood contract and the TGE contract is not explained by a "management fee" or in another way

177. The Stati Parties have previously claimed that their alleged investment cost in the LPG plant included a so-called *management fee* to Perkwood which amounted to approximately USD 44 million and that it was paid to Perkwood as a surcharge on the prices of the equipment.<sup>156</sup> In a previous arbitration between Vitol and the Stati Parties regarding the JOA contract (the "**JOA proceedings**"), Artur Lungu made the following statements.

"Perkwood charged TNG for the equipment and services under an agreement that included Perkwood's Management Fee. [...]"

Those fees [...] must be deducted from TNG's total capital expenses reflected in its financial systems and statements, total USD 43,852,108."<sup>157</sup>

178. In different proceedings, the Stati Parties have provided different explanations as to what the management fee or parts of it supposedly related. In the previous proceedings concerning the challenge of the award in Svea Court of Appeal, for example, the Stati Parties have, among other things, claimed that Perkwood handled the purchase of equipment for the LPG plant and that the management fee related to *inter alia* these services,<sup>158</sup> while the Stati Parties claimed in the enforcement proceedings in the Netherlands that the price difference of approximately USD 59 million, which is described in paragraph 170 (and which Artur Lungu has partly explained was a management fee of approximately USD 44 million) is compensation for transport, insurance, services, currency exchange between EUR and USD as well as a "mark-

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<sup>154</sup> Expert opinion of TGE, 2 June 2016, Exhibit K-66, pp. 26-27.

<sup>155</sup> See paragraphs 86-90 above.

<sup>156</sup> Artur Lungu's witness statement dated 11 October 2013, JOA proceedings, Exhibit K-71.

<sup>157</sup> Artur Lungu's witness statement dated 11 October 2013, JOA proceedings, Exhibit K-71.

<sup>158</sup> Excerpt from Stati's statement on 30 October 2015, Exhibit K-72, no. 22 (p.6).

up”.<sup>159</sup> It is also mentioned that the management fee is compensation for an economic and social risk which was assumed by virtue of the investment in the LPG plant, only to later referred to it as a profit.<sup>160</sup>

179. The fact that the price difference between the amount which Azalia paid to TGE and the amount which TNG paid to Perkwood could have been a management fee also lacks a contractual basis in the Perkwood contract. The English High Court of Justice came to the same conclusion when Justice Cook pointed out the lack of any basis for such a management fee.<sup>161</sup>

“Ascom has asserted that it paid a Management Fee of over \$33 million to an English company called Perkwood. An agreement has been disclosed which makes no mention of any Management Fee nor of any formula for calculating it. It appears from other evidence that there was a mark up on prices for equipment supplied to the LPG Plant. It appears therefore that this "fee" was simply paid at will.”<sup>162</sup>

180. In summary, the USD 44 million did not pertain to a management fee for work performed by Perkwood. As mentioned in paragraph 37 above, Perkwood was a dormant company which accordingly did not conduct any business. In fact, the so-called management fee was part of the Perkwood scheme through which the Stati Parties emptied the Kazakh companies, KPM and TNG, of money.

K.4.6 The Stati Parties intentionally inflated the investment costs for the LPG plant through the Perkwood scheme, which led to false financial reports

181. Under the Perkwood contract, TNG paid more than 100 million USD to Perkwood. As a result of TNG’s payment to Perkwood, the investment costs for the LPG plant appeared to be much higher than they actually were. Thus, the investment costs which

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<sup>159</sup> Excerpt from Stati’s statement on 16 April 2019 in Amsterdam Appeal Court, case no. 200.224.067/1, Exhibit K-73, no. 455 (p. 155).

<sup>160</sup> Excerpt from Stati’s statement on 16 April 2019 in Amsterdam Appeal Court, case no. 200.224.067/1, Exhibit K-73, no 428 (p. 147) and no. 467 (p. 158).

<sup>161</sup> The quoted decision related to a decision regarding seizure granted against Stati because of the so-called JOA proceedings. The JOA proceedings concerned Vitol’s contract with Ascom. Stati or companies controlled by Stati have been parties in three additional arbitrations. In addition to the ECT Proceedings. All arbitrations concerned the LPG plant, in respect of which the JOA proceedings was one of these parallel procedures.

<sup>162</sup> See Justice Cook’s decision (Freezing Order) of 29 August 2014 in High Court of Justice, Queen’s Bench Division, Commercial Court, Royal Court of Justice Strand, London, WC2A 2LL, case no. 2014 FOLIO 506, Exhibit K-2.

were stated for the LPG plant in the financial reports of Tristan Oil, TNG were much higher than the actual costs.

182. In an expert opinion from Deloitte, which was submitted in the challenge and invalidity proceedings initiated in the Svea Court of Appeal on 19 March 2014, this was described as follows. (Deloitte had been designated as an expert by Kazakhstan).

“Under the assumption that the New Information (which we were not in a position to verify) is correct, it can be concluded that a significant portion of the expenses Claimants allegedly made for the purpose of the construction of the LPG plant appear to lack a real basis and to have been made without recognizable cause or justification.

In accounting terms, it can be concluded that the reported construction costs of the LPG plant of approx. USD 245 million as at 31 December 2009 according to the combined financial statements of KPM, TNG and Tristan Oil or approx. USD 248 million according to the individual financial statements of TNG, respectively, were significantly overstated.”<sup>163</sup>

183. Anatolie Stati and Artur Lungu (previously Vice President of Ascom and Chief Financial Officer of Tristan Oil) also withheld from the KPMG auditors. The fact that Perkwood was a company affiliated with the Stati Parties and TNG. Instead, Anatolie Stati and Artur Lungu created the impression that Perkwood was an independent third party and that the transactions according to the Perkwood contract thus had been performed by two independent parties subject to market terms and conditions. In addition, when the equipment for the LPG-plant arrived in Kazakhstan, it was stated in the customs declarations that Perkwood was a party unrelated to TNG.<sup>164</sup>
184. In the beginning of the spring of 2016, KPMG started to doubt its previous audit reports and asked Anatolie Stati in a letter dated 15 February 2016 for explanations concerning Perkwood, especially in respect of the alleged management fee described in section K.4.5.<sup>165</sup>
185. KPMG was under an obligation to apply the rules applicable to auditors who operate internationally, i.e. the International Standard on Auditing (“ISA”). These standards describe the measures to be pursued by an auditor after the audit has been completed

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<sup>163</sup> Deloitte’s expert opinion of 1 October 2015, Exhibit K-74, p. 6.

<sup>164</sup> Perkwood customs declarations, Exhibit K-75.

<sup>165</sup> Correspondence between the Stati parties and KPMG between 2016 and 2019 (letter from Anatolie Stati to KPMG of 26 February 2016), Exhibit K-76.

in the event the auditor, following the audit, learns of circumstances which would have influenced the audit. Accordingly, a letter was sent according to ISA 560, section 14, which states the following.

“After the financial statements have been issued, the auditor has no obligation to perform any audit procedures regarding such financial statements. However, if, after the financial statements have been issued, a fact becomes known to the auditor that, had it been known to the auditor at the date of the auditor’s report, may have caused the auditor to amend the auditor’s report, the auditor shall:

(a) Discuss the matter with management and, where appropriate, those charged with governance;

(b) Determine whether the financial statements need amendment; and, if so,

(c) Inquire how management intends to address the matter in the financial statements.”

186. On 26 February 2016, Anatolie Stati replied to KPMG’s letter. In the letter, Anatolie Stati raised several counter questions concerning the information which KPMG had received. Furthermore, Anatolie Stati threatened to take measures if KPMG did not cooperate or if KPMG withdrew the audit reports. Anatolie Stati did not reply to any questions concerning Perkwood.<sup>166</sup>
187. Since Anatolie Stati did not reply to KPMG’s questions, the Stati Parties managed to temporarily prevent KPMG from conducting any further examination. As a consequence of this delay, Anatolie Stati attempted to conceal from KPMG Perkwood’s status as an affiliated company and thereby prevent a closer analysis of the transactions between Perkwood and TNG.
188. However, on 3 April 2019, Artur Lungu testified as a witness under oath during a so-called “deposition” in Houston, Texas in the US.<sup>167</sup> During the deposition, he confirmed, among other things, that the consolidated annual reports for Tristan Oil, TNG and KPM for the years 2007, 2008 and 2009 included materially false statements given that he and Anatolie Stati had withheld from KPMG’s auditors the fact that Perkwood was an affiliated company.

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<sup>166</sup> Letter from Anatolie Stati to KPMG of 26 February 2016, Exhibit K-76.

<sup>167</sup> Printout of witness testimony of Artur Lungu, 3 April 2019, Exhibit K-44.



189. Lungu also confirmed the following. In 2008, before the planned sale of the Stati Parties' assets in Kazakhstan, KPMG Tax & Advisory LLC ("**KPMG Tax & Advisory**"), prepared a draft *vendor due diligence* report, i.e. a detailed report concerning Tristan Oil, TNG and KPM's financial position for potential purchasers. The draft identified Perkwood as a company affiliated with the Stati Parties, which it was. Artur Lungu, however, instructed KPMG Tax & Advisory to remove the reference to Perkwood as an affiliated company and instead referred to Perkwood as a third party, which KPMG Tax & Advisory did.<sup>168</sup>
190. After KPMG received relevant parts of Artur Lungu's witness statement and other documents during the summer of 2019, KPMG sent the relevant documentation confirming the affiliation with Perkwood in a letter to Anatolie Stati on 5 August 2019. In the letter, Anatolie Stati is asked to comment on the effect which the documents have on the companies' annual reports in order to investigate the need for, and possibility of, an amendment according to ISA 560, section 14, quoted in paragraph 185.
191. Anatolie Stati did not reply to KPMG's letter of 5 August 2019. Anatolie Stati at no time provided a response to the question. Anatolie Stati's unwillingness to reply to KPMG's questions concerning Perkwood shows how the Perkwood scheme was intentionally withheld from the outside world.
192. Accordingly, KPMG was forced to act in accordance with ISA 560, section 17, which states the following.
- "If management does not take the necessary steps to ensure that anyone in receipt of the previously issued financial statements is informed of the situation and does not amend the financial statements in circumstances where the auditor believes they need to be amended, the auditor shall notify management and, unless all of those charged with governance are involved in managing the entity,<sup>6</sup> those charged with governance, that the auditor will seek to prevent future reliance on the auditor's report. If, despite such notification, management or those charged with governance do not take these necessary steps, the auditor shall take appropriate action to seek to prevent reliance on the auditor's report."
193. As a consequence, on 21 August 2019, KPMG sent (i) a letter to the law firm, Herbert Smith Freehills, which is Kazakhstan's legal counsel and coordinates Kazakhstan's defence in the enforcement proceedings which are ongoing in seven jurisdictions

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<sup>168</sup> Printout of witness examination of Artur Lungu, 3 April 2019, Exhibit K-44, p. 266-277.

around the world and (ii) another letter to Anatolie Stati. KPMG's letters state that the audit reports for a total of 18 of Anatolie Stati's companies' financial reports are unreliable. These financial reports include TNG's annual reports for the years 2007, 2008 and 2009 as well as Tristan Oil, TNG and KPM's consolidated annual reports for the same years.<sup>169</sup> In this context, the audit especially pertained to the LPG plant's value which was included in the balance sheet. The letter Anatolie Stati explicitly requests that take all measures necessary to prevent the reliance of third parties on the audit reports.<sup>170</sup>

194. Due to KPMG's withdrawal of the reports, Kazakhstan has asked the auditor, Mats Jakobsson with the audit firm, BDO in Stockholm, for a statement regarding the measure taken by KPMG. In his statement, Mats Jakobsson states that withdrawing issued audit reports is an extraordinary measure which is rarely taken by international audit firms. Furthermore, Mats Jakobsson states that such a withdrawal is preceded by an extraordinarily thorough analysis of the company in question.<sup>171</sup>
195. In this context, it should be noted that it has been thereby proved that Anatolie Stati intentionally deceived the Svea Court of Appeal during the challenge and invalidity proceedings initiated on 19 March 2014 and in which the Court of Appeal was to assess *inter alia* whether the evidence which the Stati Parties presented was false (*inter alia* the financial reports regarding Tristan Oil, KPM and TNG).
- K.4.7 The payments from TNG to Perkwood were channelled to Hayden which is controlled by Anatolie Stati
196. The payments which were channelled out of Kazakhstan from TNG to Perkwood according to the Perkwood contract were then channelled to other companies owned or controlled by Anatolie Stati.
197. The aforementioned follows from Perkwood's bank statements which Kazakhstan has obtained through Latvian authorities which have supported the Kazakh Prosecutor's Office in connection with international legal cooperation. In Perkwood's bank

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<sup>169</sup> Letter from KPMG to Herbert Smith Freehills on 21 Augusti 2019, Exhibit K-77

<sup>170</sup> Correspondence between the Stati Parties and KPMG from 2016-2019 (letter from Anatolie Stati to KPMG of 26 February 2016), Exhibit K-76.

<sup>171</sup> Statement of authorised auditor Mats Jakobsson, BDO, concerning KPMG's application of ISA 560 of 25 November 2019, Exhibit K-79.

statements, there are, for example, the following characteristic transfers which illustrate how money was continuously channelled out of Kazakhstan and TNG.

198. On 5 December 2008, Perkwood received a payment of USD 21,999,975 from TNG with the description “Appendix 14”.<sup>172</sup> The payment was made to Perkwood’s account at Rietumu Banka. Three days later, on 8 December 2008, two transfers were made from Perkwood to Azalia, again to an account at Rietumu Banka, of USD 12,000,000 and USD 10,000,000, respectively, both with the description “LPG Equipment”.<sup>173</sup> The amount corresponds to the one which TNG had just received. It is apparent from Azalia’s bank statement from Rietumu Banka that Azalia, on the same day Azalia received the payments of USD 12,000,000 and USD 10,000,000 respectively from Perkwood, immediately made two transfers to Hayden of USD 12,000,000 and USD 10,000,000 respectively with the description “drilling equipment”.<sup>174</sup> As described above in paragraphs 36 and 40, Anatolie Stati had a general power of attorney to represent both Hayden and Perkwood.<sup>175</sup> In addition, Anatolie Stati, controlled Hayden’s bank account and the funds deposited on it.<sup>176</sup>
199. On 16 December 2008, Perkwood again received a payment of USD 3,614,909 from TNG with the description “Appendix 14”. On the same day, Perkwood made a transfer of USD 3,600,000 to Azalia with the description, “LPG Equipment”.<sup>177</sup> The amount corresponds to the one which had been received from TNG. It is apparent from Azalia’s bank statement that USD 3,600,000 was transferred to Hayden the same day with the description, “drilling equipment”.<sup>178</sup> On 2 January 2009, Perkwood received a payment of USD 649,904. On 5 January 2009, three days later, Perkwood made a transfer of USD 650,000 to Azalia with the description, “LPG Equipment”.<sup>179</sup> It is

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<sup>172</sup> Perkwood’s bank statement, Exhibit K-79, p. 29.

<sup>173</sup> Perkwood’s bank statement, Exhibit K-79, p. 29.

<sup>174</sup> Azalia’s bank statement, Exhibit K-17, p. 40.

<sup>175</sup> General power of attorney concerning Perkwood for 2005, 2006, 2007, 2008 and 2009, Exhibit K-12 and powers of attorney concerning Hayden for the period 5 October 2005-5 October 2016, Exhibit K-22.

<sup>176</sup> Contract concerning the opening of an account at Rietumu Banka, Exhibit K-24, as well as certificate concerning beneficiaries for Hayden’s account, Exhibit K-23.

<sup>177</sup> Perkwood’s bank statement, Exhibit K-79, p. 30.

<sup>178</sup> Azalia’s bank statement, Exhibit K-17, p. 40.

<sup>179</sup> Perkwood’s bank statement, Exhibit K-79, p. 30.

apparent from Azalia's bank statement that USD 650,000 was transferred to Hayden on the same day with the description, "drilling equipment".<sup>180</sup>

200. Thus, in December 2008 and January 2009, a total of approximately USD 26 million was transferred from TNG. Accordingly, the money was channelled from TNG during the same period in which, as the Stati Parties claimed in the ECT Proceedings, KPM and TNG were dealing with financial problems. The Stati Parties transferred the money to Hayden and then used the funds for luxury consumption and to make payments to politicians and state employees.
201. In addition, TNG made advance payments to Perkwood concerning equipment for the LPG plant.<sup>181</sup> Although the LPG plant was abandoned before the alleged delivery should have taken place, the payments were not returned to TNG. In February 2010, Perkwood's debt to TNG relating to the advance payments amounted to USD 36,800,000.<sup>182</sup> In February 2010, it was decided that Tristan Oil should assume TNG's claim against Perkwood.<sup>183</sup> On 13 May 2010, a conference call was held between representatives of KPMG and Artur Lungu. It is apparent from the minutes of this call that Perkwood still had not paid its debt to Tristan Oil notwithstanding that this should have been carried out within 30 days.<sup>184</sup> The advance payments were a an additional means by which the Stati Parties could move money from TNG to Perkwood.
202. In summary, the following can be stated: The Perkwood scheme entailed that the investment costs for the LPG plant were substantially inflated and that millions could be channelled out of Kazakhstan to Hayden which was controlled by Anatolie Stati. It is now clear that the Stati Parties themselves caused TNG's insolvency and financial problems by channelling large sums of money from these companies to companies outside Kazakhstan through the sham transactions with Perkwood described above. Notwithstanding the grave financial problems confronting TNG, the money which was taken out of TNG was never paid back. Accordingly, the sham transactions with

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<sup>180</sup> Azalia's bank statement, Exhibit K-17, p. 41.

<sup>181</sup> As described in paragraph 176, *inter alia*, USD 26.5 million was paid in advance in December 2008.

<sup>182</sup> Supplement no. 11 to the Perkwood contract, 17 February 2006, Exhibit K-26.

<sup>183</sup> See offsetting contract between TNG and Tristan Oil dated 9 February 2010, attached to the Perkwood contract, Exhibit K-26.

<sup>184</sup> KPMG's minutes of the telephone call of 13 May 2010, Exhibit K-80.

Perkwood were one of the reasons why KPM and TNG were confronted with financial problems during the autumn of 2008.

## **K.5 Conclusion**

203. The financial problems confronting KPM and TNG were not caused by Kazakhstan's actions. Instead, it was the Stati Parties themselves who caused the problems by (i) not transferring the funds derived from the Tristan notes to KPM and TNG, (ii) not paying KPM and TNG for the oil and gas condensate which the companies sold and (iii) creating fictitious costs and arranging various sham invoicing schemes which gradually emptied TNG of money. The funds which were taken from KPM and TNG through these measures were transferred to Hayden by the Stati Parties, after which the Stati Parties used the funds for luxury consumption and to make payments to politicians and state employees (see further section L below).

204. On 6 June 2017, the English High Court rendered a preliminary decision in enforcement proceedings in England concerning the arbitral award. The High Court found that Kazakhstan had shown that "*there is a sufficient prima facie case that the Award was obtained by fraud*".<sup>185</sup>

## **L. The revenue which was channelled out of Kazakhstan was used in other countries, for luxury consumption and to make payments to politicians and state employees**

### **L.1 Introduction**

205. As follows from the aforementioned, it is now clear that the Stati Parties channelled revenue from Kazakhstan to invest in other countries. The documents to which Kazakhstan has obtained access show that the funds of which KPM and TNG were deprived were transferred to Hayden in order to then be used *inter alia* for luxury consumption and to make payments to politicians and state employees abroad (e.g. in Congo, Sudan and Romania). The following describes some of the transactions carried out by the Stati Parties via Hayden.

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<sup>185</sup> High Court of Justice of England and Wales' decision of 6 June 2017 in case no. CL-2+14-000070 between the Stati Parties and Kazakhstan, Exhibit K-37.

**L.2 The Stati Parties used Hayden in order to channel money abroad**

206. *Inter alia*, the Stati Parties channelled large sums of money from Hayden to countries in the Middle East, and mainly Kurdistan. By way of example, it may be mentioned that the Stati Parties, between 9 June 2008 and 3 July 2008, transferred USD 39.8 million to the account of the company, Pellat International, which is controlled by Anatolie Stati, at Rietumu Banka.<sup>186</sup> The money originated from Montvale and consisted of the oil payments from Vitol which have been described in section K.3.2.5.<sup>187</sup> Pellat International, in turn, transferred USD 32 million to Calgary Trade Inc which has connections to the United Arab Emirates, as well as USD 7.8 million to Zozik Co which has connections to Kurdistan.<sup>188</sup>
207. On 4 August 2008 and on 6 August 2008, the Stati Parties, via Hayden, transferred approximately USD 24.5 million and USD 20 million, respectively to Lenwell Solutions Inc.<sup>189</sup> This money also originated from Montvale and consisted of oil payments from Vitol.<sup>190</sup> Lenwell Solutions Inc. is controlled by Anatolie Stati by means of a power of attorney.<sup>191</sup> Lenwell Solutions Inc, in turn, transferred the money to Komet Group S.A. The latter is Anatolie Stati's operative company in Kurdistan. Both Lenwell Solutions Inc. and Komet Group S.A., over whose bank account Anatolie Stati has a right of disposition,<sup>192</sup> have bank accounts at Rietumu Banka. From Komet Group S.A., the Stati Parties later transferred the money to a company which is connected to the Kurd government, Zozik Co. The payment reference states "PSC dated 20.06.2008" which would pertain to payment under a Production Sharing

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<sup>186</sup> Powers of attorney concerning Pellat International, Exhibit K-81, as well as Pellat International's bank statement, Exhibit K-82 p. 1 and 2 and Hayden's bank statement, Exhibit K-65 p. 197 and pp. 215-216.

<sup>187</sup> Montvale's bank statement, Exhibit K-62, pp. 37-38 and Hayden's bank statement, p. 197 and pp. 215-216.

<sup>188</sup> Pellat International's bank statement, Exhibit K-82 pp. 1 and 2. In an arbitral award, it is stated that Zozik Co has been connected with the largest political party in Kurdistan; see case *Pearl Petroleum Company Ltd, Dana Gas PJSC, Crescent Petroleum Company International Ltd v The Kurdistan Regional Government*, paragraph 146, accessible on <https://www.italaw.com/sites/files/case-documents/italaw10250.pdf>.

<sup>189</sup> Hayden's bank statement, Exhibit K-65, pp. 239 and 242, as well as Lenwell's bank statement, Exhibit K-83 p. 2.

<sup>190</sup> Montvale's bank statement, Exhibit K-62, pp. 37-38 and Hayden's bank statement, Exhibit K-65, p. 197 and pp. 215-216.

