

To
The Supreme Court

APPLICATION FOR NEW TRIAL

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

Counsel: *Advokaterna* Alexander Foerster, Fredrik Ringquist and Ludwig Metz
jur.kand. Daniel Piran
Mannheimer Swartling Advokatbyrå AB
Box 1711, 111 87 Stockholm
Tel.: 08-595 060 00
Email: alexander.foerster@msa.se, [fredrik.ringquist@msa.se](mailtofredrik.ringquist@msa.se),
ludwig.metz@msa.se, daniel.piran@msa.se

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

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

Terra Raf Trans Trading Ltd
Don House, Suite 31
30–38 Main Street, Gibraltar

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

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

Decision at issue: Judgment of the Svea Court of Appeal dated 9 December 2016 in case
no. T 2675-14

Table of contents

A.	Introduction	4
B.	Requests for relief.....	7
C.	Background.....	7
	C.1 The Stati parties.....	7
	C.2 The Stati parties' operations in Kazakhstan	9
	C.3 The Stati parties' case in the arbitration	10
D.	The award was rendered on the basis of deception	14
	D.1 The deception	14
	D.2 The causal link between the deception and the award.....	17
E.	The Stati parties' allegations abroad on the judgment of the Svea Court of Appeal.....	19
F.	The new evidence	21
	F.1 Testimony of Artur Lungu of 3 April 2019 (<i>deposition</i>).....	21
	F.2 KPMG's statements regarding the audit opinions.....	26
	F.3 Correspondence between KPMG and the Stati parties.....	29
	F.3.1 The correspondence in 2019 between KPMG and the Stati parties.....	29
	F.3.2 Correspondence in 2016 between KPMG and the Stati parties	31
	F.4 Tim Allen's opinion of 21 January 2020.....	33
G.	The Stati parties' information regarding Perkwood in the proceedings before the Court of Appeal	35
H.	The new evidence would probably have altered the outcome of the case before the Svea Court of Appeal.....	37
	H.1 What has come to light by virtue of the new evidence.....	37
	H.2 The Svea Court of Appeal's view of <i>ordre public</i> and the court's conclusions	42
	H.3 Had it been aware of the new evidence, the Court of Appeal would probably have declared the award invalid	46
	H.3.1 Introduction.....	46
	H.3.2 The Court of Appeal would probably have reached the conclusion that false evidence was of decisive significance to the outcome in the arbitration	46
	H.3.3 The Court of Appeal would probably have, by an overall assessment of all circumstances, reached the conclusion that the award or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system	49

I.	Kazakhstan was not able to adduce the new evidence in the Svea Court of Appeal's case no. T 2675-14.....	54
J.	Grounds	54
K.	Evidence	55
	Index of exhibits	56

A. Introduction

1. In this application, the Republic of Kazakhstan (“**Kazakhstan**”) requests that the Supreme Court vacate the judgment of the Svea Court of Appeal of 9 December 2016 in case no. T 2675-14 and order that the case be remanded to the Svea Court of Appeal. In short, a new trial should be granted because Kazakhstan has during the past year obtained such evidence that has neither been presented or possible to invoke previously, and which likely would have led to another outcome in the case before the Svea Court of Appeal.
2. In the case for which a new trial is now sought, Kazakhstan requested that the Court of Appeal declare invalid the arbitral award rendered on 19 December 2013 in SCC case no. V (116/2010) because it violates Swedish public policy. The award was rendered in an arbitration under the Energy Charter Treaty initiated on 26 July 2010 by Anatolie Stati, Gabriel Stati, Ascom Group S.A. and Terra Raf Trans Traiding Ltd (the “**Stati parties**”) against Kazakhstan. By the award, Kazakhstan was ordered to pay compensation amounting to approximately USD 500 million to the Stati parties for their alleged damages, which included compensation for a plant for the extraction of liquefied petroleum gas from natural gas (a “**LPG Plant**”, where LPG is an acronym for Liquefied Petroleum Gas) that was not finalised.¹
3. In the proceedings before the Court of Appeal, Kazakhstan argued that the award was contrary to Swedish public policy because it was based on misleading and false evidence that the Stati parties invoked in the arbitration. The Svea Court of Appeal – which did not allow that its judgment be appealed – avoided explicitly addressing the question of whether Kazakhstan had proven its assertion about false evidence in the arbitration. Instead, the Court of Appeal found that the arbitral tribunal awarded compensation based on an indicative bid from a third party, which the Stati parties