<sup>191</sup> Power of attorney for Lenwell Solutions Inc, Exhibit K-84.

<sup>192</sup> Information regarding bank accounts at Rietumu Banka, Exhibit K-13.

Contract dated 20 June 2008 which related to Anatolie Stati's business in the Barda Rash oil field in Kurdistan.

208. On 16 June 2008, the Stati Parties transferred USD 11.5 million from Hayden to Lenwell Solutions Inc, after which this money was transferred to Komet Group S.A.<sup>193</sup> The money originated from Terra Raf. From Komet Group S.A., the money was transferred to the company, Ocean Energy FZE.<sup>194</sup> At this time, Kazakhstan does not know who owns Ocean Energy FZE, but the totality of circumstances points to the fact that the company has connections to the Kurdish government since payments to Ocean Energy FZE were made by order of the Kurdish government (which issued payment instructions to Anatolie Stati). The payment references for the transfers to Ocean Energy are "*article 32 of the production sharing contract*" and "*letter of 13 June 2008*".<sup>195</sup> The former would pertain to payment in accordance with the Production Sharing Contract which is described in paragraph 207 above. The latter appears to relate to a letter from the Kurdish government dated 13 June 2008. The letter was addressed to Anatolie Stati and contained payment instructions for payment to Ocean Energy FZE.<sup>196</sup>

### **L.3 The Stati Parties used Hayden to pay benefits to Kazakh politicians**

209. The Stati Parties also used funds from Hayden to pay benefits to a Kazakh politician. Between October 2007 and June 2008, the Stati Parties paid a total of USD 1,153,670 through nine separate transfers to Lyazzat Kiinov's daughter, Yekaterina Lyazzatova. Lyazzat Kiinov was Vice Energy and Mineral Resources Minister in Kazakhstan from March 2003 until December 2011. The payments were made through Hayden and were referred to as "*payment for scholarship*" in the bank statements.<sup>197</sup>
210. The transfers to Yekaterina Lyazzatova are currently being investigated by the Kazakh police and Prosecutor's Office due to suspicions of bribery.

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<sup>193</sup> Hayden's bank statement, Exhibit K-65, pp. 204-205.

<sup>194</sup> See Lenwell's bank statement, Exhibit K-83 p. 1 and Komet's bank statement, Exhibit K-85, p. 4. Ocean Energy FZE was registered in "Jebel Ali Free Zone" in the United Arab Emirates.

<sup>195</sup> Komet's bank statement, Exhibit K-85, p. 4.

<sup>196</sup> Letter to Anatolie Stati from Ministry of Natural Resources in Kurdistan on 13 June 2008, Exhibit K-86.

<sup>197</sup> Hayden's bank statement, Exhibit K-65, pp. 51, 78, 84, 101, 106, 137, 144, 174 and 198.

**L.4 The Stati Parties used Hayden in order to pay benefits to politicians and state employees abroad**

211. The Stati Parties also used funds from Hayden to pay several million dollars to politicians and state employees in Moldova, Congo, Romania, Sudan and Kurdistan. The money originated from funds over which the Stati Parties' Kazakh business, i.e. KPM and TNG were deprived.

**L.4.1 The Stati Parties made payments to Victor Prodan and his family**

212. From 2007 until 2015, several payments were made by Hayden to Victor Prodan and his family.<sup>198</sup> Victor Prodan was the mayor of the town of Ungheni in Romania between 2012 and 2016. During his time as mayor, Victor Prodan was charged and investigated for corruption and money laundering crimes.<sup>199</sup>

213. In total, 33 payments were made to Victor Prodan, directly or indirectly, for a total amount of approximately USD 440,000.<sup>200</sup> To put this number in perspective, it is to be noted that the gross annual income per capita in Romania in 2018 was USD 11,290.<sup>201</sup> It appears from Hayden's bank statement that the payment *inter alia* concerned "aid payments" as well as salary payments ("pmt for AID" and "salary payment"). The Stati Parties also paid for hotels for Victor Prodan at different holiday destinations. *Inter alia*, costs for the five-star hotel, Rixos Prykarpattya, in Ukraine were paid. The total hotel costs amounted to USD 45,818.56.<sup>202</sup>

214. The Stati Parties also paid large sums to Victor Prodan's wife, Anastasia Prodan, and daughter, Tatiana Prodan. Directly or indirectly, a total of 17 payments were made to Anastasia Prodan and four payments were made to Tatiana Prodan.<sup>203</sup> It is apparent

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<sup>198</sup> Bank statement from Hayden, Exhibit K-65.

<sup>199</sup> See article from MS News, *The Mayor of Ungheni, Victor Prodan, accused by ANI of conflict of interest for giving contracts to his wife's firm*, published on 23 May 2018, Exhibit K-87 and article from Adevarul, *The mayor of Ungheni, Mures County and a rich businessman from Targu-Mures indicted for abuse of office, money laundering and conflict of interest*, published on 9 December 2015, Exhibit K-88.

<sup>200</sup> Bank statement from Hayden, Exhibit K-65, pp. 5, 8, 17, 19, 42, 71, 84, 101, 113, 161, 315, 367, 369, 489, 545, 578, 580, 604, 631, 633, 641, 662, 689, 722, 727, 756, 775, 788, 800, 865, 899, 909 and 915.

<sup>201</sup> See <https://data.worldbank.org/country/romania> .

<sup>202</sup> Bank statement from Hayden, Exhibit K-65, pp. 71, 315, 633, 578 and 722.

<sup>203</sup> The payments to Anastasia Prodan are apparent from Hayden's bank statement, Exhibit K-65, pp. 541, 545, 579, 634, 667, 713, 723, 754, 772, 790, 844, 871, 933, 934, 937, 943 and 959. The payments to Tatiana Prodan are apparent from Hayden's bank statement, Exhibit K-65, pp. 415, 562, 572 and 580.



from Hayden's bank statement that the payments related to *inter alia* "payments as per request, sponsorship" as well as "rent for 6 months". From 2009 until 2015, in total, more than USD 120,000 was paid to Anastasia Prodan and Tatiana Prodan.

L.4.2 The Stati Parties made payments to Iurie Leanca and family

215. Between October 2009 and May 2014, the Stati Parties paid approximately USD 35,000 to Iurie Leanca.<sup>204</sup> Iurie Leanca was Prime Minister of Moldova between 2013 and 2015. Between 2009 and 2013, he was Vice Prime Minister as well as "*Minister of Foreign Affairs and European Integration*".

216. Beginning in December 2010, several transfers were made to Iurie Leanca's wife, Aida Leanca. Between 2010 and 2014, the Stati Parties, via Hayden, transferred approximately USD 359,000 to Aida Leanca's three accounts at Rietumu Banka (to be compared with the gross annual income per capita in Moldova of USD 2,990).<sup>205</sup> <sup>206</sup> The majority of the transfers are described in the bank statements as "as per request, for financial aid". Later, the transfers were masked as services rendered or salary, although Aida Leanca, according to Iurie Leanca, has not worked since 1996.<sup>207</sup> Iurie Leanca's sons, Marius Leanca and Tristan Leanca, also received payments from the Stati Parties via Hayden.<sup>208</sup> The payment to Tristan Leanca was made directly to Cambridge and put into payment for his studies.<sup>209</sup> Tristan Leanca's studies were later also funded by Ilan Shor, who is now involved in Moldova's biggest money laundering scandal to date.<sup>210</sup>

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<sup>204</sup> The payments were made from Hayden's bank account via a bank account belonging to Terra Raf. Kazakhstan currently does not have access to bank statements from this account. However, see bank statements from Hayden, Exhibit K-65, pp. 456, 540, 572, 608, 655, 684, 774 and 913.

<sup>205</sup> <https://databank.worldbank.org/reports.aspx?source=2&country=MDA>

<sup>206</sup> Hayden's bank statement, Exhibit K-65, pp. 499, 640, 714, 730, 747, 763, 769, 777, 795, 805, 814, 825, 838, 846, 856, 874, 881 and 913.

<sup>207</sup> Article from Tribuna, *Details on the person close to... Yuri Leanca*, published 29 September 2016, Exhibit **Error! Reference source not found.**

<sup>208</sup> Hayden's bank statement, Exhibit K-65, pp. 695 and 799.

<sup>209</sup> Hayden's bank statement, Exhibit K-65, pp. 695.

<sup>210</sup> Article from Nokta, *Investigation: younger son of Yuri Leanca studied in the UK with Ilan Shor's money*, published on 8 October 2018, K-90.

L.4.3 The Stati Parties made payments to Matombe Masanga Adelard

217. On 30 January 2008, the Stati Parties paid USD 20,000 to Matombe Masanga Adelard.<sup>211</sup> To put the amount in perspective, it must be noted that the gross annual income per capita in the Democratic Republic Congo (Congo-Kinshasa) was USD 490 in 2018.<sup>212</sup>

218. Since 2008, Matombe Masanga Adelard has held a high-ranking position within Congo-Kinshasa's tax authority. Furthermore, he is a consultant to Congo's Prime Minister.<sup>213</sup>

219. The payment of 20,000 USD was made by the Stati Parties via Hayden. According to Hayden's bank statement, the payment concerned "*payment as request, representatives*".<sup>214</sup>

L.4.4 The Stati Parties made payments to Olowa Lungudi

220. On 6 August 2008, USD 100,000 was transferred from Hayden to Olowo Lungudi (to be compared with Congo's gross annual income in paragraph 217 above).<sup>215</sup> Olowa Lungudi is a politician in Congo.<sup>216</sup> On the bank statement, it was stated that the payment related to "*payment as per Contract No 1: for consulting and marketing fee*".<sup>217</sup>

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<sup>211</sup> Bank statement from Hayden, Exhibit K-65, p. 105.

<sup>212</sup> <https://data.worldbank.org/country/congo-dem-rep?view=chart> .

<sup>213</sup> See excerpt from Adelard Matombe's LinkedIn profile, Exhibit K-91, article from Africa News, *DGRK: Kimbuta can choose between Adelard Matombe, Toussaint Mika, Muissa and Willy Lupemba*, published on 13 January 2014, Exhibit K-92 and list of participants from UN conference on trade and development in Geneva, March 2012, Exhibit K-93.

<sup>214</sup> Bank statement from Hayden, Exhibit K-65, p. 105.

<sup>215</sup> Bank statement from Hayden, Exhibit K-65, p. 242.

<sup>216</sup> See notifications in Congo's equivalent to the Swedish Official Gazette (Sw: *Post- och Inrikes Tidningar*) of 15 December 2012, Exhibit K-72 and list of senators in Congo elected on 19 January 2007, Exhibit K-95.

<sup>217</sup> Bank statement from Hayden, Exhibit K-65 p. 242.

L.4.5 The Stati Parties made payments to Costello Garang Ring Lual

221. Between 2011 and 2014, five payments were made by the Stati Parties via Hayden to Costello Garang Ring Lual. During this period, Costello Garang Ring Lual was a politician in South Sudan.

222. In total, the Stati Parties paid USD 600,000 to Costello Garang Ring Lual.<sup>218</sup> To put the amount in perspective, it is to be noted that the gross annual income in South Sudan was 460 USD in 2016.<sup>219</sup> According to Hayden's bank statement, the payments concerned "*payment as per request; for consulting fee*" as well as "*payment as per request w/n dd. 20.01.14 for representative fee*".<sup>220</sup>

L.4.6 The Stati Parties made payments to Sarbaz N Hawrami

223. Between September 2010 and February 2013, 8 transfers were made by the Stati Parties via Hayden to Sarbaz N Hawrami's bank account at Rietumu Bank. There is conflicting information regarding which position held by Sarbaz N Hawrami in the Kurdish government, i.e. there is information that indicates that, *inter alia*, he is a consultant and staff manager with Kurdistan's Prime Minister.<sup>221</sup> Several sources describe him as a manager of petrol and oil refineries in Kurdistan.<sup>222</sup>

224. The total amount transferred by the Stati Parties via Hayden to Sarbaz N Hawrami was approximately USD 1,5 million.<sup>223</sup> To put the amount in perspective, it is to be noted that the average monthly income in Kurdistan is approximately 420 USD.<sup>224</sup> It is apparent from the bank statements that the transactions related to "*bonuses and salary payments*" as well as "*payment as per request; for representative fee*".<sup>225</sup>

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<sup>218</sup> Bank statement from Hayden, Exhibit K-65, pp. 588, 686, 690, 721 and 887.

<sup>219</sup> <https://data.worldbank.org/country/south-sudan?view=chart>.

<sup>220</sup> Bank statement from Hayden, Exhibit K-68, pp. 588, 686, 690, 721 and 887.

<sup>221</sup> Excerpt from WikiLeaks, *Deputy oil minister on hydrocarbon law*, 27 November 2007, Exhibit K-96 and excerpt from Kurdistan's governments' homepage, which shows members of the fifth administration May 2006- October 2009, Exhibit K-97.

<sup>222</sup> Excerpt from homepage "getty images" concerning Sarbaz N Hawramis, Exhibit K-98.

<sup>223</sup> Bank statement from Hayden, Exhibit K-65, pp. 469, 470, 586, 750 and 766.

<sup>224</sup> <https://iraw.iom.int/demographic-survey-kurdistan-region-iraq>.

<sup>225</sup> Bank statement from Hayden, Exhibit K-65, pp. 469, 470, 586, 750 and 766.

225. The money which was transferred to Sarbaz N Hawramis, was used *inter alia* for casinos and luxury consumption.<sup>226</sup>

**L.5 The Stati Parties used income from KPM and TNG for private luxury consumption**

226. In addition to transferring large sums of money to other countries and paying benefits to politicians and state employees, the Stati Parties used the money transferred to Hayden for luxury consumption. For example, the Stati Parties used Hayden funds to buy several different cars at Hayden's expense.
227. From 2007 until 2008, the Stati Parties bought three Mercedes Benz automobiles for a total amount of EUR 140,000.<sup>227</sup> Hayden's bank statement below shows the three transactions (figure 28).

**Figure 28: Bank statement from Hayden of 2 August 2007, 7 February and 6 May 2008**

Pārskaitījumi					
02.08.2007	IV0708021769933 R-18 Pārskaitījums uz citu banku	DaimlerChrysler AG; -NL DD DE86870700000754182400, DEUTSCHE BANK AG, DEUTDE8C870 Pmt as per Invoice No. 2243-441507; for Mercedes-Benz S 350 Auftrags-Nummer 07243G2089; Zahlungsgrund 07G2089	-33 000,00	EUR	42 366,00
07.02.2008	IV0802061762455 R-486 Pārskaitījums uz citu banku	PASCAR TRADING GmbH DE76290400900101204800, COMMERZBANK AG, COBADEFF290 Invoice No. 152 dd 06.02.2008; Mercedes Benz S550L AMG	-87 000,00	EUR	37 788,06
06.05.2008	IV0805061760830 R-778 Pārskaitījums uz citu banku	Gmstepe Bahri DE43700800000578742700, DRESDNER BANK AG, DRESDEFFXXX Pmt. as per RECHNUNG Nr.2008/30 dd 05.05.2008; for Mercedes Benz Viano 2.2 CDI; Body Nr WDF63881313025671	-20 000,00	EUR	45 471,94

<sup>226</sup> See, for example, bank statement from Sarbaz N Hawrami, Exhibit K-99 pp. 1-5.

<sup>227</sup> Bank statement from Hayden, Exhibit K-65, pp. 6, 110 and 173.

228. In addition, the Stati Parties bought two BMW X6 cars at Hayden's expense in 2008.<sup>228</sup> The cars cost EUR 72,000 and EUR 89,000 respectively. Hayden's bank statement below shows the transactions (figure 29).

**Figure 29: Bank statement from Hayden of 26 May and 22 October 2008**

26.05.2008	IV0805261760230 R-852 Pārskaitījums uz citu banku	<b>BMW Bank GmbH</b> DE82700202700068007305, BAYERISCHE HYPO-UND VEREINSBANK AG.-HYPOVEREINSBANK, HYVEDEMMXXX Kunder-No. 3489659 Autospace; For car BMW X6	-72 000,00	EUR	438 394,75
22.10.2008	IV0810221761797 R-1463 Pārskaitījums uz citu banku	<b>BMW AG Munchen</b> DE05700700100152694600, DEUTSCHE BANK AG, DEUTDEMMXXX Pmt. as per request; Kunden-NR. 20745 (Auto Space); for BMW X6 50i	-89 000,00	EUR	37 966,08

229. From 2008 until the ECT Proceedings were initiated on 26 July 2010, Hayden paid for several trips by private jet for Anatolie Stati and Gabriel Stati.<sup>229</sup> The total price for the trips amounted to EUR 513,203 and USD 153,000. Hayden's bank statement below shows a selection of the trips (figure 30).

**Figure 30: Bank statement from Hayden for the period 28 February until 17 October 2008**

28.02.2008	IV0802281761958 R-569 Pārskaitījums uz citu banku	<b>AIR SPEED CHARTER FZE</b> 01-7965672-01, STANDARD CHARTERED BANK, SCBLAEADXXX Pmt. as per Invoice No. EXJET001/2008 dd 27.02.2008 ; for charter flight	-153 000,00	USD	651 624,98
03.04.2008	IV0804031761507 R-686 Pārskaitījums uz citu banku	<b>JET EXECUTIVE TRANSPORT LIMITED</b> CZ1527000000001002351159, UNICREDIT BANK CZECH REPUBLIC,A.S., BACXCZPPXXX Pmt as per Invoice No 80401 DD 03/04/08; for charter flight	-34 000,00	EUR	12 326,49
11.03.2008	IV0803111761275 R-594 Pārskaitījums uz citu banku	<b>AVB-2004 JSC</b> BG07RZBB91551467730905, RAIFFEISENBANK (BULGARIA) EAD, RZBBBGSFXXX Pmt. as per invoice No. 0000000272 dd 10/03/2008; for charter flight (Erbil-Sofia)	-18 000,00	EUR	15 032,52

<sup>228</sup> Bank statement from Hayden, Exhibit K-65, pp. 188 and 291.

<sup>229</sup> Bank statement from Hayden, Exhibit K-65, pp. 127, 133, 152, 227, 268, 284, 290, 406, 422, 434, 447 and 462.

18.07.2008	IV0807181761468 R-1053 Pārskaitījums uz citu banku	<b>ALEXANDROV AIR LTD</b> BG86UNCR70001500979238, UNICREDIT BULBANK AD, UNCRBGSFXXX Pmt as per Invoice No 2008-07-001 DD 18/07/08; for charter flight	-95 200,00	EUR	240 765,20
11.09.2008	IV0809111761772 R-1320 Pārskaitījums uz citu banku	<b>LAVANA LLC</b> CH9408667005433641309, EFG BANK, EFGBCHZZXXX Pmt as per Invoice No 388 DD 10/09/08; for charter flight	-46 430,00	EUR	75 921,52
03.10.2008	IV0810031760161 R-1422 Pārskaitījums uz citu banku	<b>JET EXECUTIVE TRANSPORT LIMITED</b> CZ1527000000001002351159, UNICREDIT BANK CZECH REPUBLIC,A.S., BACXCZPPXXX Pmt as per Invoice No 81001 DD 02/10/08; for charter flight	-85 700,00	EUR	28 995,29
17.10.2008	IV0810161762897 R-1450 Pārskaitījums uz citu banku	<b>JET EXECUTIVE TRANSPORT LIMITED</b> CZ1527000000001002351159, UNICREDIT BANK CZECH REPUBLIC,A.S., BACXCZPPXXX Pmt as per Invoice No 81002 DD 11/10/08; for charter flight	-56 500,00	EUR	147 500,08

230. In addition to cars and trips by private jet, the Stati Parties used funds from Hayden for luxury consumption. On 29 April 2008, the Stati Parties bought a watch of the H. Stern brand for GBP 325,457 at the department store, Harrods, in London.<sup>230</sup> Hayden's bank statement below shows the transaction (Figure 31).

**Figure 31: Bank statement from Hayden of 29 April 2008**

29.04.2008	IV0804291762185 R-759 Pārskaitījums uz citu banku	<b>Harrods Limited</b> 90401417, LLOYDS TSB BANK PLC., LOYDGB2LXXX Pmt. for shopping Diamonds decoration; wrist-watch; Diamonds H. Stern; Extension 8477	-325 457,00	GBP	682,73
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231. Accordingly, at the same time as the Stati Parties claimed that the companies in Kazakhstan were in financial crisis, the Stati Parties used KPM and TNG's income for luxury consumption. Instead of letting KPM and TNG receive the oil revenues and reinvest them in KPM and TNG and thereby help the companies out of the serious financial crisis in which they found themselves, the money was used for travel by private jet, watches and luxury cars. Currently, Kazakhstan is aware that at least USD 1.1 million were used for luxury consumption between 2 August 2007 and 22 October

<sup>230</sup> Bank statement from Hayden, Exhibit K-65, p. 170.

2008. This amount will likely increase as Kazakhstan reviews the documents now in its possession.

## **L.6 Conclusion**

232. In summary, it can be said that the Stati Parties used some of the funds which were channelled out of the Kazakh business for projects in other countries, luxury consumption, and to pay benefits to politicians and state employees. KPM and TNG were deprived of this money, and the money was channelled from their business during the period in which, according to the Stati Parties, the companies were in a financial crisis. By channelling money from KPM and TNG, the Stati Parties themselves caused the financial crisis in KPM and TNG on which the Stati Parties based on the claim in the ECT Proceedings.

## **M. The Laren scheme was a gamble the purpose of which was to generate a large profit for Anatolie Stati, but resulted in devastating debts for KPM and TNG**

### **M.1 Introduction**

233. As described above, the Stati Parties emptied KPM and TNG of assets and funds. During the summer of 2008, the Stati Parties began to actively work to leave Kazakhstan by means of an attempt to sell KPM and TNG. Anatolie Stati saw an opportunity to make a substantial profit by selling KPM and TNG since a purchaser of the companies would be forced to settle KPM and TNG's guarantee undertakings for Tristan Oil's indebtedness to the noteholders pursuant to the terms and conditions of the Tristan Indenture.

234. As will be described below in section M.2, as can be understood in hindsight, it was initially planned that Anatolie Stati would repurchase as many of the Tristan notes as possible before the sales of KPM and TNG took place. The repurchases were to generate a substantial profit for Anatolie Stati in the event of a sale of KPM and TNG owing to the low valuation of the Tristan notes as a consequence of the fact that the purchaser of KPM and TNG would be required to redeem the Tristan notes for an amount equal to 101 percent of their nominal value. However, this plan was abandoned. Instead, Anatolie Stati decided to stage the Laren scheme, as described below in section M.3.

**M.2 Anatolie Stati's initial plan was to repurchase Tristan notes on the market before the sale of KPM and TNG**

235. As described above in section F.1, the Stati Parties used Tristan Oil to raise external financing during 2006 and 2007, whereupon Tristan Oil issued the Tristan notes. The alleged purpose of the external financing was to finance KPM and TNG's businesses. The Stati Parties also had KPM and TNG guarantee the debt under the Tristan notes. The market value of the Tristan notes later fell and, during the spring of 2009, they were traded at a price equal to only 30-40% of their nominal value.
236. Artur Lungu, Vice Chairperson of Tristan Oil's Administrative Board and Vice President for Ascom Group S.A., saw the falling price as an opportunity to earn money. Thus, during the spring of 2009, he contacted financial consultants in order to obtain advice on how the Stati Parties could repurchase Tristan Oil's notes at the prevailing low market prices.<sup>231</sup> Such purchases were supposed to take place secretly, through a straw man and , by means of as few transactions as possible in order to minimise the risk that it would become known to the market that large quantities of the Tristan notes were being purchased by Anatolie Stati (had this become known, it would have caused the price of the notes to rise quickly).<sup>232</sup> A repurchase of the Tristan notes for 30-40 percent of their nominal value would generate substantial profits for the Stati Parties since they would result in a significant reduction of Tristan Oil's debt.
237. Furthermore, in the event KPM and TNG could be sold to an external party according to Anatolie Stati's plan, Tristan Oil would be obliged to repurchase the Tristan notes from the noteholders at a price equal to 101 percent of the nominal value of the Tristan notes since the so-called "change-of-control" clause in section 4.1.6 of the Tristan Indenture would be activated. The clause states the following:<sup>233</sup>

"(a) If a Change of Control occurs, the Company will make an offer (a "Change of Control Offer") to each Holder to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, and Additional

<sup>231</sup> Email correspondence between Dan Chapman (Black River), Adel Kamar (Renaissance Capital) and Artur Lungu, Exhibit K-100.

<sup>232</sup> Email correspondence between Dan Chapman (Black River), Adel Kamar (Renaissance Capital) and Artur Lungu, Exhibit K-100, internal emails between Standard Bank employees of 25 November 2008, Exhibit K-45.

<sup>233</sup> Tristan Indenture, section 4.16, Exhibit K-31.



Amounts, if any, on the Notes repurchased to the date of purchase subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the “Change of Control Payment”). Within ten days following any Change of Control, the Company will mail a notice to each Holder with a copy to the Trustee describing the transaction or transactions that constitute the Change of Control and stating:

[...]” (emphasis ours)

238. However, Tristan Oil, which did not conduct any business of its own and the sole purpose of which was to finance KPM and TNG,<sup>234</sup> would not have had sufficient funds to be able to repurchase the Tristan notes from the noteholders. This, in turn, would mean that KPM and TNG’s guarantee undertaking pursuant to the Tristan Indenture were activated.<sup>235</sup>

”(a) Subject to this Article 11, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

(1) the principal of, premium, if any, and Additional Amounts, if any, and interest on, the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(emphasis ours)

239. After KPM and TNG had been sold to an external purchaser according to the planned scenario, the external purchaser would be forced to bear the costs of the repurchases of the Tristan notes at 101 percent of their nominal value. Thus, owing to the low valuation of the Tristan notes at the time of the repurchases, the repurchases would have generated a substantial profit for Anatolie Stati. Accordingly, this profit would be realised by the Stati Parties first purchasing Tristan’s notes at 30-40 percent of their nominal value since the external purchaser of KPM and TNG would then redeem the

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<sup>234</sup> See section 1.01 in the Tristan Indenture, Exhibit K-31, which defines “*Guarantors*” as follows: “*Kazpolmunay, Tolkynneftegaz and each Subsidiary Guarantor and their respective successors and assigns, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of the indenture*”.

<sup>235</sup> Tristan Indenture, section 11.01, Exhibit K-31.

Tristan notes at 101 percent of their nominal value. If the plan had worked out, the Stati Parties would have made a profit equal to 60-70 percent of the nominal value of the Tristan notes.

240. However, this plan was abandoned after Tristan's financial consultant concluded that it would not be possible to repurchase a sufficiently large amount of the Tristan notes without causing the price of the notes to rise. If the price of the notes rose, the potential profit would have been reduced correspondingly. Therefore, the Stati Parties came up with another means by which to generate a comparable profit: the Laren scheme.

**M.3 In the ECT Proceedings, the Stati Parties presented the Laren scheme as having been a disadvantageous loan but was also a covert attempt for realising an illegitimate profit at the expense of the purchaser of KPM and TNG**

M.3.1 Briefly regarding the Laren scheme

241. When it was clear in the spring of 2009 that it was not possible to repurchase a sufficiently large number of the Tristan notes on the market through a straw man without simultaneously causing the prices to rise, the so-called Laren scheme, which was concluded on 11 June 2009, was set up. From the outside, the Laren scheme appeared to be legitimate loan financing subject to horrendous conditions but, in reality, it also was a covert method by which to earn money at the expense of KPM and TNG's purchaser.

242. In the ECT Proceedings, the Stati Parties claimed that they were forced to enter into the Laren scheme because Credit Suisse withdrew their loan offer.<sup>236</sup> As described in section J above, this later proved to be untrue. In reality, the Stati Parties chose not to enter into a loan agreement with Credit Suisse since they considered it to be too costly.

243. From the outside, briefly stated, the Laren scheme appeared to consist of Laren, which, as it has now become known, was a company controlled by Anatolie Stati, entering into a loan agreement with seven investors (Laren Facility Agreement). In total, the investors loaned 60,2 million USD to Laren at an interest rate of 35 percent and for a period of repayment of six months.<sup>237</sup>

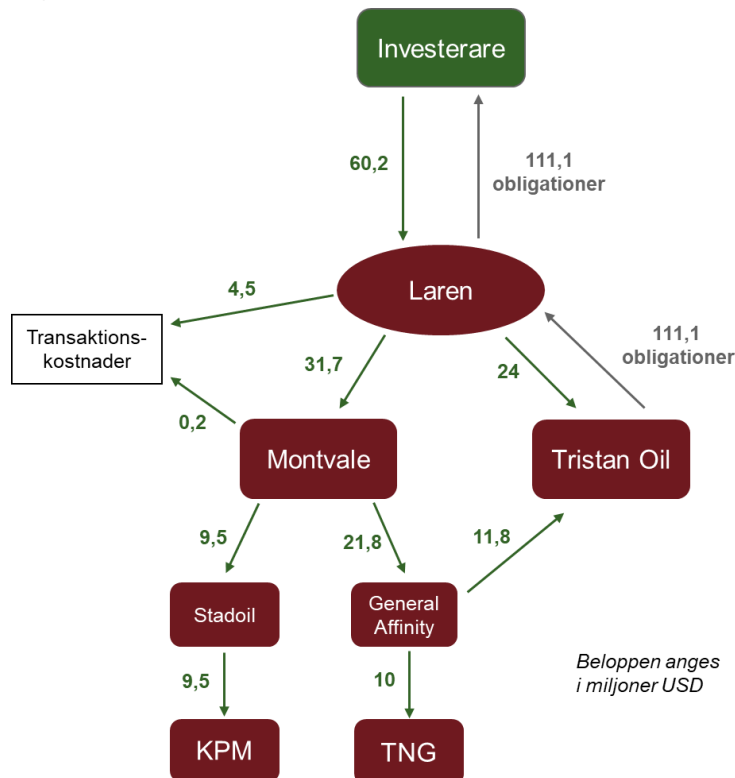
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<sup>236</sup> The Stati-Parties' first Post-Hearing-Brief dated 8 April 2013, Exhibit K-35, paragraph 217.

<sup>237</sup> Laren Facility Agreement, Exhibit K-101, sections 1.1 and 2.

244. As a security for the loan from the investors, Tristan Oil, issued new notes for a total nominal value of USD 111.1 million<sup>238</sup> which Laren bought for USD 30 million according to a separate purchase agreement between Laren and Tristan (the “**New Tristan notes**”).<sup>239</sup> In turn, Laren transferred the New Tristan notes to six of the seven investors according to another agreement, the Note Transfer Agreement, which was concluded between Laren and the six investors.<sup>240</sup> Thus, in fact, six of the seven investors bought the New Tristan notes for USD 30 million from the seven investors which meant that they received a discount of approximately 73 percent.
245. Figure 32 shows how the money and the New Tristan notes were supposed to be transferred according to the Laren scheme.

**Figure 32: The Laren scheme**



<sup>238</sup> As previously issued notes, these notes matured in 2012, the annual interest rate on the notes amounted to 10.5 percent (see Laren Facility Agreement, Exhibit K-101, section 1.1) and the interest was paid biannually (see Purchase Agreement, Exhibit K-102, section 1.2 as well as Tristan Trust Indenture, Exhibit K-31, p. 1 and Exhibit A, p. 2).

<sup>239</sup> Purchase Agreement, Exhibit K-102, section 1.1. See also Laren’s founding certificate and articles of association, Exhibit K-28, section 5.1, from which follows that one of Laren’s purposes was to use the money from the investors in the Laren scheme to purchase the new Tristan notes for USD 30 million.

<sup>240</sup> Note Transfer Agreement, Exhibit K-103, sections 2-3.

246. Furthermore, Laren and Montvale concluded a separate loan agreement (Montvale Loan Agreement). In accordance with the loan agreement between Laren and Montvale, Laren loaned USD 27 million to Montvale.<sup>241</sup> As follows from figure 32 above, Montvale transferred the majority of the money to KPM and TNG via Stadoil and General Affinity. From the loan agreement between Laren and the investors (Laren Facility Agreement) alone, it follows that the money which Montvale received from Laren would be channelled to KPM and TNG. Furthermore, it appears from the figure 32 above that the remaining money from the total loan amount of USD 60.2 million was used to pay transaction costs.

M.3.2 The Stati Parties concealed the fact that Anatolie Stati controlled Laren

247. During the ECT Proceedings, the Stati Parties claimed that Laren was not an affiliated company and the Stati Parties explicitly denied that Anatolie Stati controlled Laren (see figure 33 below which presents an excerpt from the Stati Parties' "post-hearing briefs" which were submitted during the ECT proceedings).<sup>242</sup>

**Figure 33: Excerpt from the Stati Parties first Post-Hearing Brief**

354. In the KMG valuation documents that Kazakhstan belatedly produced on March 14, 2013, RBS and PwC express some confusion regarding the terms of the Laren transaction, suggesting that Laren is an affiliate of Mr. Stati and still holds the US \$111 million in notes issued in connection with that transaction.<sup>507</sup> Lest there be any confusion here, that is not correct. Laren was a special-purpose entity that was organized in the British

248. As mentioned above, it has now become known that this is not true. Accordingly, the Stati Parties lied during the ECT Proceedings. In the new documentation to which Kazakhstan has obtained access, there are several facts which show that Anatolie Stati, in fact, controlled Laren.

249. Firstly, Harneys, the law firm in the British Virgin Islands, which the Stati Parties used to represent Tristan Oil, invoiced Tristan Oil for the preparation of Laren's articles of association which is apparent from an invoice of 24 June 2009 (see figure

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<sup>241</sup> According to the Montvale Loan Agreement, Exhibit K-104, sections 1.1 and 2, Montvale was to receive a loan of USD 27 million from Laren. From the Laren Facility Agreement, Exhibit K-101, section 3, it is apparent, however, that Laren was to loan USD 25.5 million to Montvale.

<sup>242</sup> The Stati Parties' first Post-Hearing Brief, dated 8 April 2008, Exhibit K-35, paragraph 354.

34 below).<sup>243</sup> Had Anatolie Stati not controlled Laren, it would have not made sense that Tristan Oil, a company entirely owned by Anatolie Stati, was invoiced for the preparation of Laren's articles of association.

**Figure 34: Excerpt from an invoice issued to Tristan**

To our professional fees re: accepting your instructions; conducting a search at the British Virgin Islands Registry of Corporate Affairs and High Court of Justice; liaising with the registered agent; **requesting and obtaining a Registered Agent's Certificate for** Lorrin Invest Limited, Casterwal Invest Ltd., Montvale Invest Ltd, Tristan Oil Ltd, Laren Advisory Ltd, Hackton Investments Ltd, Casco Petroleum Overseas Ltd, **Laren Holdings Ltd**, Snarbrook Limited and Casco Petroleum Middle East Limited (**the "Companies"**); **reviewing the Memorandum and Articles of Association of the Companies**; reviewing and commenting on the transaction documents; drafting and reviewing the authorising resolutions; drafting directors certificates; **drafting special Memorandum and Articles of Association with respect to Laren Holdings Ltd and Laren Advisory Ltd**; attending to the client and providing general advice on British Virgin Islands law.

250. Secondly, Eldar Kasumov, Anatolie Stati's personal chauffeur,<sup>244</sup> signed contracts on Laren's behalf (see figure 35 below). As follows from figure 35, Eldar Kasumov signed as "Director" for Laren, *inter alia* the settlement agreements which Laren concluded with the investors on 5 December 2011 as a consequence of the Stati Parties not paying back the loan within the agreed time period (Laren Settlement Agreement).<sup>245</sup>

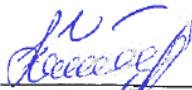
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<sup>243</sup> Invoices from Harneys issued to Tristan Oil, Exhibit K-105, p. 24.

<sup>244</sup> This has been confirmed by Artur Lungu; see printout of witness examination with Artur Lungu on 3 April 2019, Exhibit K-44, p. 94.

<sup>245</sup> Laren Settlement Agreement, Exhibit K-106.

**Figure 35: Excerpt from the Laren Settlement Agreement****EXECUTION PAGES**

SIGNED as a DEED for and on behalf )  
of LAREN HOLDINGS LTD by )   
) Name: ELDAR KASUMOV  
) Title: DIRECTOR

251. In addition, the same Eldar Kasumov also signed several addenda to the Perkwood contract on behalf of Perkwood. As described above,<sup>246</sup> Perkwood was another company which, in fact, was controlled by Anatolie Stati. Eldar Kasumov signed, for example, additional agreement no. 3 which was concluded on 17 February 2006 (Additional Agreement No. 3), as follows from figure 36.

**Figure 36: Excerpt from Additional Agreement no. 3 relating to the Perkwood contract<sup>247</sup>**

<b><u>"SELLER":</u></b>	<b><u>"BUYER":</u></b>
<b><u>"PERKWOOD INVESTMENT LIMITED"</u></b>	<b><u>LLP "Tolkynneftegaz"</u></b>
<b><u>KASUMOV E.</u> /signature/</b>	<b><u>KOZHIN A.A.</u> /signature/</b>
/Seal/	/Seal/

252. Thus, in total, it is clear that Anatolie Stati controlled Laren and that the Stati Parties therefore intentionally deceived the arbitral tribunal about this fact during the ECT Proceedings.
253. Since Laren was controlled by Anatolie Stati, parts of the Laren scheme were a transaction between affiliated companies because the other companies which were involved, except for the investors, were also controlled by Anatolie Stati (see figure 32 above). According to the Tristan Indenture, such a transaction was only permitted if the conditions of the transaction were not less advantageous than the terms and conditions which would have applied had the transaction not been one between affiliated companies.<sup>248</sup> In order to decide if the terms and conditions of the Laren scheme would have fulfilled this requirement, a "fairness opinion" would have had to

<sup>246</sup> See section E.2.2 above.

<sup>247</sup> The Perkwood contract on 17 February 2006, Exhibit K-26, Additional Agreement No. 3.

<sup>248</sup> Tristan Trust Indenture, Exhibit K-31, section 4.12 (a) (1).

be rendered by an accounting firm, a rating agency or an investment bank with national status.<sup>249</sup>

254. In light of the fact that the New Tristan notes were purchased for a mere USD 30 million according to the separate purchase agreement between Laren and Tristan Oil. Notwithstanding they had a total nominal value of USD 111.1 million, it is reasonable to assume that the Laren scheme would not have been deemed fair and that the Laren scheme would thus not have been approved.

M.3.3 Anatolie Stati's secret opportunity to make a profit of USD 61.1 million with the new Tristan notes

255. In order to understand the secret opportunity to make profit through the Laren scheme, the fact that Anatoli Stati planned to sell KPM and TNG is important.<sup>250</sup> Thus, the plan was that Laren would at no time pay back the loan to the investors with funds which were earned through KPM and TNG's business. Instead, the plan was that the Laren scheme should be paid back with the income from the sale of KPM and TNG.<sup>251</sup> As described above in paragraph 237 above, the sale of KPM and TNG would have activated the "change-of-control" clause in the Tristan Indenture. Since Tristan did not have the means to repurchase the new Tristan notes itself, this was supposed to be carried out by KPM and TNG which had undertaken to act as guarantors for Tristan Oil's notes. In turn, this entailed that the new purchaser of KPM and TNG would have had to pay for the costs of the repurchases of the New Tristan notes up to an amount equal to 101 percent of the nominal value of the notes.

256. According to the Note Transfer Agreement (which was concluded by Laren and six of the seven investors), the investors were to retransfer a part of the New Tristan notes, or the purchase price if they had been sold, to Tristan Oil in the event the loan according to the Laren Facility Agreement had been paid back within a certain period of time and the "change-of-control" clause in the Tristan Indenture had been activated.<sup>252</sup> The part of the New Tristan notes which was to be transferred varied

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<sup>249</sup> Tristan Trust Indenture, Exhibit K-31, section 4.12 (2) (B).

<sup>250</sup> The Stati Parties' first Post-Hearing Brief, dated 8 April 2008, Exhibit K-35, paragraph 353.

<sup>251</sup> Email correspondence between Linklaters and Salans, May 2009, Exhibit K-107 p.2. At the time of the entry into the Laren scheme, Linklaters was legal advisor to Salans. Linklaters acted for Renaissance Advisory Services, which had the roll of an "Arranger" in the Laren scheme.

<sup>252</sup> Note Transfer Agreement, Exhibit K-103, section 6.2.

depending on when the money was paid back. The largest possible number of the New Tristan notes which could have been transferred back to Tristan Oil according to the Note Transfer Agreement was 55 percent of the new Tristan notes provided that the loan had been paid back within 28 days from the payment. If the money had been paid back later than 28 days but within 42 days of the payment, 50 percent of the New Tristan notes would have had to be transferred back to Tristan Oil. Furthermore, 20 percent of the New Tristan notes would have had to be transferred back to Tristan Oil if the money had been paid back later than 42 days after the payment. If the money was not paid back, the investors were to keep all of the New Tristan notes.

257. Thus, in the event of a quick sale of KPM and TNG, Tristan Oil (and, in fact, Anatolie Stati given that Tristan Oil is entirely owned by him), could get back 55 percent of the New Tristan notes. Anatolie Stati's initial scheme to purchase the notes on the market was to transfer the notes to company other than Tristan Oil before KPM and TNG were sold. The purchaser of KPM and TNG would then have had to pay Tristan Oil 101 percent of the nominal value of the new Tristan notes which meant that a profit of USD 61.1 million could be made on the notes. At the same time, the Stati Parties would be released from their indebtedness to the investors by means of the income from the sale of KPM and TNG.

M.3.4 Anatolie Stati's plan to make a profit did not work out, resulting in large debts for KPM and TNG

258. Unsurprisingly, Anatolie Stati's gamble did not work out well, since KPM and TNG were not sold. As a consequence, the loan which Laren had received could not be paid back and Anatolie Stati also lost the opportunity to make the profit he had hoped for with the New Tristan notes. Instead, the Laren scheme resulted in KPM and TNG accumulating large debts since the companies had undertaken to act as principal guarantors for Laren's loan from the investors, which follows from separate agreements with the investors,<sup>253</sup> and for Tristan Oil's debt to the owners of the new notes, which follows from the Tristan Indenture.

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<sup>253</sup> KPM and TNG Sale Agreements, Exhibit K-108. According to section 2 in the respective agreement, KPM and TNG respectively, were obliged to purchase the investors' claim against Laren if Laren did not pay on time.



259. Since the Stati Parties' opportunity to pay off the Laren scheme depended on KPM and TNG being sold to a purchaser who relied on the companies' financial reports, Anatolie Stati was forced to face the fact that the Laren scheme was a gamble which jeopardised the survival of the companies. The fact that Anatolie Stati nonetheless entered into the Laren scheme shows that he did not care that KPM and TNG accumulated devastating debts.

M.3.5 Shortly after entering into the Laren-scheme, the Stati Parties entered into loan agreements on commercial terms and conditions

260. In the ECT Proceedings, the Stati Parties claimed that they were forced to enter into the Laren scheme because no lender wanted to make loans to the Stati Parties on commercial terms and conditions. According to the Stati Parties, the loan funding was necessary for KPM and TNG to be able to pay their debts to Tristan Oil as well as their tax debts to Kazakhstan. It was also claimed that Tristan Oil, in turn, was supposed to use the money to pay the company's own debts to the owners of the Tristan notes.<sup>254</sup> As far as it has been investigated, parts of KPM and TNG's tax debts to Kazakhstan were paid by means of the loan. It has not been possible to confirm what the remaining money was used for.

261. However, the Stati Parties' claim that they could not get a loan on commercial terms and conditions was false. Shortly after the conclusion of the Laren scheme, in January 2010, the Stati Parties, through Montvale, concluded two loan agreements. The first loan agreement was concluded with Reachcom Public Ltd<sup>255</sup> and the second loan agreement was concluded with Limozen Investments Ltd<sup>256</sup>. Through the loan agreement with Reachcom Public Ltd, Montvale borrowed USD 8,700,000.<sup>257</sup> Montvale borrowed USD 10,000,000 from Limozen Investments Ltd.<sup>258</sup> Thus, in total,

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<sup>254</sup> See, *inter alia*, the Stati Parties' first Post-Hearing Brief dated 8 April 2013, Exhibit K-35, paragraph 353.

<sup>255</sup> Reachcom Public Ltd is registered in Cyprus and is a subsidiary of Renaissance Capital.

<sup>256</sup> Limozen Investments Ltd was registered in Cyprus and was liquidated in 2017.

<sup>257</sup> The loan agreement between Montvale Invest Ltd and Reachcom Public Ltd, January 2010, Exhibit K-109.

<sup>258</sup> The loan agreement between Montvale Invest Ltd and Limozen Investments Ltd, January 2010, Exhibit K-110.

the Stati Parties borrowed nearly USD 19 million. The interest rate on the loans was 11.12 percent, i.e. significantly lower than the interest rate on the Laren scheme.