¹ After the arbitration and the judgment of the Svea Court of Appeal in 2016, further circumstances and evidence have emerged that illustrate beyond all reasonable doubt that the Stati parties’ alleged damages, which Kazakhstan was ordered to compensate, actually were the result of the Stati parties themselves having drained their companies of money through acts that correspond to several gross crimes under Swedish law. As explained in Kazakhstan’s statement of claim dated 25 November 2019 in the Svea Court of Appeal’s case no. T 12462-19, Exhibit S-01, the arbitral tribunal would not have ordered that Kazakhstan compensate the Stati parties’ alleged damages if the tribunal had known about the mentioned evidence.

had submitted and invoked in support of their claim in the arbitration, and that the indicative bid did not constitute false evidence.

4. The Stati parties now attempt to enforce the award in several countries. In its comprehensive efforts to resist enforcement – on the basis that the award is contrary to the public policy of the enforcement country because it is based on misleading and false evidence – Kazakhstan has now obtained new evidence that definitely confirms that the Stati-parties presented and relied upon false and misleading evidence in the arbitration, and also shows that the Stati parties did not only deceive the arbitral tribunal and Kazakhstan, but also the Svea Court of Appeal in the subsequent challenge and invalidation case. That case would likely have had another outcome, had the Court of Appeal known about the new evidence.
5. Firstly, Kazakhstan has obtained oath-sworn information to the effect that the evidence was grossly inaccurate on central issues and that the Stati parties were well aware of that when the evidence was presented in the arbitration. The oath-sworn information was given by Artur Lungu in a deposition in the U.S. in April 2019. As Vice President of the opposing party Ascom Group S.A. (“**Ascom**”) and Chief Financial Officer of the group company Tristan Oil Ltd (“**Tristan Oil**”), he gave affidavits and testified in the arbitration. In the mentioned deposition, Artur Lungu confirmed that group companies (ultimately controlled by Anatolie Stati) through Anatolie Stati systematically provided false information in their financial statements and to their auditors and third parties.
6. Secondly, Kazakhstan has obtained a confirmation from the accounting firm of the companies held by the Stati parties, KPMG Audit LLC (“**KPMG**”), to the effect that the companies’ financial statements, which were of decisive importance to the outcome of the arbitration, contain materially false information and are therefore not reliable. By letter in August 2019, KPMG has declared in writing that no less than 18 of KPMG’s audit reports concerning financial statements for the Stati parties’ operating companies are not reliable (“*reliance should not be placed on the audit reports issued by KPMG*”). To issue a written declaration such as the one issued by KPMG corresponds to a withdrawal of the audit reports and is utterly rare and fully undermines the credibility of the financial statements as well as the credibility of all information based on the financial statements, including the indicative bid that the arbitral tribunal considered when it assessed the compensation to be awarded for the LPG Plant.