262. Thus, six months after the conclusion of the Laren scheme, the Stati Parties could borrow capital and ensure funding subject to significantly better terms and conditions than the terms and conditions of the Laren scheme. Thus, the Stati Parties were not in such a desperate need of funding as they suggested during the ECT Proceedings. Instead, the Stati Parties could procure extensive loans on ordinary, commercial terms and conditions shortly after the Laren scheme.

#### **M.4 Conclusion**

263. As is apparent from the above, the Laren scheme was not merely a loan subject to poor terms and conditions as everyone was made to believe by the Stati Parties during the ECT Proceedings. Instead, it was intended to make it possible for Anatolie Stati to make a secret profit of approximately USD 60 million. However, this was a gamble given that the plan required a sale of KPM and TNG before the loan expired.

264. As is known, KPM and TNG were not sold, which meant that it was not possible to pay back the loan from the investors because this could only be done with the income from the sale of the companies and that the investors could keep the New Tristan notes. This, in turn, caused KPM and TNG to accumulate devastating debts – a risk to which Anatolie Stati, was indifferent.

265. It appears that Anatolie Stati realised that there was a significant risk of KPM and TNG not being able to be sold in time. As follows from a minutes kept by KPMG regarding a conference call with Artur Lungu on 13 May 2010, Anatolie Stati's plan in this case was to sue Kazakhstan in order to get the money back, see figure 37.<sup>259</sup>

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<sup>259</sup> See KPMG's minutes of the call of 13 May 2010, Exhibit K-80, p. 3.

**Figure 37: KPMG protocol from the conference call**

King & Spallding was hired by the Company for preparation of arbitration claim against the government of RK. Claim will be submitted in case of fail of SPA transaction with potential buyer. It was agreed that the management of the Company will provide KPMG with written representation from King & Spallding on nature of the services.

266. This eliminates the essential importance of the Laren scheme, which did not work out, to the initiation of the ECT Proceedings.
267. Thus, it has now come to light that the assertions by the Stati Parties in the course of the ECT Proceedings regarding the Laren scheme were lies. The Stati Parties were not forced to enter into the Laren scheme because of Kazakhstan's actions. Instead, it was the Laren scheme, an elaborate plan by Anatolie Stati, which was intended to inappropriately procure large sums of money at the expense of others.

**V. LEGAL GROUNDS**

**N. The award entails the examination of an issue which, according to Swedish law, may not be decided by arbitrators pursuant to section 33, first paragraph, sub-section 1 of the Swedish Arbitration Act.**

**N.1 The arbitral tribunal has, by virtue of the award, addressed and determined claims in breach of law and morality**

268. According to section 33, first paragraph of the Swedish Arbitration Act, an arbitral award is invalid if it includes a determination of a question which, according to Swedish law, may not be decided by arbitrators. As a main rule, only matters which concern "*matters in respect of which the parties may reach a settlement*" may be

decided by an arbitral tribunal (section 1, paragraph 1 of the Swedish Arbitration Act). Thus, the matter must be amenable to out-of-court settlement.<sup>260</sup>

269. It is a common view in Swedish law that a court may not determine certain types of claims.<sup>261</sup> Examples of such claims which are frequently mentioned include those which are based on criminal acts as well as claims which are an affront to morality.<sup>262</sup> Furthermore, an arbitral tribunal may not determine such claims.<sup>263</sup> In addition, an arbitral tribunal may not determine claims which are based on corruption and bribes.<sup>264</sup>

270. The fact that an arbitral tribunal may not determine claims which are based on criminal acts also follows from “*The Unclean Hands Doctrine*”, according to which “*He who comes to equity for relief must come with clean hands*”.<sup>265</sup> According to this principle, an arbitral tribunal may not determine claims which are based on unjust acts. Furthermore, an arbitral tribunal may not act to protect a right which has been acquired or upheld through actions which have not been justified.<sup>266</sup> Thus, an arbitral tribunal may neither determine nor uphold illegitimate claims. The principle of “unclean hands” is currently deemed a general legal principle within international law.<sup>267</sup>

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<sup>260</sup> See Kaj Hobér, *International Commercial Arbitration in Sweden*, 2011, pp. 115-116.

<sup>261</sup> See, *inter alia*, Government Bill 1998/99:35 *Ny lag om skiljeförfarande*, p. 141 and Stefan Lindskog, *Kommentar till skiljeförfarandelagen*, published in Zeteo 2018-09-07.

<sup>262</sup> See, *inter alia*, Government Bill 1998/99:35 *Ny lag om skiljeförfarande*, p. 141 and Stefan Lindskog, *Kommentar till skiljeförfarandelagen*, published in Zeteo 2018-09-07.

<sup>263</sup> Stefan Lindskog, *Kommentar till skiljeförfarandelagen*, published in Zeteo 2018-09-07.

<sup>264</sup> Compare Kaj Hobér, *International Commercial Arbitration in Sweden*, 2011, p. 117. In an ICC proceeding from 1963, the arbitral tribunal found that it could not determine questions on claims which were based on contracts according to which payments were to be made to Argentinian civil servants. ICC Case Nr 1110, *Arbitration International Volume 10 Number 3*, p. 282, paragraphs 17-23, Exhibit R-1.

<sup>265</sup> Kaj Hobér, *International Commercial Arbitration in Sweden*, 2011, p. 305 and Richard Kreindler, *Corruption in International Investment Arbitration: Jurisdiction and the Unclean Hands Doctrine*, Between east and west: essays in honour of Ulf Franke, ed. Kaj Hobér, Anette Magnusson och Marie Öhrström, 2010, Exhibit R-2 pp. 316-317.

<sup>266</sup> Kaj Hobér, *International Commercial Arbitration in Sweden*, 2011, p. 305.

<sup>267</sup> Kaj Hobér, *International Commercial Arbitration in Sweden*, 2011, p. 306 and Richard Kreindler, *Corruption in International Investment Arbitration: Jurisdiction and the Unclean Hands Doctrine*, Between east and west: essays in honour of Ulf Franke, ed. Kaj Hobér, Anette Magnusson and Marie Öhrström, 2010, Exhibit R-2 pp. 316-317.

271. In international investment law, it is also a common view that an arbitral tribunal may not determine claims which are based on unlawful actions.<sup>268</sup> Thus, an illegitimate investment is not deemed worthy of protection under treaties intended to protect investments (such as the ECT treaty).<sup>269</sup> The fundamental principles of international investment law are part of international law and therefore binding on Swedish courts.
272. The requirement that an investment must be legitimate applies irrespective of the manner in which such a requirement is established in the specific treaty which regulates the investment.<sup>270</sup> Thus, even though such a requirement does not follow explicitly from the ECT treaty, it still applies.<sup>271</sup> The fact that illegitimate investments are not protected – irrespective of whether this is stipulated in the specific treaty or not – also follows from the principle of “clean hands”.<sup>272</sup> This is confirmed by the case *Fraport AG Frankfurt Airport Services Worldwide v. Philippines*, in which the arbitral tribunal stated the following.<sup>273</sup>

“Investment treaty cases confirm that such treaties do not afford protection to illegal investments either based on clauses of the treaties, as in the present case according to the above analysis, or, absent an express provision in the treaty,

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<sup>268</sup> *Fraport AG Frankfurt Airport Services Worldwide v. Philippines*, ICSID No. ARB/11/12, Award (10 December 2014), paragraph 332, Exhibit R-3.

<sup>269</sup> Katharina Diel-Gligor and Rudolf Nennecke, “*Investment in Accordance with the Law*” i Bungenberg/Giebel/Hobe/Reinisch (International Investment Law, 2015), Exhibit R-4, p. 572.

<sup>270</sup> *Plama Consortium Ltd. v Bulgaria*, ICSID Case No ARB/03/24, Award (27 August 2008), paragraphs 138-143, Exhibit **Error! Reference source not found.**, *Gustav F. W. Hamester GmbH & Co KG v. Ghana*, ICSID Case Nr. ARB/07/24, Award (18 June 2010), paragraphs 123-124, Exhibit **Error! Reference source not found.**, Richard Kreindler, *Corruption in International Investment Arbitration: Jurisdiction and the Unclean Hands Doctrine*, Between east and west: essays in honour of Ulf Franke, 2010, Exhibit **Error! Reference source not found.**, pp. 313-316.

<sup>271</sup> See, *inter alia*, Richard Kreindler, *Corruption in International Investment Arbitration: Jurisdiction and the Unclean Hands Doctrine*, Between east and west: essays in honour of Ulf Franke, 2010, Exhibit **Error! Reference source not found.**, pp. 313-316 and *Gustav F. W. Hamester GmbH & Co KG v. Ghana*, ICSID Case Nr. ARB/07/24, Award (18 June 2010), paragraphs 123-124, Exhibit **Error! Reference source not found.**

<sup>272</sup> *Fraport AG Frankfurt Airport Services Worldwide v. Philippines*, ICSID No. ARB/11/12, Award (10 December 2014), paragraph 328, Exhibit **Error! Reference source not found.** Patrick Dumberry, “*State of Confusion: The Doctrine of ‘Clean Hands’ in Investment Arbitration After the Yukos Award*”, 17 *Journal of World Investments and Trade* (2016), Exhibit **Error! Reference source not found.**, p. 231: “...the imposition by tribunals of such a legality requirement (whether or not the treaty actually contains an explicit clause to that effect) is in fact a manifestation of the clean hands doctrine. Thus, the different Latin maxims which are often used by tribunals to determine issues of jurisdiction/admissibility in this context are expressions of the broader doctrine of clean hands.”

<sup>273</sup> *Fraport AG Frankfurt Airport Services Worldwide v. Philippines*, ICSID No. ARB/11/12, Award (10 december 2014), paragraphs 328 och 332, Exhibit R-3.

based on rules of international law, such as the "clean hands" doctrine or doctrines to the same effect."

273. The fact that an illegitimate investment does not deserve protection and that arbitral tribunals therefore may not determine such types of investments is confirmed in several case in international arbitration. In the case *Ioannis Kardassopoulos v. The Republic of Georgia*, the arbitral tribunal stated the following.<sup>274</sup>

““Protection of investments” under a BIT is obviously not without some limits. It does not extend, for instance, to an investor making an investment in breach of the local laws of the host State. A State thus retains a degree of control over foreign investments by denying BIT protection to those investments that do not comply with its laws. As noted by one scholar, “*no State has taken its fervour for foreign investment to the extent of removing any controls on the flow of foreign investment into the host State*”.”

274. In the case, *Hamester v. Ghana*, the arbitral tribunal specifically pointed out that an investment is not protected if it has come about through fraud or if it violates good faith.<sup>275</sup>

“The Tribunal considers, as was stated for example in *Phoenix v. Czech Republic*, that: “States cannot be deemed to offer access to ICSID dispute settlement mechanism to investments not made in good faith.”

An investment will not be protected if it has been created in violation of national or international principles of good faith; by way of corruption, fraud, or deceitful conduct; or if its creation itself constitutes a misuse of the system of international investment protection ... It will also not be protected if it is made in violation of the host State's law.”

“These are general principles that exist independently of specific language to this effect in the Treaty.” (our underlining.)

275. Within international arbitration, it is also stated that the protection of illegitimate investments violates the principle *nemo auditor propriam turpitudinem allegans* (nobody can claim a criminal act for his defence).<sup>276</sup>

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<sup>274</sup> *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction (6 July 2007), paragraph 182, Exhibit R-8.

<sup>275</sup> *Gustav F. W. Hamester GmbH & Co KG v. Ghana*, ICSID Case Nr. ARB/07/24, Award (18 June 2010), Exhibit R-6, paragraphs 123-124.

<sup>276</sup> *Plama Consortium Ltd. v Bulgaria*, ICSID Case No ARB/03/24, Award (27 August 2008), paragraph 143, Exhibit R-5.

276. In summary, it can be said that it is accepted according to both Swedish and international (investment) arbitration law that neither a court nor an arbitral tribunal may determine claims which are illegitimate or which are based on criminal acts. Yet, this has occurred in the ECT Proceedings at issue. Through the arbitral award, the arbitral tribunal has determined – and admitted – a claim which is based on gross criminal acts (acts which are considered crimes both under Swedish law and in most of world’s jurisdictions). In all cases, the actions are so reprehensible that they are deemed to violate morality. Since the arbitral award includes a determination of a question which, according to Swedish law, must not be decided by arbitrators, the arbitral award must be declared invalid.

277. The following will provide an account of the circumstances by which claims arise as a consequence of, or are otherwise characterised by, acts which are comparable to crimes in accordance with Swedish law or, in any case, entail that the claims violate morality as this concept is understood in Swedish law. The Court of Appeal must, in the assessment of whether the claims are of the type that neither Swedish tribunals nor Swedish courts of law may address or uphold them, consider the case law developed within international investment law.

**N.2 In the arbitral award, the arbitral tribunal has determined and admitted claims which have arisen due to, or otherwise include, acts which are criminal according to Swedish law**

**N.2.1 Introductory remarks**

278. The following describes the crimes which Anatolie Stati has committed and which are governed by Swedish criminal law. Kazakhstan is not of the opinion and does not request that Anatolie Stati be prosecuted for these crimes in Sweden. Instead, the description is intended to show that Anatolie Stati’s acts are criminal according to Swedish law. The fact that the acts are criminal in Sweden is relevant to the assessment of whether the Swedish arbitral tribunal should have determined and granted the Stati Parties’ claims in the ECT Proceedings. It is also relevant to the assessment which the Court of Appeal must now make, i.e. whether the arbitral award, by virtue of which the claim granted and which, in turn, is based on gross criminal acts, is to be upheld by the Swedish judiciary system.

279. Anatolie Stati’s acts qualify as crimes in several jurisdictions around the world, i.e. not only in Sweden. Thus, the statutes which are described below have equivalents in

other countries and therefore reflect common norms of what is criminal and inappropriate conduct.

280. It should be noted that the description of the crimes which Anatolie Stati has committed is not complete. Below is a selection of the crimes which Anatolie Stati has committed.

N.2.2 The claims arose through acts which would qualify as gross dishonesty to creditors

N.2.2.1 *The legal framework*

281. The crime of *dishonesty to creditors* is governed by Chapter 11 section 1 of the Swedish Criminal Code (Sw: *Brottsbalken*). The section states the following.

A person who, being insolvent or in manifest danger of becoming insolvent, destroys, or by gift or other like action disposes of property of substantial value, shall be sentenced for *dishonesty to creditors* to imprisonment for at most two years. This also applies to any person who by means of a like act or acts renders himself insolvent or brings about a manifest danger of becoming insolvent.

[...]

If a crime under Section 1 is considered to be gross, imprisonment shall be imposed for not less than six months and not more than six years for gross dishonesty to creditors. In assessing whether a crime is gross, special attention shall be given to whether the offender attested a false statement, or made use of a false document or misleading bookkeeping, or if the crime was on a considerable scale.

282. Corresponding crimes exist in several jurisdictions around the world, among them Kazakhstan.<sup>277</sup>

N.2.2.2 *Description of the crime*

283. Through his role as a legal representative, alternatively, *actual* representative of Stadoil, General Affinity and Perkwood, Anatolie Stati, in any case during the period November 2005 until July 2010 when KPM and TNG were insolvent or in manifest danger of becoming insolvent, intentionally ensured that assets amounting to a value of USD 217 million were taken from KPM and TNG through gift-like transactions

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<sup>277</sup> Article 239 of Kazakhstan's Criminal Code regulates the crime, "Bringing to Insolvency" and Article 190 in Kazakhstan's Criminal Code regulates "Fraud".



with the affiliated companies, Stadoil, General Affinity and Perkwood,. These transactions have, in any case, led to the insolvency of KPM and TNG or caused a manifest danger of insolvency.

N.2.2.3 *The gift-like transactions between affiliated companies took place when KPM and TNG were insolvent or when a manifest danger of such insolvency existed and the transactions led to the companies becoming insolvent or to a manifest danger of the companies becoming insolvent.*

284. Since October 2008 at the latest, there has been a manifest danger that KPM and TNG would become insolvent. On 27 October 2008, KPM's Director of Finance and Credit and TNG's Vice General Director sent a letter to Anatolie Stati from which follows that KPM and TNG had debts amounting to a total of USD 66,847,000 which were due for payment within the following months.<sup>278</sup> Furthermore, it was also apparent from the letter that USD 94,149,000 had to be paid back to KPM and TNG in November and December 2008 in order for the companies to be able to fulfil their contractual obligations and avoid the risk of violating Kazakh law .<sup>279</sup> At the time of the letter (27 October 2008), KPM and TNG's total available funds amounted to USD 21,900,000.<sup>280</sup>

285. In May 2009, KPM and TNG were insolvent. This follows from the companies' own statements in letters to General Affinity on 20 May 2009 and Stadoil on 26 May 2009.<sup>281</sup> As described in section I above, both KPM and TNG stated in these letters that the companies could not pay their debts to suppliers and other contract partners in May 2009, which is why several creditors had turned to courts at this time. Furthermore, it was apparent that KPM and TNG had extensive tax debts and other debts to the Kazakh state which could not be paid. It was stated that it is "extremely

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<sup>278</sup> Letter from Ascom's finance department, TNG's deputy General Director and KPM's Director of Finance and Credit Department to Anatolie Stati of 27 October 2008, Exhibit K-41.

<sup>279</sup> To KPM, a total of 36 754 000 USD was to be paid back (USD 14,754,000 in November 2008 and USD 22 000 000 USD in December 2008) and to TNG, a total of USD 57,395,000 was to be paid back (USD 32,045,000 in November 2008 and USD 25,350,000 in December 2008). See letter from Ascom's department of finance, TNG's vice General Director and KPM's Director of Finance and Credit Department to Anatolie Stati on 27 October 2008, Exhibit K-41, p. 3.

<sup>280</sup> See letter from Ascom's department of finance, TNG's vice General Director and KPM's Director of Finance and Credit Department to Anatolie Stati of 27 October 2008, Exhibit K-41, p. 1.

<sup>281</sup> Letter from TNG's General Director to General Affinity of 20 May 2009, Exhibit K-42, p. 3, as well as a letter from KPM's deputy General Director to Stadoil of 26 May 2009, Exhibit K-42, p. 4.

likely” that the companies would not be able to pay salaries to the employees during the following months.<sup>282</sup>

286. The Stati Parties confirmed KPM and TNG’s insolvency during the ECT Proceedings and stated that KPM and TNG were obliged to pay fines “*large enough to bankrupt the company*” in June 2009.<sup>283</sup> During the ECT Proceedings, the Stati Parties confirmed KPM and TNG’s inability to pay their debts to Tristan Oil and their tax debts to Kazakhstan.<sup>284</sup>

287. In order to obtain funds for KPM and TNG, the Stati Parties, in June 2009, became parties to the Laren scheme, so-called “emergency bridge funding,” the terms and conditions of which, according to the Stati Parties themselves, were “horrendous”.<sup>285</sup> According to information from the Stati Parties, entering into the Laren scheme was the only way to save KPM and TNG.<sup>286</sup> As described in section M.3.3, the Stati Parties could not make the payments pursuant to the Laren Scheme unless the Stati Parties succeeded in selling KPM and TNG. No sale of KPM and TNG ever took place.

288. Under the circumstances described above, there has been, since October 2008, a manifest danger that KPM and TNG would become insolvent. Insolvency or, in any case, a manifest danger of such insolvency existed since May 2009 at the latest. At this latter point, KPM and TNG did not have the ability to pay, and this state of affairs was not merely temporary. The fact that KPM and TNG were insolvent in May 2009 was, furthermore, conceded by the Stati Parties themselves.

289. KPM and TNG became insolvent or there was a manifest danger of such insolvency as a consequence of the extensive gift-like related-party transactions through which the Stati Parties disposed of KPM and TNG assets and income of substantial value. In any case, the insolvency of the companies or manifest danger of such insolvency was

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<sup>282</sup> Letter from TNG’s General Director to General Affinity of 20 May 2009, Exhibit K-42, p. 3 as well as a letter from KPM’s deputy General Director to Stadoil of 26 May 2009, Exhibit K-42, p.4.

<sup>283</sup> Statement from the Stati Parties in the ECT Proceedings concerning questions on jurisdiction and liability on 7 May 2012, Exhibit K-111, paragraph 17.

<sup>284</sup> Anatolie Statis’ second witness statement in the ECT Proceedings on 7 May 2012, Exhibit K-47, paragraph 43.

<sup>285</sup> The Stati Parties’ first Post-Hearing Brief dated 8 April 2013, Exhibit K-35, paragraph 217.

<sup>286</sup> The Stati Parties’ first Post-Hearing Brief dated 8 April 2013, Exhibit K-35, paragraph 217 and Anatolie Statis’ second witness statement in the ECT Proceedings of 7 May 2012, Exhibit K-47, 43.

triggered by these gift-like related-party transactions. The transactions continued when KPM and TNG were insolvent or there was a manifest danger of such insolvency and have thereby further exacerbated KPM and TNG's financial situation.

290. Set forth below is an account of these gift-like related-party transactions.

N.2.2.4 *The Stati Parties disposed of KPM and TNG assets and income of substantial value through gift-like related-party transactions*

(i) Gift-like related-party transactions with Stadoil and General Affinity

291. During the period November 2005 until July 2010, the gift-like related-party transactions with Stadoil and General Affinity have consisted of KPM and TNG, selling oil to Stadoil and General Affinity for a total value of USD 1.05 billion.<sup>287</sup>

292. Of this amount of USD 1.05 billion, Kazakhstan has been able, by means of information regarding the bank accounts at Rietumu Banka, to trace the detailed payment flows of USD 713 million, as a consequence of which the subsequent value constitutes the basis of Kazakhstan's assertions in the following.

293. During the period July 2007 until July 2010, Stadoil and General Affinity, wholly on an instalment basis, and subject to terms according to which payment was to be made 170 calendar days following delivery (which was subsequently extended to 325 calendar days following delivery), purchased oil from KPM and TNG at a value of USD 713 million.<sup>288</sup> Thereafter, Stadoil and General Affinity sold the oil onward to an additional affiliated company, Montvale (prior thereto, from November 2005 until June 2007, the oil was sold to Terra Raf). Montvale, in turn, sold the oil onward to Vitol. It was only in conjunction with the sale to Vitol that the sole arm's length transaction in this chain of asset transfers occurred.

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<sup>287</sup> See paragraph 148 above, in which it is stated that Vitol made payments of USD 713 million to Montvale for purchase of oil and bank statements from Terra Raf, Exhibit K-50, pp. 588-937, from which it is apparent that Vitol made payments in any case of USD 337 million to Terra Raf for purchases of oil.

<sup>288</sup> See agreement between KPM and Stadoil dated 15 August 2005, Exhibit K-57, as well as agreement between TNG and General Affinity dated 15 August 2005, Exhibit K-58. See also agreement between KPM and Stadoil on extended payment period dated 2 May 2009, Exhibit K-59 as well as agreement between TNG and General Affinity on extended payment period dated 5 May 2009, Exhibit K-60. It is apparent from the agreements regarding extended payment periods that they entered into force upon signing by the parties.

294. Notwithstanding the fact that Montvale received full payment in advance from Vitol for a total amount of USD 713 million, only USD 522 million thereof was received by the actual suppliers of the oil, i.e. KPM and TNG. The remainder of Vitol's payments remained with Montvale which, in turn, channelled the funds to Hayden, after which they were used for investments, and expenses outside Kazakhstan. By means of these gift-like transactions with affiliated companies, KPM and TNG had been deprived of assets for a total value of not less than USD 191 million, which is equal to the difference between the price which Vitol paid for KPM and TNG's oil and the payments which KPM and TNG received from Stadoil and General Affinity for the same oil.
295. The above-described transactions were not commercially justified. Instead, the character of the transactions has been gift-like which is illustrated not the least by the fact that Stadoil and General Affinity obtained oil from KPM and TNG at a value of USD 191 million for which they never paid. To this is to be added the fact that the deliveries from KPM and TNG were on an instalment basis and subject to terms by which Stadoil and General Affinity could make payment to KPM to TNG after 170 calendar days in respect of each individual delivery. In addition, KPM and TNG not only continued to deliver oil to Stadoil and General Affinity under conditions in which Stadoil and General Affinity had already incurred substantial debts to KPM and TNG due to previously delivered oil for which payment had not been made (at the end of 2008/beginning of 2009, these debts amounted to slightly more than USD 135 million),<sup>289</sup> but, also, (in May 2009), agreed to an amendment to the agreement with Stadoil and General Affinity whereby the payment terms were extended to 325 calendar days following each delivery.<sup>290</sup> As described in paragraph 285 above, KPM and TNG were subsequently burdened by extensive debts which the companies could not pay. Notwithstanding the same, neither KPM nor TNG at any time pursued any legal sanctions against Stadoil or General Affinity as a consequence of the gross breaches of contract by these companies. The fact that both the contractual terms and conditions and the parties' actions pursuant to the agreements were wholly

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<sup>289</sup> Tristan Oil's, KPM and TNG's revised annual reports for the financial year 2009, Exhibit K-61, p. F-52.

<sup>290</sup> Agreement between KPM and Stadoil relating to extended payment period dated 2 May 2009, Exhibit K-59 and agreement between TNG and General Affinity relating to extended payment period dated 5 May 2009, Exhibit K-60.

uncommercial strongly suggests that the transactions were fictitious purchases and that there was no time in any genuine intention that KPM and TNG would receive full compensation for the oil deliveries.

296. In summary, Anatoile Stati, by virtue of gift-like related-party transactions which were held out as purchases, has disposed of KPM and TNG assets and income of substantial value. The transactions have taken place subject to terms and conditions which were not commercial, the character of which was that of fictitious purchases. KPM and TNG have not received compensation for the value of the oil sold by the companies. With regard to the large sums of money of which KPM and TNG were deprived by the Stati Parties, there is no doubt that the assets were of substantial value.

(ii) Gift-like related-party transactions with Perkwood

297. The gift-like related-party transactions with Perkwood consisted of TNG, by means of a number of fictitious transactions, disposing of assets to an affiliated company, Perkwood. The fictitious transactions related to equipment for the LPG plant which the Stati Parties built on the Borankol field in Kazakhstan and which was owned by KPM. The fictitious transactions consisted, *inter alia*, of the following.
298. On 31 January 2006, Ascom and Azalia<sup>291</sup> purchased equipment for the LPG plant from TGE for a total value of approximately USD 34 million.<sup>292</sup> A short time later, on 27 March 2006, TNG purchased the same equipment from Perkwood, this time at a price of approximately USD 93 million (i.e., approximately USD 59 million more than Ascom/Azalia paid for comparable equipment).<sup>293</sup>
299. Two years later, on 2 December 2008, TNG once again purchased equipment from Perkwood at a price of USD 21.8 million.<sup>294</sup> The equipment was identical to the equipment TNG purchased from TGE on 31 January 2006 and from Perkwood on 27 March 2006.

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<sup>291</sup> Azalia was controlled by employees of Ascom through powers of attorney; see section E.2.2.

<sup>292</sup> Agreement between TGE, Ascom and Azalia of 31 January 2006, Exhibit K-67.

<sup>293</sup> Annex nr 2 dated 27 March 2006 of 17 February 2006, Exhibit K-26.

<sup>294</sup> Annex nr 14 dated to December 2008 of 17 February 2006, Exhibit K-26.

300. In total, Anatoile Stati thus purchased identical equipment for the LPG plant on three different occasions. The Stati Parties have not been able to explain why the same equipment was purchased on three occasions or what justified the price difference amongst the various purchases (see, *inter alia*, section K.4.3 above).<sup>295</sup> By means of these fictitious investment costs, the Stati Parties have transferred TNG assets of substantial value to Perkwood for which TNG received no consideration.
301. The fact that TNG assets were transferred to Perkwood is confirmed by Perkwood's account statements.<sup>296</sup> As described in section K.4.4 above, it is apparent, *inter alia* from the account statements, that TNG only in December 2008 and January 2009, i.e. during the period KPM and TNG were insolvent or there was a manifest danger of such insolvency, transferred a total of approximately USD 26 million to Perkwood for which TNG received no consideration.<sup>297</sup>
302. In summary, the Stati Parties, by means of gift-like related-party transactions, deprived TNG of assets of substantial value. The transactions with Perkwood pertained to fictitious investment costs and were thus a fictitious scheme which was created in order for the Stati Parties to be able to empty TNG of assets and further channel these funds from Kazakhstan. TNG has received no consideration from Perkwood, as a consequence of which the transactions were gift-like. The assets of which TNG was deprived by the Stati Parties through gift-like transactions were of substantial value.

N.2.2.5 *Anatolie Stati committed the acts with intent*

303. Anatolie Stati committed the aforementioned acts with intent. By virtue of Anatolie Stati's actions and/or control of all of the companies described above, Anatolie Stati must have perceived the risk that the related-party transactions entailed that KPM and TNG disposed of assets of substantial value by virtue of gift-like measures. Anatolie

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<sup>295</sup> The fact that the price difference was not commercially justified has also been confirmed by experts and examined and noted by an English court; see expert opinion from TGE of 2 June 2016, Exhibit K-66, pp. 23-24, and expert opinion from Steef Huijbregtse of 6 February 2019, Exhibit K-15 pp. 21-27; see, also, the decision of Justice Cooke (Freezing Order) of 29 August 2014 in the High Court of Justice, Queen's Bench Division Commercial Court, Royal Court of Justice Strand, London, WC2A 2LL, case no. 2014 FOLIO 506, Exhibit K-2.

<sup>296</sup> Bank account statements from Perkwood, Exhibit K-79.

<sup>297</sup> Bank account statements from Perkwood, Exhibit K-79, pp. 29-30.

Stati, furthermore, in his capacity as owner of KPM and TNG, was aware of the fact that both KPM and TNG were insolvent or, in any case, that the measures rendered the companies insolvent or created a manifest danger that the companies would become insolvent. In any case, Anatolie Stati was indifferent to this risk, as a consequence of which Anatolie Stati, in any case, committed the acts with intentional indifference.

N.2.2.6 *The acts are comparable to gross dishonesty to creditors*

304. By virtue of the measures described above, Anatolie Stati has committed acts comparable to dishonesty to creditors pursuant to Chapter 11, section 1 of the Swedish Penal Code. Taking into account the significant scope of the crime and the amounts involved in the crime, the crime is to be regarded as gross. The crime is also gross taking into account the particularly dangerous nature thereof since the crime was committed as part of a systematic economic criminal acts and also due to the fact that Anatolie Stati has used several different legal entities over which he exercised controlling influence to carry out the transactions between them.

N.2.3 The claims arose as a consequence of acts which would be qualified as careless disregard of creditors

N.2.3.1 *The legal framework*

305. The crime of careless disregard of creditors is governed by Chapter 11, section 3 of the Swedish Penal Code, which reads as follows:

Any person who, being insolvent or in manifest danger of becoming insolvent, continues to run an enterprise, utilising thereby considerable means without corresponding benefit to the enterprise, or who lives in a wasteful or extravagant manner, or who enters into a hazardous undertaking or thoughtlessly assumes onerous commitments, or who embarks upon a similar course of action and thereby intentionally or through gross carelessness substantially worsens his economic status, shall be sentenced for *careless disregard of creditors* to imprisonment for at most two years. The same shall apply even though the perpetrator did not realise, but had good reason to assume, that he was insolvent or in manifest danger of becoming insolvent.

306. Comparable crimes exist in nearly all jurisdictions around the world, among them Kazakhstan.<sup>298</sup>

N.2.3.2 *Description of the crime*

307. On 11 June 2009, when KPM and TNG were insolvent or when they were in manifest danger of becoming insolvent, Anatolie Stati, through his role as actual representative of KPM, TNG and Laren, intentionally or through gross negligence, caused KPM and TNG to assume imprudent liability commitments by entering into the Laren scheme and thereby substantially undermined KPM and TNG's financial position. In any case, Anatolie Stati had reasonable cause to assume that KPM and TNG were insolvent or in manifest danger of becoming insolvent.

N.2.3.3 *The Laren scheme was entered into when KPM and TNG were insolvent or in manifest danger of becoming insolvent*

308. As described in section N.2.2.3, since October 2008, KPM and TNG were in manifest danger of becoming insolvent. In any case, insolvency or manifest danger for such existed since May 2009. The Laren scheme was entered into on 11 June 2009, thus, when KPM and TNG were insolvent or in manifest danger of becoming insolvent.

N.2.3.4 *Anatolie Stati accepted imprudent contract conditions for KPM and TNG by concluding the Laren scheme*

309. As described in section M.3.4 above, KPM and TNG assumed guarantee undertakings in the amount of USD 171.1 million (plus interest of 10.5 percent on USD 111.1 million and of 35 percent on the remaining USD 60 million) through the Laren scheme. In exchange for these guarantee undertakings, Tristan Oil and Montvale (which were companies affiliated with KPM and TNG) only received funds of USD 55.5 million in total. Thus, KPM and TNG's guarantee undertakings were highly disadvantageous, which meant that there was a manifest risk that KPM and TNG could accumulate a loss of USD 115.6 million. At the same time, Anatolie Stati had an opportunity to make an illegitimate profit of USD 61.1 million if the debt of USD 60 million was paid back within a certain period of time (section M.3.3 above).

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<sup>298</sup> Article 239 of Kazakhstan's Penal Code regulates the crime, "Bringing to insolvency".



310. Furthermore, at the time of assuming the guarantee undertakings, it was clear to Anatolie Stati that Laren would not be able to pay back the debt of USD 171.1 million if the sale of KPM and TNG did not take place. As described in paragraph 258 above, KPM and TNG were never sold and the debt to the investors has therefore not yet been entirely paid back.

311. Accordingly, the Laren-scheme involved a great deal of risk.

312. In summary, KPM and TNG's guarantor obligations concerned a total debt which was three times higher than the amount which KPM and TNG received through payments to the affiliated companies, Tristan Oil and Montvale. Furthermore, the possibility of paying back the debt was entirely dependent on the sale of KPM and TNG, which was not at all safe at the time of entering into the Laren scheme. Against the background of this risk taking, it is clear that the guarantee undertakings are tantamount to imprudent liability commitments.

N.2.3.5 *Anatolie Stati committed the crime intentionally or, in any case, through carelessness*

313. Anatolie Stati committed the crime intentionally. Through his actions and control of KPM, TNG and Laren, Anatolie Stati must have perceived the risk that the guarantee undertakings were very disadvantageous and involved a great risk for KPM and TNG. Furthermore, Anatolie Stati, as owner of KPM and TNG, knew that KPM and TNG were insolvent at the time of assuming the obligations. In any case, Anatolie Stati was indifferent to this risk, which is why Anatolie Stati, in any event, has committed the crime with intentional indifference. In any case, Anatolie Stati committed the crime as a consequence of gross negligence.

N.2.4 The claims arose as a consequence of acts which would be qualified as gross swindling

N.2.4.1 *The legal framework*

314. The crime of *gross swindling* is governed by Chapter 9, section 9 of the Swedish Penal Code which reads as follows:

A person who publishes or otherwise disseminates misleading information among the public in order to influence the price of an article, a security or other property, shall be sentenced for *swindling* to imprisonment for at most two years or, if the crime is petty, to a fine or imprisonment for at most six months.

A person who assists in organising a share company or other firm or who, because of his position ought to possess special knowledge about a firm,

intentionally or through gross carelessness publishes or otherwise disseminates misleading information among the public or among those holding an interest in the firm of a nature to influence the assessment of the firm from a financial point of view, and thereby causes damage, shall be sentenced in accordance for *swindling*.

If a crime as defined in the first or second paragraph is gross, imprisonment for at least six months and at most six years shall be imposed for *gross swindling*. In the determination of whether the crime is gross, special consideration shall be given as to whether the act was extensive, could have caused substantial harm, or was otherwise particularly hazardous in nature.

315. Comparable crimes exist in nearly all jurisdictions throughout the world, including Kazakhstan.<sup>299</sup>

N.2.4.2 *Description of the crime*

316. Anatolie Stati, who has had special knowledge of KPM and TNG in his capacity of exercising controlling influence in these companies, has, during the years 2007 to 2009, intentionally or through gross negligence published or disseminated amongst the public or parties interested in KPM and TNG misleading information intended to influence the assessment of KPM and TNG from a financial perspective. The acts have caused harm.

N.2.4.3 *Anatolie Stati has disseminated misleading information by failing to report transactions with affiliated companies in a correct manner*

(i) Anatolie Stati has provided and disseminated misleading information regarding KPM and TNG's oil sales

317. The deception consisted of Anatolie Stati reporting in the 2007-2009 annual reports for KPM and TNG claims against Stadoil and General Affinity. for oil sales without also explaining that (i) KPM and TNG continued to sell oil wholly on an instalment basis to Stadoil and General Affinity notwithstanding the extensive claims and (ii) other affiliated companies (Terra Raf and, subsequently, Montvale) actually received full payment from Vitol for the oil which KPM and TNG delivered without such funds

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<sup>299</sup> Article 225 of Kazakhstan's Criminal Code regulates the crime, "Non-provision of information or presentation of knowingly false details by civil servant of issuer of securities to insolvency" and Article 241 in Kazakhstan's Criminal Code regulates the crime, "Violation of the legislation of Republic of Kazakhstan on book records and financial accountability".

being received by KPM and TNG.<sup>300</sup> The deception was intended to influence the assessment of KPM and TNG from a financial perspective since the correct information would have shed light on the transactions whereby KPM and TNG were emptied of assets. The deception thereby caused harm.<sup>301</sup>

(ii) Anatolie Stati has provided and disseminated misleading information regarding the relationship with Perkwood

318. The deception has consisted of Anatolie Stati providing erroneous information to auditors and governmental authorities regarding the relationship with Perkwood. As described in section K.4.6 above, Anatolie Stati instructed Artur Lungu to, *inter alia*, inform KPMG that Perkwood was a company outside their corporate group, i.e. withheld the fact that Perkwood was an affiliated company in relation to the Stati Parties and TNG, as a consequence of which misleading information was subsequently published and disseminated.
319. In testimony on 3 April 2019, Artur Lungu confirmed that the consolidated financial statements of Tristan Oil, TNG and KPM, for the years of 2007, 2008 and 2009 contained material misrepresentations as a result of himself and Anatolie Stati having withheld information from the companies' auditors about Perkwood being an affiliated company.<sup>302</sup> By these actions, Anatolie Stati was able to ensure that the financial statements indicated that Perkwood was an independent company which was false information.
320. In his testimony, Artur Lungu also confirmed that KPMG, prior to the sale of KPM and TNG, produced a draft vendor due diligence report, i.e. a detailed report in respect of KPM and TNG's financial position. The report was intended for potential purchasers and was intended to be disseminated amongst them. In the report,

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<sup>300</sup> See Tristan Oil's, KPM and TNG revised annual reports for 2007, Exhibit K-49, Tristan Oil, KPM and TNG's revised annual report for 2008, Exhibit K-112, as well as Tristan Oil, KPM and TNG's revised annual report for 2009, Exhibit K-61.

<sup>301</sup> KPM has recorded claims of USD 49.9 million in respect of Stadoil on 31 December 2006, USD 67.9 million on 31 December 2007, USD 63.7 million on 31 December 2008 and USD 93.5 million on 31 December 2009. TNG has recorded claims of USD 43.7 million in respect of for General Affinity on 31 December 2006, USD 75.5 million on 31 December 2007, USD 71.7 million on 31 December 2008 and USD 68.6 million on 31 December 2009. See Tristan Oil, KPM and TNG's revised annual reports for 2007, Exhibit K- 49, as well as Tristan Oil, KPM and TNG's revised annual report for 2009, Exhibit, K-61p. F-52.

<sup>302</sup> Printout of testimony of Artur Lungu of 3 April 2019, Exhibit K-44, pp. 144-145, 182-183 and 197-201.

Perkwood was initially identified as a company affiliated with the Stati Parties, whereupon Artur Lungu instructed KPMG to instead refer to Perkwood as a third party which KPMG subsequently did.<sup>303</sup> This misleading information was thereby intended to influence the assessment of KPM and TNG from a financial perspective and thereby caused harm to those who relied on the information in the report. Anatolie Stati, in his capacity as an owner of both KPM and TNG, had special knowledge of the companies and was ultimately responsible for the information presented in the report.

321. Anatolie Stati also provided misleading information to Kazakh authorities in respect of Perkwood's status as an affiliated company. When the equipment for the LPG plant arrived in Kazakhstan, the customs declaration stated that Perkwood was an "unrelated party".<sup>304</sup> The erroneous information had as a result the fact that Perkwood could charge a higher price for the equipment than would have been possible had it been apparent that Perkwood was an affiliated company (for affiliated companies, the Kazakh rules and regulations on transfer pricing applies).<sup>305</sup> By virtue of the higher prices, larger sums were transferred from TNG to Perkwood which, in turn, reduced TNG's tax basis in Kazakhstan while the investment costs for the LPG plant increased to a comparable degree. The book value of the LPG plant thereby exceeded the actual value of the plant.<sup>306</sup> The published misleading information regarding the investment costs for the LPG plant was thereby intended to influence the assessment of TNG from a financial perspective and thereby caused harm those persons who relied on the information.

322. On 21 August 2019, KPMG withdrew its audit reports for Tristan Oil's, KPM and TNG's consolidated annual reports for the years 2007, 2008 and 2009 because KPMG believed it had been deceived in light of the new information from Arthur Lungu which confirmed that the reports were not reliable.

(iii) Anatolie Stati has provided and disseminated misleading information regarding the relationship with Laren

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<sup>303</sup> Printout of testimony of Artur Lungu of 3 April 2019, Exhibit K-44, pp. 265-277.

<sup>304</sup> Perkwood's customs receipt, Exhibit K-75.

<sup>305</sup> Expert opinion from Steef Huibregtse of 6 February 2019, Exhibit K-15, pp. 17-19 regarding Kazakhstan's rules and regulations for transfer pricing.

<sup>306</sup> Expert opinion from Steef Huibregtse of 6 February 2019, Exhibit K-15, p. 25.

323. The deception consisted in that Anatolie Stati, through Tristan Oil which was entirely owned by him, in a press release which was sent to the public concerning the issue of the new Tristan notes, stated that Laren was owned by a “charitable trust” but actively chose not to state that he himself exercised control over Laren.<sup>307</sup> Had it been known that Laren was an affiliated company, it would have been obvious that the Laren Scheme would not have been permitted according to Tristan Indenture, which would have had as a consequence the fact that the scheme would not have been approved and executed (see, further, section M.3.2 above).

324. The misleading information that the Laren Scheme was not a related/party transaction was intended to influence the assessment of KPM and TNG from a financial perspective since the companies would have otherwise not received funds in order to pay their tax liabilities in Kazakhstan which, in turn, was a condition for the companies to be able to be sold. The deception has caused harm since KPM and TNG could thereby assume payment obligations which the companies had no possibility to satisfy.

N.2.4.4 *Anatolie Stati has committed the acts with intent or, in any case, with gross negligence*

325. The purpose of disseminating the misleading information described above has been to influence the assessment of KPM and TNG from a financial perspective which, in turn, would cause harm. Anatolie Stati has, in any case understood the risk and has accordingly been indifferent to the fact that the dissemination of the misleading information would influence the assessment of KPM and TNG from an economic perspective. Thus, in any case, the acts have been committed with intentional indifference and, at any rate, Anatolie Stati has been grossly negligent by disseminating the information.

N.2.4.5 *The acts are comparable to gross swindling*

326. By virtue of the acts described above, Anatolie Stati has committed acts comparable to swindling in accordance with Chapter 9, section 9 of the Swedish Penal Code. The

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<sup>307</sup> See press release concerning the issue of the new Tristan notes dated 19 June 2009, Exhibit K-113.

crime is to be regarded as gross since the acts have been extensive, could have caused substantial harm, or were otherwise particularly hazardous in nature.

N.2.5 The claims arose as a consequence of acts which would be qualified as gross tax crimes

N.2.5.1 *The legal framework*

327. Sections 2 and 4 of the Swedish Tax Crimes Act (Swedish Code of Statutes 1971:69) governs the conditions relating to *gross tax crimes*. The legal provisions state the following.

**Section 2 Swedish Tax Crimes Act**

Any person that, by other means than orally, intentionally provides an authority within incorrect information or fails to submit a tax return, statement of earnings or any other prescribed information thereby creates a risk of tax being withheld from the public or wrongfully credited or repaid to that or any other person. Shall be sentenced for tax crime to a term of imprisonment of up to 2 years.

**Section 4 Swedish Tax Crimes Act**

If a crime as defined in section 2 is gross, the person shall be sentenced for gross tax crime to imprisonment for at least six months and up to six years.

When assessing if the crime is gross, it shall especially be taken into consideration whether the sum in question was very significant, whether the offender used false documents or deceiving accounting, or whether the act was part of a systematic criminal operation or was of a large scale or otherwise especially dangerous.