-
7. Thirdly, in October 2019, Kazakhstan has obtained correspondence between KPMG and the Stati parties from 2016, when the proceedings before the Court of Appeal were still pending. It is evident from the correspondence that KPMG strongly questioned the correctness of certain information of central importance that the Stati parties had previously provided to KPMG in accounts and management representation letters from Tristan Oil and its subsidiaries. The information called into question by KPMG concerned precisely the circumstances subject to trial in the then pending case before the Svea Court of Appeal. In spite of this, the Stati parties wrongfully claimed before the Svea Court of Appeal that the information was known to KPMG and that KPMG had full access to all accounting documents. Thus, by the new evidence, Kazakhstan can show *inter alia* that the Stati parties deceived the Svea Court of Appeal and Kazakhstan in the case before the Court of Appeal by making untrue assertions.
 8. Accordingly, the new evidence shows that the financial statements which the Stati parties presented in the arbitration and which formed the basis of the indicative bid constitute false evidence. Also, it is obvious, under the criterion given by the Court of Appeal in the case, that the financial statements, at least through an indirect impact on the arbitral tribunal, was of decisive importance to the outcome in the arbitration. Also, in light of the new evidence, it is clear from an overall assessment of all circumstances, that the behaviour of the Stati parties, which the award is based on, is so exceptionable that it would be highly objectionable to uphold the validity of the arbitral award. Thus, the new evidence shows that the arbitral award is contrary to Swedish public policy.
 9. If Kazakhstan could have deployed (i) Artur Lungu's oath-sworn information; (ii) KPMG's declaration that the 18 audit reports that KPMG had issued for the Stati parties' operating companies lack reliability; and (iii) the correspondence from 2016 between KPMG and the Stati parties in the case before the Svea Court of Appeal, that case would likely have had a different outcome. It is in any event likely that the Svea Court of Appeal would have declared the arbitral award invalid. There are thus sufficient reasons for a new trial.

B. Requests for relief

10. Kazakhstan requests that the Supreme Court vacate the judgment of the Svea Court of Appeal of 9 December 2019 in case no. T 2675-14 and order that the case be remanded to the Svea Court of Appeal.
11. Kazakhstan requests compensation for its costs in an amount to be stated later.

C. Background

C.1 The Stati parties

12. *Anatolie Stati* was born in 1952 and is a Moldovan and Romanian citizen. Anatolie Stati founded Ascom and controls a large number of companies seated in several jurisdictions around the world. The majority of the companies Anatolie Stati controls are so-called letterbox companies registered in the British Virgin Islands or other tax havens where company information is difficult to access. In addition, most of the companies' registered officials are straw men. This means that it is virtually impossible to obtain an overview of the Stati group.
13. Owing to the so-called Panama Papers, which were made accessible in 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 are directly controlled by Anatolie Stati. Anatolie Stati controls some of the companies through his wife, Larisa Stati, as well as his children, Gabriel Stati and Nicoleta Stati.
14. Anatolie Stati's son, *Gabriel Stati*, was born in 1976. Gabriel Stati too is a Moldovan and Romanian citizen. Gabriel Stati was Vice President of Ascom during 1999–2007 and owns or controls, together with Anatolie Stati, a large number of companies in the Stati group, among them Terra Raf Trans Traiding Ltd (“**Terra Raf**”). Like Anatolie Stati, Gabriel Stati's appears in the ICIJ Offshore Leaks Database (*inter alia*, in the Panama Papers). In 2009, Gabriel Stati was arrested 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 also appears in an extensive fraud and

money laundering investigation in Moldova (referred to in media as *The Theft of the Century Case*).²

15. Because Anatolie Stati exercises control over and owns Ascom and Terra Raf, and Gabriel Stati has exercised control over Ascom and exercises control over and owns Terra Raf, Antolie Stati's knowledge of the circumstances addressed in this petition is to be ascribed to Ascom, Terra Raf and Gabriel Stati too.
16. Ascom is a limited liability 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, has been placed on the U.S. 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 U.S. administration, the companies on this list contribute to the crisis in South Sudan because they supply the country with significant revenue that, through public corruption, is used to fund the purchase of weapons and other material that undermine peace, security and stability rather than supporting the South Sudanese people's welfare.³
17. Terra Raf is a limited liability company registered in Gibraltar. Anatolie Stati and Gabriel Stati each own half of Terra Raf. Anatolie Stati is Terra Raf's authorised legal representative. Terra Raf had a bank account with Rietumu Banka, which account Anatolie Stati had the right to dispose of. Anatolie Stati and Gabriel Stati used Terra Raf and its account with Rietumu Banka to, *inter alia*, implement and hide improper transfers of value from the operations in Kazakhstan.