328. Comparable crimes exist in nearly all jurisdictions throughout the world, including Kazakhstan and England.<sup>308</sup> In support of the assertion that tax crimes have been committed, primarily by disregarding the internationally recognised rules regarding transfer pricing – that is, regarding internal pricing in international corporate group relationships and transfers of value – Kazakhstan has requested that the tax consultant, Steef Huibregtse, from the TPA Global consulting firm, evaluate available material regarding the Stati Parties’ investments in Kazakhstan. The report was issued on 6 February 2019 and has been prepared for the purpose of submission in the Dutch execution proceedings. However, the report also provides a good description of the

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<sup>308</sup> Article 245 in Kazakhstan’s Criminal Code regulates the crime “Evasion of taxes and (or) other compulsory payments to the budget by an organization”.

conditions pertaining to tax crimes in England and Kazakhstan. In the following, it will be referred to as the “TPA report”.<sup>309</sup>

N.2.5.2 *Description of the act*

329. During the period November 2005 to July 2010, Anatolie Stati intentionally provided incorrect or incomplete information to the Kazakh tax authorities and the Kazakh customs authorities and the English authority, Companies House (comparable to the Companies Registration Office in Sweden) or, in any case, failed to submit declarations, statements of earnings, and other prescribed information in respect of KPM and TNG, and Perkwood, and thereby created a risk that tax would be withheld from the Kazakh and English states.

N.2.5.3 *The provision of incorrect information or the failure to provide the prescribed information has created the risk that tax would be withheld*

(i) Information regarding the gift-like transactions between KPM and Stadoil and between TNG and General Affinity

330. During the years 2003-2010, Anatolie Stati was the beneficial owner of KPM by means of one hundred per cent indirect ownership. Furthermore, during the same period of time, Anatolie Stati was the beneficial owners of TNG by means of indirect ownership of 50 percent. In his capacity as beneficial owner of KPM and TNG, Anatolie Stati, during the stated period of time, exercised legal or, in any case, actual controlling influence over the management of the funds management and business of the companies, including the information which was provided or withheld in relation to the Kazakh tax and customs authorities.

331. These acts have consisted of Anatolie Stati, as regards KPM and TNG, during the period 2005 to July 2010 – in any case, in 2007-2009 – preparing misleading annual reports, providing untrue or incomplete information to the Kazakh tax authorities in respect of oil sales from KPM to Stadoil and from TNG to General Affinity, and the gift-like character of the sales whereby extensive transfers of value were made to Stadoil and General Affinity outside the framework of the rules governing profit distribution in KPM and TNG. In any case, Anatolie Stati has failed to provide the prescribed information that the character of the transactions was gift-like. The

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<sup>309</sup> Expert opinion regarding transfer pricing of 2 June 2019, Exhibit K-15.

transfers of value have created the risk that taxes would be withheld from the Kazakh state in that the funds amounting to USD 146 million which formed the tax basis were not received by KPM and TNG.

(ii) Information regarding Perkwood

(A) Information submitted to Kazakh authorities concerning TNG's relationship to Perkwood

332. Through his indirect actions in TNG, Anatolie Stati was its legal and actual representative. During the period 2005 to 2009, Anatolie Stati intentionally provided incorrect or incomplete information to Kazakh authorities or, in any case, failed to provide them with information regarding TNG's actual relationship to Perkwood. Anatolie Stati has thereby created a risk that taxes would be withheld from the Kazakh state.
333. As described in section K.4.6, Anatolie Stati and Artur Lungu withheld from the auditors at KPMG the fact that Perkwood was a company affiliated with the Stati Parties and TNG. Instead they made it seem like Perkwood was an independent third party and that the transactions had been made on arm's length basis
334. In a witness testimony on 3 April 2019, Artur Lungu confirmed, for example, that the 2007, 2008 and 2009 financial statements for Tristan Oil, TNG and KPM contained material errors, given that Anatolie Stati had concealed from the auditors at KPMG that Perkwood was an affiliated company and, in this way, had managed to keep that information out of the financial statements.<sup>310</sup> Thus, Anatolie Stati has deliberately concealed the relationship to Perkwood from auditors and authorities. As described in paragraph 193, KPMG has withdrawn the audit reports for 18 financial statements as a consequence of the new information regarding Perkwood.<sup>311</sup>
335. Another example of incorrect information regarding Perkwood provided to a Kazakh authority is that Anatolie Stati, when bringing the parts for the LPG Plant to Kazakhstan, stated that Perkwood was an "unrelated party" in the customs declarations.<sup>312</sup> This made it possible for the Stati Parties to circumvent rules

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<sup>310</sup> Printout from Artur Lungu's testimony on 3 April 2019, K-44.

<sup>311</sup> Letter from KPMG to Herbert Smith Freehills on 21 August 2019, Exhibit K-77.

<sup>312</sup> Perkwood's customs declaration, Exhibit K-75.



regarding transfer pricing and, accordingly, could raise the purchase price for the equipment. Through the increased costs, TNG transferred large sums to Perkwood and thereby reduced its tax base in Kazakhstan.<sup>313</sup>

(B) Information provided to authorities in England regarding the business of Perkwood

336. As described in paragraph 36, Anatolie Stati had a general power of attorney which enabled him to represent Perkwood in all matters during the period 2005 to 2009.<sup>314</sup> Furthermore, Anatolie Stati had a right of disposition in respect of Perkwood's bank account and the funds deposited on account at Rietumu Banka.<sup>315</sup> Thus, Anatolie Stati exercised controlling influence over Perkwood's administration of funds and business, including, *inter alia*, the information which was or was not provided to the authorities.
337. Anatolie Stati intentionally provided incorrect or incomplete information to the British Companies House or, in any case, failed to provide them with information regarding Perkwood's actual business. Anatolie Stati has thereby created a risk that taxes would be withheld from the English state.
338. The incorrect information has consisted of Anatolie Stati claiming to the English *Companies House* that Perkwood was a dormant company during the period the Perkwood agreement was applicable and the supposed transactions were carried out with TNG.<sup>316</sup> Perkwood's account statements show extensive transactions involving large sums with many companies over a period of several years.<sup>317</sup>
339. A dormant company which has not carried out any transactions which are subject to a reporting obligation was, according to English law, released from the requirement of submitting audited annual reports to *Companies House*.<sup>318</sup>

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<sup>313</sup> Expert opinion of Steef Huibregtse on 6 February 2019, Exhibit K-15, pp. 17-19, concerning Kazakh regulations regarding transfer pricing.

<sup>314</sup> General powers of attorney concerning Perkwood for 2005, 2006, 2007 and 2008, Exhibit K-12.

<sup>315</sup> Certificate of beneficiaries for Perkwood's bank account, Exhibit K-14.

<sup>316</sup> Excerpt from the Companies House with respect to Perkwood, Exhibit K-9. On pp. 18, 25, 32 and 39, it is stated that Perkwood used SIC code 9999. SIC is an acronym for *Standard Industrial Classification of Economic Activities*. On p. 58, it is stated that the code, 9999, means *dormant company*, i.e. that the company is inactive.

<sup>317</sup> Perkwood's bank statement, Exhibit K-79.

<sup>318</sup> Expert opinion regarding transfer pricing, the chapter regarding English law of 2 June 2016, Exhibit K-15, p. 15-16 concerning the English regulations.

340. By providing incorrect information regarding Perkwood’s activities to the authorities in England, Anatolie Stati, through Perkwood, created a risk that taxes would be withheld from the public or wrongfully credited or repaid. This is also confirmed by the expert opinion from Steef Huibregtse.

“A case for cheating the public revenue “at large” can be seen in the dormant filings made by Perkwood which are irreconcilable with the conduct of Perkwood as defined in the Perkwood contract. The admission by the Stati et al. concerning the motive of the alleged transfer pricing arrangement, i.e. to “*minimise the taxable base of the corporate income tax in the jurisdictions of their incorporation, namely Russia (Azalia) and England (Perkwood), respectively*”, confirms that Perkwood did not pay appropriate taxes in the UK in the concerned period, thereby cheating the public revenue “at large”. Thus, HMRC can pursue a case of fraud against Perkwood based on common law practice which is punishable by a fine and/or imprisonment.”<sup>319</sup>

341. After an assessment of the relevant documents, Steef Huibregtse states in his expert opinion that the Perkwood scheme “*forms a prima facie case of misrepresentation of taxable income*”, which is criminal in, among other countries, Great Britain and Kazakhstan.<sup>320</sup>

(iii) Information regarding General Affinity

342. As described in paragraph 42, General Affinity is registered as a company with limited business which enjoyed a less stringent obligation pursuant to section 249 a (1) of the English Companies Act 1985. Anatolie Stati had general power of attorney, which authorised him, in all respects, to represent General Affinity. In addition, he had control over General Affinity’s bank account and the funds deposited on accounts at Rietumu Banka AS in Latvia.<sup>321</sup> Anatolie Stati thus exercised actual controlling influence over the company’s funds management and business, including the information which was provided to, or withheld from, the English authorities.
343. During the period 2005 to 2009, Anatolie Stati intentionally provided incorrect or incomplete information to the English authorities or, in any case, failed to provide them with information regarding General Affinity’s actual business. Anatolie Stati has thereby created a risk that taxes would be withheld from the English state.

<sup>319</sup> Expert opinion from Steef Huibregtse of 6 February 2019, Exhibit K-15, p. 16.

<sup>320</sup> Expert opinion from Steef Huibregtse of 6 February 2019, Exhibit K-15, pp. 15-18.

<sup>321</sup> Information regarding the bank accounts at Rietumu Banka, Exhibit K-13, and powers of attorney concerning General Affinity for the period 18 May 2006-18 May 2009, Exhibit K-27.

344. The incorrect or incomplete information has consisted of Anatolie Stati claiming that the company was a company with limited business although the company was engaged in an extensive business in the form of oil trading, and General Affinity's account statement also shows extensive transactions subject to a reporting obligation involving large sums with many companies over a period of several years.<sup>322</sup>

345. By providing incorrect or incomplete information regarding General Affinity's activities to the authorities in England, Anatolie Stati created a risk that taxes would be withheld from the public or wrongfully credited or repaid.

N.2.5.4 *Anatolie Stati committed the acts with intent*

346. Anatolie Stati must have understood the risk that there was a danger that taxes would be withheld from the public due to the fact that he provided incorrect information or, in the alternative, in that he failed to provide the prescribed information. In addition, Anatolie Stati was indifferent to this risk. Accordingly, Anatolie Stati committed the acts, in any case, with intentional indifference.

N.2.5.5 *The acts are comparable to gross tax crimes*

347. Thus, by virtue of the acts which have been described above, Anatolie Stati has committed acts comparable to tax crimes pursuant to section 2 of the Swedish Tax Crimes Act and which also constitute evasion of taxes and (or) other compulsory payments to the budget by an organisation according to Kazakh law and fraud according to English law.<sup>323</sup> The crimes are to be deemed gross merely on the basis that they were part of criminal activity which was exercised systematically and extensively.

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<sup>322</sup> General Affinity's bank statement, Exhibit K-64.

<sup>323</sup> As regards the latter, see opinion from Steef Huibregtse of 6 February 2019, Exhibit K-15, p. 16.

N.2.6 The claims arose as a consequence of acts, which would qualify as gross bookkeeping crimes

N.2.6.1 *The legal framework*

348. The crime *gross bookkeeping crime* is governed by Chapter 11, section 5 of the Swedish Penal Code. The provision reads as follows.

A person who intentionally or through carelessness neglects the obligation to maintain accounts in accordance with the Bookkeeping Act (1999:1078) by failing to enter business transactions into the accounts or to preserve accounting material, or by entering false information into the accounts or in some other way, shall, if in consequence the course of the business or its financial results or status cannot in the main be assessed from the accounts, be sentenced for *bookkeeping crime* to imprisonment for at most two years, or, if the crime is petty, to a fine or imprisonment up to six months.

If the crime is gross imprisonment for not less than six months and not more than six years shall be imposed. In assessing whether the crime is gross, special consideration shall be given to whether the neglect involved a very substantial value or whether the offender used false documents or whether the crime was part of a crime, which was committed systematically, or whether the crime otherwise has been of a particularly dangerous nature.

349. Comparable crimes exist in nearly all jurisdictions throughout the world, including Kazakhstan and England.<sup>324</sup>

N.2.6.2 *Description of the crime*

350. Anatolie Stati has, in his capacity as actual representative of KPM, TNG, Stadoil, General Affinity and Perkwood, during the period 2006-2010, intentionally neglected the companies' obligation to maintain accounts by completely failing to issue annual reports or by providing false or inconclusive information in the companies' annual reports as a consequence of which the developments in the businesses, their financial results and financial position in general could not be assessed on the basis of the annual reports.

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<sup>324</sup> Article 241 of the Kazakhstan's Criminal Code regulates the crime "violation of the legislation of the Republic of Kazakhstan on book records and financial accountability".

N.2.6.3 *Anatolie Stati has neglected KPM and TNG's obligation to maintain accounts by failing to report gift-like transactions between affiliated companies*

(i) False or inconclusive information regarding the gift-like transactions between KPM and Stadoil and between TNG and General Affinity

351. The acts consisted of Anatolie Stati providing false or inconclusive information in the annual reports of KPM and TNG during the years 2007-2009, contrary to generally accepted accounting practices, by reporting claims against the affiliated companies, Stadoil and General Affinity, of between USD 93.6 and 162.1 million for each year, for the sale of oil without reporting the fact that (i) KPM and TNG's claims were caused by the fact that the companies continued to sell oil entirely on, an instalment basis to Stadoil and General Affinity even though Stadoil and General Affinity had not paid for previously delivered oil and KPM and TNG therefore had the right to a suspension of deliveries and return of the delivered oil, and that (ii) other affiliated companies (Terra Raf and later Montvale) had received payment in full in advance from Vitol for the oil delivered by KPM and TNG without KPM and TNG receiving these funds. As a consequence, developments in the businesses, their financial results and financial position in general could not be assessed on the basis of the annual reports. This is the case since the annual reports did not reflect the fact that KPM and TNG had opportunity, by simple means, to demand and receive full payment for the delivered oil and thereby increase the liquid assets of the companies.

(ii) False or incomplete information concerning gift-like transactions between TNG and Perkwood

352. The acts have consisted of Anatolie Stati, at a minimum during 2007-2009, providing false information by presenting transactions with affiliated companies without disclosure of Perkwood in this category of transactions. As a consequence of this information, developments in the businesses, their financial results or financial position in general could not be assessed on the basis of the annual reports. This is because the costs relating to the LPG Plant were higher than they would have been had the transactions been carried out on an arm's-length basis in accordance with generally accepted accounting principles, and hence the value of the LPG Plant was inflated.

353. As described above, KPMG later withdrew the audit reports concerning the annual reports in question as a consequence of these concealed gift-like transactions with affiliated companies.

N.2.6.4 *Failure to issue annual reports for General Affinity and Perkwood*

354. The acts consisted of Anatolie Stati, during the years 2006-2010, failing to issue annual reports for Perkwood notwithstanding the company conducted business that involved transactions that were required to be reported in the accounts. Furthermore, Anatolie Stati has submitted incomplete or incorrect annual reports for General Affinity. This made it impossible to assess developments in the businesses, their financial results or financial position in general.

N.2.6.5 *Anatolie Stati committed the crimes with intent*

355. Given that Anatolie Stati was the actual representative of the above referenced companies, he must have been aware of the fact that the gift-like transactions had not been reported in the annual reports. In addition, Anatolie Stati must have been aware of the fact that the annual reports for General Affinity and Perkwood had not been prepared notwithstanding the fact that the companies had conducted business involving transactions which were to be reported. Accordingly, Anatolie Stati committed the acts with intent. In any case, Anatolie Stati committed the acts as a consequence of negligence.

N.2.6.6 *The acts are comparable to gross bookkeeping crimes*

356. By virtue of the acts described above, Anatolie Stati committed acts which are comparable to bookkeeping crimes pursuant to Chapter 11, section 5 of the Swedish Penal Code. The crimes are to be deemed gross since they pertain to very substantial value and were part of criminal activity which was exercised systematically.

N.2.7 The claims arose as a consequence of acts which would qualify as gross fraud

N.2.7.1 *The legal framework*

357. The crime of *gross fraud* is governed by Chapter 9, sections 1 and 3 of the Swedish Penal Code. The provisions read as follows.

**Chapter 9, section 1 of the Swedish Penal Code**

If a person by deception induces someone to commit or omit to commit some act which involves gain for the accused and loss for the deceived or someone represented by the latter imprisonment for at most two years shall be imposed for fraud. A sentenced for fraud shall also be imposed.

[...]

**Chapter 9, section 3 of the Swedish Penal Code**

If a crime as defined in Section 1 is regarded as gross, imprisonment for at least six months and at most six years shall be imposed for *gross fraud*.

In assessing whether the crime is gross, special consideration shall be given to whether the offender abused public trust or employed a false document or misleading bookkeeping, or whether the crime otherwise had been of a particularly dangerous nature, involved a substantial value or resulted in a keenly felt loss.

358. Comparable crimes exist in nearly all jurisdictions throughout the world, including Kazakhstan.<sup>325</sup>

N.2.7.2 *Description of the act*

359. During the period November 2005 – July 2010, Anatolie Stati, in his capacity as representative of KPM and TNG, misled Vitol by stating fictitious and inflated costs for the LPG plant. The misleading information has caused Vitol to pay these false costs.

360. During the period November 2005 – July 2010, Anatolie Stati has, in his capacity as representative of KPM and TNG, misled the holders of the Tristan notes by (i) withholding information that a large amount of KPM and TNG’s oil revenues were never received by KPM and TNG. The deception has caused the noteholders to invest in the Tristan notes, in any case, the deception has caused the noteholders to refrain from taking legal measures to obtain payment.

361. The measures described above have entailed a gain for Anatolie Stati and a loss for Vitol and the holders of the Tristan notes.

N.2.7.3 *Anatolie Stati has misled Vitol by stating fictitious costs for the LPG plant*

362. According to the JOA contract Vitol was to pay parts of the set-up costs in respect of the LPG plant (see, further, paragraph 49 above). However, as described above,

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<sup>325</sup> Article 190 of the Kazakhstan’s Criminal Code regulates the crime, “Fraud”.

Anatolie Stati, by virtue of fictitious agreements with Perkwood, created fictitious investment costs for the LPG plant which entailed that TNG was able to report much higher investment costs for the LPG plant than the actual investment costs incurred by TNG (and for which compensation has been paid to TGE). In accordance with the expert opinion which Deloitte submitted in the challenge and invalidity proceedings, which were initiated in Svea Court of Appeal on 19 March 2014, a “*substantial part*” of the reported costs for the LPG plant had no basis and the costs therefor were “*substantially inflated*” (see, further, paragraph 182 above).<sup>326</sup>

363. An example of fictitious investment costs is the equipment which TNG purchased from Perkwood in accordance with Annex 2 and Annex 14 of the Perkwood agreement. In total, TNG paid approximately USD 148.8 million to Perkwood in accordance with these annexes (USD 93 million pursuant to Annex 2 and USD 21.8 million pursuant to Annex 14 (see paragraphs 169-176 and 298-299 above).<sup>327</sup> The same equipment which was the subject of these contractual appendices had, however, already been purchased from TGE for an amount of approximately USD 34 million. By means of the fictitious arrangement with Perkwood, Anatolie Stati could thus report additional investment costs in the amount of USD 148.8 million to Vitol of which Vitol would pay a certain part.
364. The fact that Anatolie Stati, by virtue of the Perkwood arrangement, created fictitious investment costs for the LPG plant is confirmed by the fact that KPMG, as soon as it learned of the new information which emerged regarding the Perkwood arrangement through Artur Lungu’s testimony on 3 April 2019, declared that the auditor’s affirmation regarding TNG was not reliable (see, further, paragraph 193 above).<sup>328</sup>
365. By promising that Vitol’s investment of USD 20 million would be used for the funding of the LPG plant when Anatolie Stati actually intended to use (and actually used) the entire sum or parts of it to pay sham invoices to companies controlled by him, Anatolie Stati deceived Vitol to enter into and pay pursuant to the JOA contract. This entailed a profit for Anatolie Stati and harmed Vitol.

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<sup>326</sup> Expert opinion from Deloitte, Exhibit K-74, *inter alia*, p. 6.

<sup>327</sup> See, above, section K.4.4.

<sup>328</sup> See, above, section K.4.6.



- N.2.7.4 *Anatolie Stati has misled the holders of the Tristan notes by withholding information that a large part of KPM and TNG's oil revenues were never received by KPM and TNG*
366. Notwithstanding that Terra Raf/Montvale received full payment from Vitol for KPM and TNG's oil, only some of these funds have been received by the actual suppliers of the oil, KPM and TNG. By means of this course of action, KPM and TNG have been deprived of assets for a total value of at least USD 191 million (see, further, section N.2.2.4 above). As a consequence, KPM and TNG had financial problems and eventually became economically distressed.
367. The possibility for the noteholders to obtain payment in accordance with the Tristan notes was dependent upon KPM and TNG's ability to pay because KPM and TNG's loan payments financed Tristan Oil's payments to the noteholders and because KPM and TNG had assumed a guarantee undertakings for Tristan Oil's debt to the noteholders. By failing to inform the noteholders that all oil revenues from Vitol were not received by KPM and TNG, the noteholders have been misled to believe that all of the oil revenues would also be received by KPM and TNG. The noteholders have thereby received misleading information regarding the Tristan notes, the risks involved, and the actual value thereof.
368. Had the holders of the Tristan notes known that Anatolie Stati's intention was that large parts of KPM and TNG's revenues would never be received by KPM and TNG, they would have, in all probability, not invested in the Tristan notes. By virtue of the deception, the noteholders have thus been caused to invest in the Tristan notes.
369. Had the noteholders known that not all oil revenues were going to be received by KPM and TNG, which significantly undermined the holder's chances of being paid on their claims, they would have, furthermore, been able to pursue legal measures in order to procure payment by *inter alia* rescinding the agreement concerning the notes for early payment. This possibility has been denied to the noteholders by virtue of the fact that they did not know the true situation regarding KPM and TNG's oil revenues. The deception has thus caused the noteholders to fail to pursue such legal measures in order to thereby protect their rights.

370. Depriving KPM and TNG's of oil revenues has contributed to Tristan Oil's inability to pay its liabilities to the noteholders.<sup>329</sup> The noteholders have thus incurred a loss equal to Tristan Oils' outstanding debt to them at the same time as Anatolie Stati has enjoyed a corresponding profit.

N.2.7.5 *Anatolie Stati committed the acts with intent*

371. Anatolie Stati has committed the aforementioned acts with intent. The purpose of Anatolie Stati's actions was, by withholding material information, to acquire as much money as possible at the expense of Vitol and the holders of the Tristan notes.

N.2.7.6 *The acts are comparable to gross fraud*

372. By virtue of the acts described above, Anatolie Stati has committed acts comparable to fraud pursuant to Chapter 9, section 1 of the Swedish Penal Code. The crimes are to be deemed gross merely taking into account that they involve substantial value.

N.2.8 The claims have entailed acts comparable to gross money laundering crimes

N.2.8.1 *The legal framework*

373. The crime of *money laundering* is regulated in sections 3 and 5 of the Swedish Penalties for Money Laundering Offences Act (Swedish Code of Statutes 2014:307). The provisions of the Act read as follows.

**Section 3 of the Swedish Penalties for Money Laundering Offences Act**

A person is guilty of a *money laundering* offence if he or she, provided that the measure is intended to conceal the fact that money or other property derives from an offence or criminal activities or to promote the possibility of someone appropriating the property or its value,

1. transfers, acquires, converts, stores or takes another such measure with the property; or
2. supplies, acquires or draws up a document that can provide a seeming explanation for the possession of the property, participates in transactions that are carried out for the sake of appearances, acts as a front or takes another such measure.

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<sup>329</sup> See e.g. Minnesota District Court's decision of 30 August 2011 in a case between the owners of the initial notes and, among others, Tristan Oil and the owners of the New Tristan notes, Exhibit K-114, p. 3, from which it is apparent that "*Tristan defaulted on its July 1, 2010 interest payment*".

The penalty is imprisonment for at most two years.

**Section 5 of the Swedish Penalties for Money Laundering Offences Act**

If an offence referred to in Section 3 or 4 is *gross*, the penalty shall be imprisonment for at least six months and at most six years for a gross money laundering offence.

In judging whether the offence is gross, particular attention shall be paid to whether the act has concerned objects of substantial value, whether the criminal measures have been part of criminal activities that have been conducted systematically or extensively, or whether they have otherwise been of a particularly dangerous nature.

374. Comparable crimes exist in nearly all jurisdictions throughout the world, including Kazakhstan.<sup>330</sup> The Swedish legislation is based on an EU Directive.

N.2.8.2 *Description of the act*

375. Commencing November 2005 up to July 2010, through bank accounts controlled by Anatolie Stati, Anatolie Stati has channelled money derived from the aforementioned crimes for the purpose of concealing the origins of the money or promoting the possibilities for Anatolie Stati to appropriate the funds or the value thereof.

N.2.8.3 *Bank accounts in Anatolie Stati's control have been used to transfer funds derived from crimes or criminal activities for the purpose of concealing the origin of the funds or promoting the possibilities to appropriate the funds or the value thereof*

376. In any case, during the period from November 2005 to July 2010, Anatolie Stati had a right of disposition in respect of the following companies' accounts at Rietumu Banka: Stadoil, General Affinity, Terra Raf, Montvale, Perkwood, Azalia and Hayden. As described in paragraph 45, Rietumu Banka is known for its involvement in extensive money laundering schemes.

377. As described, *inter alia*, in paragraph 278 above, impermissible value transfers have taken place from KPM and TNG by virtue of crimes which, *inter alia*, constitute dishonesty to creditors. These impermissible transfers have resulted in KPM and TNG being deprived of not less than USD 217 million during the period November 2005 until July 2010 The transfers were carried out for the purpose of concealing the origins

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<sup>330</sup>In article 218 in Kazakhstan's Criminal Code, the crime "Legalization (laundering) of money and (or) other property, received by criminal way" is regulated.

of the funds and promoting the opportunity for Anatolie Stati, or other parties designated by Anatolie Stati, to obtain the funds and the value thereof.

378. The acts have consisted of the following.

(i) Anatolie Stati has deprived KPM and TNG of extensive oil revenues

379. As described in section K.3 KPM and TNG have been deprived of extensive oil revenues in that these revenues instead – through Terra Raf and Montvale – were channelled to other companies controlled by Anatolie Stati, primarily Hayden. In order to succeed in channelling these funds, Anatolie Stati has used the bank accounts of Terra Raf, Montvale, Stadoil, General Affinity and Hayden at Rietumu Banka.

380. In section K.3, a description is provided as to the manner in which Vitol, from July 2007 until July 2010, paid a total of USD 713 million to Montvale as payment for oil which was extracted by KPM and TNG. Of these amounts, only USD 522 million was received by the suppliers of the oil, KPM and TNG. The majority of the USD 19 million, which KPM and TNG were deprived of, was transferred from Montvale to Hayden.<sup>331</sup>

381. In total, during the period from July 2007 until July 2010, Anatolie Stati has thus transferred through bank accounts under his control a total of USD 191 million which was derived from criminal activities.

(ii) Anatolie Stati has channelled substantial sums of money from Perkwood to Hayden

382. As described in section K.4 above, TNG has transferred large sums of money to Perkwood. The transfers have been part of a fictitious arrangement in which TNG did not receive any consideration corresponding to the value of the transfers. In several cases, TNG has made payment to Perkwood, after which Perkwood immediately forwarded the funds via Azalia to Hayden. Azalia, Perkwood and Hayden all have bank accounts at the Rietumu Banka bank.

383. The transfers can be illustrated by the following example.

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<sup>331</sup> Section K.3 provides a description of an example of the manner in which Montvale deprived KPM and TNG of funds and instead channelled them to Hayden.

- (a) On 5 December 2008, Perkwood accepted payment from TNG in the amount of USD 21,999,975 with the description, "Appendix 14".<sup>332</sup> Three days later, on 8 December 2008, two transfers were made from Perkwood to Azalia in the amount of USD 12,000,000 and USD 10,000,000. "LPG Equipment" was provided as the description for both payments.<sup>333</sup> The amount transferred to Azalia thus equals the amount which Perkwood just received from TNG.

On the same day as Azalia received the payments of USD 12,000,000 and USD 10,000,000 from Perkwood, two transfers were immediately made to Hayden in the amount of USD 12,000,000 and USD 10,000,000 with the description, "drilling equipment".<sup>334</sup>

- (b) On 16 December 2008, Perkwood took payment from TNG in the amount of USD 3,614,909 with the description, "Appendix 14". On the same day, Perkwood made a transfer to Azalia in the amount of USD 3,600,000 with a description, "LPG Equipment".<sup>335</sup> The amount thus corresponds to the amount which had been just received by TNG. It is apparent from Azalia's account statements that USD 3,600,000 was transferred on the same day to Hayden under the description, "drilling equipment".<sup>336</sup>
- (c) On 2 January 2009, Perkwood took payment of USD 649,984 from TNG. Three days later, on 5 January 2009, Perkwood transferred USD 650,000 to Azalia under the description, "LPG Equipment".<sup>337</sup> It is apparent from Azalia's account statements that USD 650,000 was transferred to Hayden on the same day under the description, "drilling equipment".<sup>338</sup>

(iii) Summary comments regarding the acts

384. As set forth below, both revenues from oil sales as well as funds received by Perkwood from TNG have, to a large extent, been channelled to Hayden. It is apparent from

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<sup>332</sup> Bank account statement from Perkwood, Exhibit K-79, p. 29.

<sup>333</sup> Bank account statement from Perkwood, Exhibit K-79, p. 29.

<sup>334</sup> Bank account statement from Azalia, Exhibit K-17, p. 40.

<sup>335</sup> Bank account statement from Perkwood, Exhibit K-79, p. 30.

<sup>336</sup> Bank account statement from Azalia, Exhibit K-17, p. 40.

<sup>337</sup> Bank account statement from Perkwood, Exhibit K-79, p. 30.

<sup>338</sup> Bank account statement from Azalia, Exhibit K-17, p. 41.

Hayden's bank account statements that, once with Hayden, the funds, in addition to the investments in projects outside Kazakhstan, were used, *inter alia*, for luxury consumption and to make payments to politicians and politically exposed persons. *Inter alia*, Anatolie Stati purchased several luxury cars at Hayden's expense and he has also purchased a luxury watch of the H. Stern brand for the amount of GBP 325,457 (see, further, section L.5 above). In addition to various luxury purchases, Anatolie Stati paid hundreds of thousands of dollars to politicians and politically exposed persons in Moldova, the Democratic Republic of the Congo, Romania, Sudan and Kurdistan (see, further, section L.3-L.4 above). Anatolie Stati also channelled money abroad (section L.2 above). By means of the transfers to Hayden, Anatolie Stati has attempted to hide the fact that the money originates from criminal activities and that he has also made it possible for him, or other parties designated by Anatolie Stati, to obtain the funds.

N.2.8.4 *Anatolie Stati committed the acts with intent*

385. It is clear that Anatolie Stati's intention with the transfers was to conceal the origins of the funds and advance the opportunities for him or companies controlled by him to dispose of the funds. Accordingly, Anatolie Stati has committed the crimes with intent.

N.2.8.5 *The crimes are comparable to money laundering crimes*

386. By virtue of the actions described above, Anatolie Stati has committed acts comparable to money laundering crimes in accordance with section 3 of the Swedish Penalties for Money Laundering Offences Act. The acts are to be deemed gross since they pertain to substantial value, are part of systematic criminal activity, and were extensive.

N.2.9 The funds which were impermissibly channelled from Kazakhstan have been transferred to politicians and politically exposed persons by means of acts which appear to be comparable to gross payment of bribes

N.2.9.1 *The legal framework*

387. Pursuant to Chapter 10, section 5a of the Swedish Penal Code, a person who is an employee or carries out an engagement and accepts, approves a promise of, or requests and improper benefit for the performance of the employment or the engagement shall be sentenced for acceptance of a bribe. The crime, *gross giving of bribes* is governed

by Chapter 10, sections 5 b-c of the Swedish Penal Code. The latter provisions read as follows.

**Chapter 10, section 5 of the Swedish Penal Code**

A person who gives, promises or offers an improper benefit in the cases referred to in section 5 a shall be sentenced for *payment of bribes* to a fine or a term of imprisonment not exceeding two years.

**Chapter 10, section 5 c of the Swedish Penal Code**

If the offence referred to in 5 a or 5 b is regarded as gross, the offender shall be convicted or *gross payment of bribes* to imprisonment for a term of not less than six months and not more than six years. In determining whether an offence is gross, special consideration shall be given as to whether the act involved abuse of, or an attack on, a position of special responsibility, related to substantial value or was part of systematic criminal activity or extensive in scope or otherwise a particularly dangerous character.

388. Comparable crimes exist in most jurisdictions throughout the world, including Kazakhstan.<sup>339</sup>

N.2.9.2 *Description of the act*

389. During the period 2005-2015, in his capacity as legal representative of Hayden, Anatolie Stati has provided what appears to be improper benefits to politicians and politically exposed persons, which benefits may be deemed to be for the exercise of the engagement.

N.2.9.3 *Anatolie Stati has provided benefits to politicians and politically exposed persons by means of funds which were channelled out of Kazakhstan through previous criminal activities*

390. During the period 2005-2015, Anatolie Stati had a general power of attorney to, in all respects, represent Hayden.<sup>340</sup> Furthermore, Anatolie Stati was the sole beneficiary of the funds on Hayden's bank accounts.<sup>341</sup>

391. In 2007-2010, Hayden received not less than USD 172 million in funds which were improperly channelled from KPM and TNG by means of the actions described in section N.2.2.4 above. These funds were used, *inter alia*, to provide benefits to politicians and politically exposed persons outside Kazakhstan apparently in order to

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<sup>339</sup> Article 367 of Kazakhstan's Criminal Code regulates the crime, "Giving bribe".

<sup>340</sup> See, further, paragraph 40 above.

<sup>341</sup> The powers of attorney concerning Hayden for the period 5 October 2005–5 October 2016, Exhibit K-22 and Certificate of Beneficiary of Hayden's bank account, Exhibit K-23.

benefit Anatolie Stati's investments in such countries which is described in greater detail in section L above.

392. Anatolie Stati has apparently provided improper benefits to the following politicians and politically exposed persons which may be assumed to have been for carrying out the engagement.

(i) Benefits to Lyazzat Kiinov

393. During the period October 2007 to June 2008, Anatolie Stati, by means of money transfers from Hayden's bank account at Rietumu Banka, appears to have provided improper benefits to Lyazzat Kiinov's daughter, Yekaterina Lyazzat, in a total amount of USD 1,153,670. At that time Lyazzat Kiinov was Vice Energy and Mineral Resources Minister in Kazakhstan. According to the bank statements, the payments concerned "*payment for stipend*".

(ii) Benefits to Victor Prodan and family

394. During the period 2007 to 2015, Anatolie Stati, by means of money transfers from Hayden's bank account at Rietumu Banka, appears to have provided improper benefits to Victor Prodan and his family in a total amount of not less than USD 560,000 at a time during which Victor Prodan occupied the position of Mayor of the municipality of Ungheni in Romania. The inappropriate benefits consisted, *inter alia*, of monetary benefits and hotel costs.

(iii) Benefits to Iurie Leanca

395. During the period October 2009 to May 2014, Anatolie Stati, by means of money transfers from Hayden's bank account at Rietumu Banka, appears to have provided undue benefits to Iurie Leanca, his wife, Aida Leanca, as well as his sons, Marius and Tristan Leanca, amounting to a total of more than 400,000 USD at the time when Iurie Leanca was Vice Prime Minister in Moldova as well as "Minister of Foreign Affairs and European Integration". The inappropriate benefits consisted, *inter alia*, of monetary benefits and payments for Iurie Leanca's son's university studies.

(iv) Benefits to Matombe Masanga Adelard

396. On 30 January 2008, Anatolie Stati, by means of money transfers from Hayden's bank account at Rietumu Banka, appears to have provided an undue benefit in the



amount of USD 20,000 to Matombe Masanga Adelard who, at that time, worked at the tax authority in the Democratic Republic of the Congo and was and advisor the Prime Minister of the Congo. The inappropriate benefits consisted, *inter alia*, of monetary benefits.

(v) Benefits to Olowa Lungudi

397. On 6 August 2008, Anatolie Stati, by means of money transfers from Hayden's bank account at Rietumu Banka, appears to have provided undue benefits of USD 100,000 to Olowa Lungudi at a time at which he was a politician in the Democratic Republic of the Congo. The inappropriate benefits consisted, *inter alia*, of monetary benefits.

(vi) Benefits to Costello Garang Ring Lual

398. During the period 2011 to 2014, Anatolie Stati, by means of money transfers from Hayden's bank account at Rietumu Banka, appears to have provided undue benefits totalling USD 600,000 to Costello Garang Ring Lual who, at that time, was a politician in South Sudan. The inappropriate benefits consisted, *inter alia*, of monetary benefits.

(vii) Benefits to Sarbaz N Hawrami

399. During the period September 2010 to February 2013, Anatolie Stati, by means of money transfers from Hayden's bank account at Rietumu Banka, appears to have provided undue benefits totalling USD 1,503,260 to Sarbaz N Hawramis who, at that time, was engaged with the local government in the Kurdistan region of Iraq. The inappropriate benefits consisted, *inter alia*, of monetary benefits.

N.2.9.4 *Anatolie Stati must be deemed to have committed the acts with intent*

400. Anatolie Stati must be deemed to have understood the risk that the transfers would constitute undue benefits for the performance of employment or an engagement. In any case, Anatolie Stati has been indifferent to this risk, as a consequence of which Anatolie Stati, in any event, has committed the acts with, in any case, intentional indifference.

N.2.9.5 *The acts appear to correspond to gross payment of bribes*

401. By virtue of the acts described above, Anatolie Stati committed acts which are comparable to gross payment of bribes pursuant to Chapter 10, section 5b of the

Swedish Penal Code. The crimes are to be deemed gross taking into account that they involved an attack on a position of special responsibility, related to substantial value and were part of systematic criminal activity and were extensive in scope

402. In this submission, Kazakhstan has presented extensive evidence showing that Anatolie Stati has provided inappropriate benefits to politically exposed persons. Under these circumstances, it is upon the Stati Parties to show that the money transfers, which are describe above, were not inappropriate.

N.2.10 The claims arose as a consequence of acts comparable to gross false certification or gross use of false documents

N.2.10.1 *The legal framework*

403. Chapter 15, section 11 of the Swedish Criminal Code governs the conditions for *gross false certification* and *gross use of a false document*. The provision states the following.

A person who gives untrue information about his or her identity or about other than his or her own affairs or for the sake of appearances prepares a document concerning a legal act shall, if the act jeopardises proof, be sentenced for *false certification* to fines or imprisonment for a term of not more than six months.

Where the crime is considered *gross* due to the fact that it involves misuse of an official position or for other reasons, a term of imprisonment not exceeding two years shall be imposed.

A person who invokes or otherwise uses a false document referred to in the first paragraph shall, where the act jeopardises proof, be sentenced for *using a false document* in the manner set forth in the first and second paragraphs.

N.2.10.2 *Description of the act*

404. During the period November 2005 to July 2010, Anatolie Stati intentionally prepared for the sake of appearances agreements between (i) KPM and Stadoil, (ii) TNG and General Affinity, and (iii) Perkwood and TNG. Furthermore, Anatolie Stati has invoked and used these agreements. The measures jeopardised proof.

N.2.10.3 *Anatolie Stati has systematically used documents in the form of legal documents which were prepared for the sake of appearances*

405. Anatolie Stati has exercised controlling influence over and controlled the following companies: Ascom, KPM, TNG, Stadoil, General Affinity, Terra Raf, Montvale, Perkwood, Azalia and Hayden. Through these companies, documents have been

prepared for the sake of appearances in the form of agreements concerning legal acts which have jeopardised proof.

(i) KPM's agreements with Stadoil and TNG's agreements with General Affinity

406. As described in paragraph 116 above, KPM and TNG delivered oil during the period August 2005 until July 2010 to Stadoil and General Affinity wholly on an instalment basis, subject to the condition that Stadoil and General Affinity would make payment first 170 calendar days following each delivery.

407. KPM and TNG have not only continued to deliver oil to Stadoil and General Affinity notwithstanding that Stadoil and General Affinity took on extensive liabilities to KPM and TNG in respect of previously delivered oil which had not been paid for, but also consented to an amendment to the agreements with Stadoil and General Affinity whereby the payment terms were extended to 325 calendar days after each delivery. At no time did KPM or TNG assert any legal sanctions against Stadoil or General Affinity as a consequence of the companies' missing payments notwithstanding that the agreements gave them an express right to a return of all delivered oil in conjunction with delays in payment.

408. There is much to suggest that KPM and TNG's formal right to payment of the purchase price from Stadoil and General Affinity was never intended to be satisfied but, rather, that the purchase agreement was prepared for the sake of appearances in order to transfer oil from KPM and TNG in gift-like form. The purchase agreements have jeopardised proof including the fact that KPM and TNG reported their claims against Stadoil and General Affinity in respect of the purchase price as assets in their annual reports.

409. Accordingly, there is much to suggest that KPM and TNG's claims against Stadoil and General Affinity were never intended to be repaid but, rather, were issued for the sake of appearances in order to transfer money from KPM and TNG without commercial justification. The assertion of the claims has jeopardised proof since KPM and TNG reported their claims against Stadoil and General Affinity as assets in their annual reports.

(ii) The Perkwood agreement

410. As described in section K.4.3 above, TNG and Perkwood entered into the Perkwood agreement in 2006 in respect of the purchase of equipment for the LPG plant notwithstanding that TGE, by virtue of the TGE agreement, had already been engaged for the same project by Azalia and Ascom. The Perkwood agreement specified the equipment which was purchased pursuant to the agreement in various annexes.
411. Following the review carried out by TGE of the annexes to the Perkwood agreement within the context of the preparation of the expert opinion (see, further, section K.4.3 above), it was revealed that the list of equipment was so unspecified that it was not possible to deliver it on the basis of the information in the relevant annex and that certain equipment is listed several times in the various annexes. An example of the latter is Annex 14, which lists equipment already included in the equipment which was purchased two years earlier by virtue of Annex 2. Annex 14 thus appears to be a purely fictitious document.
412. The equipment listed in Annex 2 (which is identical to the equipment listed in Annex 14) had already been delivered by TGE. Annex 2 also thus appears to be a purely fictitious document.
413. As described in section K.4.7 above, TNG made several large transfers in December 2008 and January 2009 to Perkwood which, were labelled “annex 14” and “LPG equipment” on the bank account statement. These funds were subsequently sent to Azalia and thereafter channelled to Hayden.
414. The Perkwood agreement was thus prepared for the sake of appearances in order to transfer large values from TNG in various gift-like forms. The procedure entailed jeopardising proof since the transfers resulted in an increased booked value of the LPG plant and erroneous annual reports for the years 2007, 2008 and 2009. The latter is confirmed by the fact that KPMG, after they had learned of TNG’s affiliation with Perkwood and the unjustified pricing in the Perkwood agreement, rescinded its audit of Perkwood’s annual reports.
- N.2.10.4 *Anatolie Stati committed the acts with intent*
415. Anatolie Stati must have understood the risk that the preparation of the false documents would entail jeopardising proof and that he was indifferent to such risk.

Accordingly, Anatolie Stati committed the acts, in any case, with intentional indifference.

N.2.10.5 *The acts are comparable to gross false certification or gross use of a false document*

416. By virtue of the documents described above, Anatolie Stati has committed acts comparable to false certification and use of false documents in accordance with Chapter 15, section 11 of the Swedish Penal Code. The crimes are to be regarded as gross taking into account the fact that they are part of systematic criminal activities and are extensive and taking into account the large values covered by the false documents.

**N.3 The Stati Parties reprehensible acts have in all cases violated morality**

417. In case the acts described above do not qualify as criminal acts in all respects, the Stati Parties' acts have been extraordinary reprehensible, hence the acts violate morality.

**N.4 The crimes committed by the Stati Parties were determinative of the Stati Parties' claims in the ECT Proceedings and the outcome in the case**

418. Above, Kazakhstan has given an account of the criminal acts through which Anatolie Stati deprived KPM and TNG of extensive assets and revenues. Such deprivations commenced shortly after the Stati Parties' acquisition of KPM and TNG and occurred for the purpose of enriching the Stati Parties themselves. The investment by the Stati Parties in Kazakhstan has thus not been legitimate but, rather, has been in "bad faith" and with "unclean hands" (see, further, section N.1 above).

419. In the ECT Proceedings, the Stati Parties requested damages totalling approximately USD 3 billion. The claim in damages was based on the fact that Kazakhstan had violated Article 10(1) of the ECT by conducting a "harassment campaign" against KPM and TNG. In the ECT Proceedings, the Stati Parties claimed that the "harassment campaign" was the reason for the economic distress of KPM and TNG.