² Article from Accent-TV, *Special Commission: Vlad Plahotniuc is the main beneficiary of the theft of a billion*, published on 20 September 2019, Exhibit S-02 and article from Hromadske International, *Fugitive Oligarch Wanted in Moldova's "Theft of the Century" Case*, published on 15 October 2019, Exhibit S-03.

³ Federal Register /Vol. 83, No. 56/Thursday, March 22, 2018/Rules and Regulations, Exhibit S-04, p. 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 S-05.

C.2 The Stati parties' operations in Kazakhstan

18. In 2000, the Stati parties purchased shares in Kazakh companies which owned the extraction rights to two oil and gas fields in Kazakhstan: Terra Raf purchased Tolkynneftegaz LLP (“**Tolkynneftegaz**”) and Ascom purchased Kazpolmunay LLP (“**Kazpolmunay**”). Through Tolkynneftegaz, the Stati parties also commenced the construction of the LPG Plant.
19. In 2008, the Stati parties attempted to sell their Kazakh business. Prior to the sale, the Stati parties engaged Renaissance Capital – Financial Consultants Ltd to draft an information memorandum.⁴ The financial information in the information memorandum was obtained from Tristan Oil, Tolkynneftegaz and Kazpolmunay’s financial statements.⁵ It was stated in the information memorandum that all financial information in it had been produced in accordance with the standard IFRS (acronym for *International Financial Reporting Standards*) and the financial information included both audited and unaudited information (accordingly, information that had been reviewed and audited by KPMG).⁶
20. With the information memorandum as the starting point, various potential buyers placed indicative (non-binding) bids on the Stati parties’ Kazakh business, which included the LPG Plant. One of these bidders was the Kazakh company, KazMunaiGas Exploration Production JSC (“**KazMunaiGas**”), a company then listed on the London Stock Exchange and whose majority of shares was owned by the Kazakh oil company JSC National Company KazMunayGas, which tendered an indicative bid on 25 September 2008, which was based on the financial information provided by the Stati parties in the information memorandum, in the belief that that information was correct.

⁴ Information memorandum (*Project Zenith, Confidential Information Memorandum*), August 2008, Exhibit S-06, p. 1.

⁵ Information memorandum (*Project Zenith, Confidential Information Memorandum*), August 2008, Exhibit S-06, p. 4.

⁶ Information memorandum (*Project Zenith, Confidential Information Memorandum*), August 2008, Exhibit S-06, p. 4 and 59.

C.3 The Stati parties' case in the arbitration

21. The sale of the Kazakh business did not occur, however, and, in March 2009, the Stati parties abandoned the work with the LPG Plant before it was complete. The Stati parties alleged that the reason why the Plant was abandoned was that they were in financial dire straits because Kazakhstan had carried out a harassment campaign against them. Due, *inter alia*, to this, the Stati parties requested arbitration against Kazakhstan in accordance with the Energy Charter Treaty. The real reason for the financial dire straits was that the Stati parties themselves had drained their Kazakh companies on assets by *inter alia* the related party transactions described in section D.1 below.
22. In the arbitration, the Stati parties requested compensation for the LPG Plant and other assets in Kazakhstan. One of the Stati parties' main arguments relating to the LPG Plant was that compensation should be granted at a value equal to the investment cost the Stati parties alleged that they had incurred for the LPG Plant.⁷
23. In the arbitration, the Stati parties thus asserted that the investment cost was USD 245 million.⁸ In support of the assertion, the Stati parties adduced the annual reports of Tolkynneftegaz, reports from the Stati parties' damages expert and written statements from Anatolie Stati and Artur Lungu (CFO for Tristan Oil and Vice President for Ascom during the time the Stati parties conducted their operations in Kazakhstan and witness in the arbitration).⁹
24. Anatolie Stati stated the following in his second witness statement in the arbitration:

“I chose in May 2009 to postpone the LPG Plant project, having already spent more than USD 245 million toward its construction.”¹⁰

25. Artur Lungu stated the following in his first witness statement in the arbitration:

⁷ Arbitral award dated 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan, Exhibit S-07, paras 1694–1696 and 1699.