420. As set forth above, it has been subsequently revealed that KPM and TNG's economic distress was caused by the Stati Parties themselves and that this, *inter alia*, was caused by the criminal, or in any case reprehensible, acts described above. The claim in damages asserted by the Stati Parties in the ECT Proceedings was thus based on criminal acts and criminal (or in any case reprehensible) transactions. Had this been

known to the tribunal, the tribunal would not have undertaken the ECT Proceedings but, rather, dismissed the Stati Parties' action. In any event, the tribunal would have disallowed the Stati Parties' action in its entirety or awarded a significantly lower amount in damages. Since the acts were concealed by the Stati Parties, the tribunal, however, took on the case and found in favour of the Stati Parties.

421. The Stati Parties' claim in the ECT Proceedings was thus not arbitrable, and the award which is subject to this invalidity action is thus to be declared invalid.<sup>342</sup> Upholding the award would entail acceptance of a claim which is based on criminal acts and highly reprehensible behaviour. The Swedish legal system should not participate in upholding such types of claims. Such an order of things is also not intended. On the contrary, the statements in the preparatory works as well as precedent point out that neither courts of law nor arbitral tribunals are to hear claims which are based on the type of behaviour in which the Stati Parties (in particular, Anatolie Stati) have engaged. It would be an undesirable development if the Court of Appeal participated in causing the Swedish legal system to be used to extract payment for claims which are based on systematic criminal or reprehensible activities. Instead, there should be good cause in order to maintain a regime according to which these types of claims are not upheld.

422. In addition, it may be noted that, if the Court of Appeal upholds the award, the Court of Appeal would abet the criminal activity or, in any case, the particularly objectionable scheme described in sections N.2 above. By virtue of the ECT Proceedings, the Stati Parties have "laundered" their claims and made them appear legitimate. This was possible since neither the tribunal nor Kazakhstan at the time of the ECT Proceedings were aware of the criminal or reprehensible acts on which the claims were based. However, the Court of Appeal is aware of this. In the event the Court of Appeal upholds the award, the Court of Appeal would, in practice, thus abet money laundering by the Stati Parties. In the event the award is maintained, the Court of Appeal would, furthermore, compel Kazakhstan which, according to the award is obligated to perform in accordance therewith, to abet in money laundering.

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<sup>342</sup> Cf. section 1 of the Swedish Arbitration Act and section 33, sub-section 1 of the Swedish Arbitration Act.

**O. The award and the manner by which it came about is, in any case, obviously incompatible with the principles of the Swedish legal system, pursuant to section 33, first paragraph, sub-section 2 of the Swedish Arbitration Act**

**O.1 Introduction**

423. Pursuant to section 33, first paragraph, sub-section 2 of the Swedish Arbitration Act, an award is invalid if the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system (*ordre public*).

424. The *ordre public* reservation applies, *inter alia*, to claims which a court of law cannot entertain, such as claims based on criminal activities.<sup>343</sup>

425. In conjunction with the implementation of the Swedish Arbitration Act, a proposal was presented to implement a provision according to which an award could be set aside following an action brought by a party asserting that a document adduced as evidence was falsified or distorted or where someone other than a party or a representative of a party has consciously provided an untrue statement (procedural *ordre public* – the way, in which the arbitral award has come about).<sup>344</sup> However, the legislature was of the opinion that no such special rule which addressed the aforementioned situation was necessary. Instead, it was believed that such actions were already covered by the *ordre public* rule in section 33 of the Swedish Arbitration Act.<sup>345</sup> It follows therefrom that such deception of the tribunal, and especially a false witness statement, would also be covered by *ordre public*.<sup>346</sup>

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<sup>343</sup> See, *inter alia*, Government Bill 1998/99:35 *Ny lag om skiljeförfarande*, p. 142.

<sup>344</sup> See, Government Bill 1998/99:35, p. 150.

<sup>345</sup> In Government Bill 1998/99:35 *Ny lag om skiljeförfarande*, p. 150, it is stated that “[i]n accordance with the Committee Report, however, these situations should be covered by the *ordre public* concept as used in the Model Act and the New York Convention.”

<sup>346</sup> Lars Heuman, *Skiljemannarätt*, 1999, p. 600: “According to the arbitral awards enquiry, awards based on false evidence are embraced by the concept of *ordre public* in the Model Act and the New York Convention. The efforts to harmonise Swedish law with foreign precedent indicate that the award constitutes a nullity were false written evidence or consciously untrue witness statements have influenced the outcome.”; Stefan Lindskog, *Skiljeförfarande*, section 4.2.2, p. 850: “Furthermore, the circumstances on which an award is based may be such that the manner by which the award came to be must be deemed to be clearly incompatible with the basic principles of the Swedish legal system. Practically speaking, the situation is one in which the successful party has adduced false evidence.”

426. As will be developed in the following, the award in the current case is clearly incompatible with the basic principles of the Swedish legal system since:

- a) the Stati Parties' claims are based on criminal acts described in section N.2 (which, in any event are particularly reprehensible); and
- b) the Stati Parties have obtained the award by consciously misleading the tribunal.

427. The grounds therefor shall be developed in the following.

**O.2 The award is clearly incompatible with the basic principles of the Swedish legal system**

**O.2.1 The Stati Parties' claims in the ECT Proceedings are based on criminal acts**

428. As described in sections N.2-N.3 above, the Stati Parties' claims in the ECT Proceedings are based on gross criminal acts. Even if the acts are not deemed to constitute crimes in all respects, the acts have been, in any case, particularly reprehensible. The crimes were comprised primarily of economic crimes in which most have been criminalised for the purpose of protecting the public from harm which, for example, money laundering crimes entail for society at large. By virtue of the award, these compensation claims, which concern profits and assets, which have been obtained through crimes or through reprehensible acts, have been granted. The award is thus incompatible with compulsory legal rules which have been set up in the interests of society and is thereby clearly incompatible with the basic principles of the Swedish legal system.

429. In addition to the fact that the award is incompatible with the basic principles of the Swedish legal system since it entails granting a claim which is based on gross criminal activity, upholding the award would entail that both the Court of Appeal and Kazakhstan would abet the criminal activity or, in any case, a particularly reprehensible scheme described in section N.2. An award with such consequences must, in any event, be deemed incompatible with the basic principles of the Swedish legal system.



O.2.2 The Stati Parties have deliberately obtained the award by deliberately misleading the tribunal

O.2.2.1 The Stati Parties mislead the tribunal during the ECT Proceedings

430. As described in section G, the Stati Parties claimed during the ECT Proceedings that Kazakhstan had violated the Stati Parties' investments by conducting a "*harassment campaign*" against KPM and TNG. According to the Stati Parties, the "*harassment campaign*" prevented them from obtaining the loan from Credit Suisse, as a consequence of which the Stati Parties, in June 2009, were forced to enter into the Laren-scheme.<sup>347</sup> According to the Stati Parties, the horrendous terms of the Laren-scheme caused a financial crisis for KPM and TNG making it impossible for the companies to carry on with their business.

431. As described in section G.3 above, the tribunal accepted the Stati Parties' claims and held that Kazakhstan's investigations of KPM and TNG had harmed the "*investment*" of the Stati Parties. Thus, the tribunal accepted that the alleged "*harassment campaign*" led to the Stati Parties not being able to obtain the loan from Credit Suisse and that this meant that they instead were forced to enter into the Laren-scheme.<sup>348</sup>

432. Based on *inter alia* these conclusions, the tribunal reached the conclusion that Kazakhstan had breached its obligations pursuant to the ECT and were thus liable to compensate the "*liability*" of the Stati Parties. Thereby, the tribunal could also grant the Stati Parties' claim and hold Kazakhstan liable to pay damages to the Stati Parties.

O.2.2.2 *In the ECT Proceedings, the Stati Parties intentionally provided false and misleading information and lied regarding the actual cause of the financial problems and the liquidity crisis which arose in 2009*

433. As described in section H above, Kazakhstan, by virtue of the information and documents which became available to Kazakhstan in 2016, understood that the Stati Parties (and several of their witnesses) had, in several respects, misled and provided

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<sup>347</sup> The Award, dated 19 December 2013, Exhibit K-34, paragraph 1338.

<sup>348</sup> The Award, dated 19 December 2013, Exhibit K-34, paragraphs 1408-1416.

completely false information to the tribunal within the context of the ECT Proceedings.

434. These lies and deceptions consist primarily of the assertion that Kazakhstan, as a consequence of the “*harassment campaign*”, should have caused the Stati Parties to suffer extensive financial problems. In the ECT Proceedings, the Stati Parties stated, in so far as is relevant,

- (i) that Tristan Oil, KPM and TNG’s financial position was caused by the “*harassment campaign*” in that Credit Suisse did not provide the Stati Parties with bridge financing (see, further, section J above); and
- (ii) that the Stati Parties, since no commercial bank wanted to lend money to the Stati Parties, were compelled to enter into the Laren scheme with its terrible terms and conditions (see, further, section M above).

435. In their second Post-Hearing Brief, dated 3 June 2013, the Stati Parties stated the following:

“116. International observers, including Credit Suisse and two ratings agencies, Fitch and Moody’s, immediately picked up on the press release. Credit Suisse promptly backed out of a \$150-175 million credit facility that it was in the process of finalizing with Claimants, which had significant financial and operational consequences to Claimants’ investments and operations during the course of 2009.”<sup>349</sup> (Emphasis ours.)

436. Artur Lungu, the CFO for the Stati Parties, testified before the tribunal that:

Kazakhstan’s harassment campaign also caused a liquidity crisis for TNG and KPM in spring and summer of 2009.<sup>350</sup>

437. When counsel for the Stati Parties referred during the main hearing in the proceedings on 1 October 2012 to Kazakhstan’s position, namely that KPM and TNG’s liquidity problems in 2009 were the result of factors beyond Kazakhstan’s influence, and subsequently asked what caused the liquidity problems, Lungu answered:

“There were such problems. But the reasons that generated such problems and the severity of the problems was of two types: on the one hand, we had

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<sup>349</sup> The Stati Parties’ second Post-Hearing Brief dated 3 June 2013, Exhibit K-36, paragraph 116.

<sup>350</sup> Second witness statement of Mr. Artur Lungu in the Arbitration, dated 5 May 2012, Exhibit K-115, paragraph 7.

objective reasons, such as the prices, the oil price went down on the world market, and this affected us, and then the seasonality of the gas demand on the local market. The extraordinary reasons, on the other hand, that contributed the most, in our opinion, to the difficult financial situation at the end of spring 2009/the beginning of summer 2009 were actions of Kazakhstan that were started in October and November 2008, such as the controls they carries out in the company, as well as starting criminal proceedings (on the) main pipeline that never existed, as well as re-evaluating new taxes for our previous activity.”<sup>351</sup>

438. With respect to the possibility of obtaining other financing, the Stati Parties claimed that they were compelled to become parties to the Laren scheme as a last resort in order to solve the liquidity crisis in KPM and TNG.<sup>352</sup> In the Stati Parties’ second Post-Hearing Brief, the Stati Parties stated the following reasons why they became parties to the Laren scheme.

“213. Claimants’ inability to obtain that financing had serious consequences. Most significantly, as Kazakhstan admits, Claimants would not have needed to enter into the Laren transaction in June 2009 if they had obtained the Credit Suisse financing. The Laren scheme required Tristan to issue an additional US \$111 million in notes, on top of a US \$60 million promissory note, in order to raise US \$60 million in financing needed to pay tax and interest obligations. Although that transaction was a necessary and prudent step to save Claimants’ investments from debt and tax default, the onerous terms and complicated structure of that transaction caused the Moody’s and Fitch ratings agencies to further downgrade Tristan’s debt rating to the C level. This is a plain demonstration of the spiraling effect on the Claimants’ investments that Kazakhstan set in motion with its actions that began in October 2008, and became public no later than December 18, 2008.”<sup>353</sup> (Emphasis ours.)

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“217. Moreover, in the spring of 2009, Kazakhstan’s illegal actions forced Claimants to suspend construction of the LPG Plant indefinitely. Kazakhstan’s interference with the Credit Suisse transaction put TNG in a position where it needed to conserve cash to meet current obligations. Additionally, as Mr. Stati explained, Kazakhstan’s actions changed the investment environment to the point where it was simply too risky to invest additional capital in a fixed asset that Kazakhstan could seize.”<sup>354</sup> (Emphasis ours.)

439. In the Stati Parties’ first Post-Hearing Brief, the Stati Parties stated the following regarding the terms and conditions and consequences of the Laren scheme.

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<sup>351</sup> Record of the first hearing day 1, Direct Examination of Mr. Artur Lungu, Exhibit K-48, pp. 199-201.

<sup>352</sup> The Award dated 19 December 2013, Exhibit K-34, paragraph 1415.

<sup>353</sup> The Stati Parties’ second Post-Hearing Brief, dated 3 June 2013, Exhibit K-36, paragraph 213.

<sup>354</sup> The Stati Parties’ second Post-Hearing Brief, dated 3 June 2013, Exhibit K-36, paragraph 217.

“24. Claimants could not operate or manage their companies normally in that devastating environment, yet Kazakhstan’s campaign continued and the consequences mounted. Claimants struggled to restart the Project Zenith sales process. Mr. Stati was forced to halt construction of the LPG Plant, as the State’s campaign made it too risky to invest additional capital. Vitol opportunistically withdrew from the venture in 2009 and increased Claimants’ financial exposure to the subsequent seizure. Claimants had to turn to the Laren loan sharks for emergency financing on disastrous terms. Claimants were unable and unwilling to take the risk of investing increasingly scarce capital to progress drilling and development at Borankol and Tolkyn.” (Emphasis ours.)

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”217. As further explained in Section IV.A.1, one immediate effect of the defamatory leak was that Credit Suisse decided not to execute the term sheet for a US \$150-175 million credit facility it was on the verge of concluding with Claimants. The loss of the Credit Suisse facility ultimately forced Claimants, in June 2009, to resort to the Laren Loan sharks for US \$60 million in emergency bridge financing. The “horrendous” conditions of the Laren loan (as Kazakhstan accurately puts it) caused further financial duress. As Mr. Lungu testified, Claimants would not have needed to enter into the Laren loan if they had obtained financing on commercial terms from Credit Suisse, as was on the verge of occurring in December 2008.”<sup>355</sup> (Emphasis ours.)

440. Anatolie Stati himself explained in his written testimony to the tribunal:

“But because of Kazakhstan’s harassment campaign – most specifically, the debt downgrade in January 2009 that followed Kazakhstan’s reversal of preemptive rights and public allegations of forgery and fraud – it was impossible to borrow money on reasonable commercial terms.”<sup>356</sup>

441. Thus, the Stati Parties’ attorney stated in the presentation of the case during the main hearing on the first day:

“... And the evidence will show that Crédit Suisse, in response to the allegations of the state’s reassertion of preemptive rights, in response to the allegation of forgery, withdrew its offer to make a loan to our client. In other words, our client was unable to secure the financing through the financial institution of Credit Suisse.”<sup>357</sup> (Emphasis ours.)

442. The Stati Parties and their witness, Artur Lungu, thus claimed during the ECT Proceedings that the Stati Parties were compelled to enter into the Loan Facility since they could not borrow capital from Credit Suisse or other commercial banks.

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<sup>355</sup> The Stati Parties’ first Post-Hearing Brief, dated 8 April 2013, Exhibit K-35, paragraph 217.

<sup>356</sup> Second witness statement of Mr. Anatoli Stati in the Arbitration, dated 7 May 2012, Exhibit K-47, paragraph 43.

<sup>357</sup> Transcript Hearing Day 1, Stati’s Opening Statement on the Merits, Exhibit K-48, p. 110.

Furthermore, the Stati Parties claimed that Kazakhstan's actions were a direct cause as to why the Stati Parties needed to accept the horrendous terms of the Laren scheme in lieu of taking a loan from Credit Suisse subject to reasonable commercial terms and conditions. These were false and misleading assertions. Artur Lungu and Anatolie Stati lied in their testimony. Artur Lungu testified in 2019 under oath that Ascom transferred between USD 200-250 million to exploitation projects in Kurdistan and Iraq in 2008.

443. As set forth in section I above, the documentation now available shows that KPM and TNG's grave financial problems existed as early as the autumn of 2008, i.e. before Kazakhstan had even begun the alleged "harassment campaign". Similarly, it is apparent from section J above that the Stati Parties, in December 2008, would have been able to obtain commercial credit but chose to not enter into the loan agreement with Credit Suisse.

**O.3 The incompatibility of the award with the basic principles of the Swedish legal system is clear**

444. In order for an award to be invalid, it is necessary that the incompatibility of the award with the basic principles of the Swedish legal system is clear. The preparatory works state that invalidity should follow exclusively from the fact that the award is in conflict with the interests of the public or third parties.<sup>358</sup>

445. As set forth above, Anatolie Stati committed systematic economic crimes and particularly reprehensible acts which, *inter alia*, entailed deceiving contractual parties, advisors, the public and the tribunal. By virtue of the award, this type of economic criminality which Swedish penal legislation attempts to counteract is justified and legitimised. In addition to the fact that the award is incompatible with the Swedish legal system since it is based on crimes or, in any case, particularly reprehensible acts, upholding the award would entail that both the Court of Appeal and Kazakhstan are abetting the crime.

446. As follows from section N.4 above, the Stati Parties procured the award by providing, over a long period of time, advisors and governmental authorities with erroneous information, and Artur Lungu's false witness statements were adduced to prove the

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<sup>358</sup> Government Bill 1998/99:35 *Ny lag om skiljeförfarande*, p. 141.

erroneous information. Artur Lungu and Anatolie Stati lied during the testimony regarding circumstances which the arbitrators found to be relevant to holding Kazakhstan responsible for a violation of the ECT. In any event, it is obvious that the award is incompatible with the basic principles of the legal system in Sweden.

## **VI. THERE IS NO IMPEDIMENT TO THE COURT OF APPEAL EXAMINING THE CASE**

447. After the award was issued in the ECT Proceedings, Kazakhstan brought a challenge and action for invalidity in the Svea Court of Appeal.<sup>359</sup> Kazakhstan's action was based primarily on procedural grounds such as the composition of the tribunal, jurisdiction and excess of mandate. Kazakhstan also claimed that the award contravened Swedish *ordre public* since the Stati Parties had provided erroneous and misleading information and adduced false evidence in respect of the value of the LPG plant within the context of the ECT Proceedings.<sup>360</sup>
448. On 9 December 2016, the Court of Appeal issued a judgment in the case.<sup>361</sup> The Court of Appeal, which ruled in favour of the Stati Parties, found that neither the award nor the manner in which it came to be was clearly incompatible with the basic principles of the Swedish legal system. The Court of Appeal was further of the opinion that there was cause to allow the decision to be appealed.
449. As described in section H above, in 2018 - 2019, i.e. after both the arbitral award and the judgement of the Court of Appeal were issued, Kazakhstan acquired access to a large quantity of evidence due to assistance from judicial authorities in Latvia, England and the US. The evidence shows that the Stati Parties were engaged in gross and systematic criminal acts in Kazakhstan through which the Stati Parties looted substantial assets of the companies, KPM and TNG, *and* that such looting was concealed by means of extensive money-laundering schemes and that the funds which were funnelled out of Kazakhstan, *inter alia*, were used to benefit politicians and state employees. In addition, the evidence shows that the Stati Parties lied during the ECT

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<sup>359</sup> See Svea Court of Appeal case no. T 2675-14.

<sup>360</sup> See Kazakhstan's Statement of Claim in the Svea Court of Appeal of 19, March 2014 in case no. T 2675-14.

<sup>361</sup> See the judgement of the Svea Court of Appeal in case no. T 2675-14 of 9 December 2016.

Proceedings in respect of KPM and TNG's economic distress and that this was actually caused by the Stati Parties themselves. These new circumstances constitute the basis for the current petition.

450. The chain of events, and the circumstances now asserted are thus entirely independent and substantially different from the chain of events which was the subject of the examination by the Court of Appeal in the previous challenge and invalidity case. The new circumstances have not been the subject of examination by the Court.
451. The invalidity regime has been established for cases in which it would be objectionable and run contrary to the public interest to uphold the award.<sup>362</sup> As far as can be gleaned by Kazakhstan, it has never occurred that a party has filed two petitions for invalidity with the Svea Court of Appeal regarding one and the same award. In this sense, then, the current petition is unique. However, so are the new circumstances forming the basis of the petition, since it has been shown that the claims granted by virtue of the award are based on gross criminal acts.
452. The systematic, gross criminal activities engaged in by the Stati Parties do not deserve the protection of the Swedish legal system. The fact that the Stati Parties' claims in the ECT Proceedings were based upon gross criminal activities was learned by Kazakhstan only after the ECT Proceedings and the judgement rendered by the Court of Appeal. An arbitral award cannot be appealed, and the involvement of the states in the arbitration regime is restricted. Where, as in the matter at bar, such exceptional new circumstances are present which are based on extensive criminal activity, there must be a control mechanism which ensures that awards based on criminal activities are not upheld. The fact that it has been the intention of the legislature that such awards should not be upheld is shown not the least by the fact that there is no time limit as regards the possibility to assert grounds for invalidity.<sup>363</sup>

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<sup>362</sup> Stefan Lindskog, *Kommentar till skiljeförfarandelagen*, published in Zeteo 2018-09-07.

<sup>363</sup> Stefan Lindskog, *Kommentar till skiljeförfarandelagen*, published in Zeteo 2018-09-07.

Stockholm, 25 November 2019

Alexander Foerster

Fredrik Ringquist

Malin Berggren

Daniel Piran



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K-3	Article from Accent-TV, <i>Special Commission: Vlad Plahotniuc is the main beneficiary of the theft of a billion</i>	Published on 20 September 2019
K-4	Article from Hromadske International, <i>Fugitive Oligarch Wanted in Moldova's "Theft of the Century" Case</i>	Published on 15 October 2019
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R-3	Judgement in ICSID No. ARB/11/12, <i>Fraport AG Frankfurt Airport Services Worldwide v. Philippines</i>	10 December 2014
R-4	Katharina Diel-Gligor and Rudolf Nennecke, "Investment in Accordance with the Law" in Bungenberg/Giesel/Hobe/Reinisch (International Investment Law)	2015
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R-8	Decision in question concerning jurisdiction in ICSID Case No. ARB/05/18, <i>Ioannis Kardassopoulos v. The Republic of Georgia</i>	6 June 2007