⁸ Arbitral award dated 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan, Exhibit S-07, para.1694.

⁹ Excerpt from the Stati parties' second Post-Hearing Brief dated 3 June 2013, Exhibit S-08, paras 354 and 386; Artur Lungu's first witness statement dated 17 May 2011, Exhibit S-09, para. 27; Anatolie Stati's second witness statement dated 7 May 2012, Exhibit S-10, para. 40.

¹⁰ Anatolie Stati's second witness statement dated 7 May 2012, Exhibit S-10, para. 40.

“[I]n July of 2010, more than USD 245 million had been invested in construction of the LPG Plant [...].”¹¹

26. It is apparent from the expert reports of the Stati parties’ financial expert that the financial expert based its assessment of the investment cost on the financial statements audited by KPMG.¹² In addition, the expert used KazMunaiGas’s indicative bid to calculate the value of the LPG Plant.¹³ It is apparent from one of the expert reports that KazMunaiGas had calculated the value of the LPG Plant by way of a method which took as its point of departure the costs.¹⁴ During the arbitration, the Stati parties highlighted that KazMunaiGas had calculated its indicative bid on the basis of the investment costs for the LPG Plant:¹⁵

“One such third party was KMG E&P, which made an indicative offer of US \$199 million for the LPG Plant in September 2008. Importantly, KMG E&P arrived at that figure using a mixed comparative value and cost approach, not based on a discounted cash flow analysis[.]”¹⁶

27. The Stati parties’ expert witness, Howard Rosen of FTI Consulting, Inc., stated the following during the arbitration:

“I further noted that in KMG’s analysis of value for their indicative offer, they had also approached the LPG plant on a cost basis, and at the valuation date it was closer to \$200 million, because that was the information on the cost of the plant at that time.”¹⁷

¹¹ Artur Lungu’s first witness statement of 17 May 2011, Exhibit S-33, para. 27.

¹² Expert opinion dated 17 May 2011 from the Stati parties’ financial expert in the arbitration, Exhibit S-11, para. 6.23; supplemental expert opinion dated 28 May 2012 from the Stati parties’ financial expert in the arbitration, Exhibit S-12, para. 2.40 and footnote 37; and supplemental expert opinion dated 8 April 2013 from the Stati parties’ financial expert in the arbitration, Exhibit S-13, para. 5.1.

¹³ Supplemental expert opinion dated 8 April 2013 from the Stati parties’ financial expert in the arbitration, Exhibit S-13, para. 7.5.

¹⁴ Expert opinion dated 17 May 2011 from the Stati parties’ financial expert in the arbitration, Exhibit S-11, para. 14.28.

¹⁵ Extract from the Stati parties’ first Post-Hearing Brief dated 8 April 2013, Exhibit S-14, paras 35 and 569, and transcript of the fourth day of the Hearing on Quantum of 31 January 2013, Exhibit S-15, p. 57.

¹⁶ Extract from the Stati parties’ first Post-Hearing Brief dated 8 April 2013, Exhibit S-15, para. 569.

¹⁷ Transcript of the fourth day of the Hearing on Quantum dated 31 January 2013, Exhibit S-13, p. 57

-
28. In addition, the Stati parties referred during the arbitration to the indicative bid from KazMunaiGas on the issue of the quantum of damages:¹⁸

“Indeed, the offer made for the LPG Plant by KazMunaiGas at that time was US \$199 million. While Claimants did not accept these offers because at the time they deemed them too low and did not feel that they would lead to a sale, the Tribunal should note that State-owned KazMunaiGas itself offered almost US \$200 million for the Plant, more than six times the highest value assigned to the LPG Plant by Deloitte of US \$32 million. Little more is needed to demonstrate that Deloitte’s salvage value assumptions and calculations are worthless.”¹⁹

“The third indicator of value for the Tribunal, and a very important one in claimants’ view, is the indicative offers for the companies in 2008.”²⁰

“Now, while it’s correct that the offering companies had not yet had access to the data room of the companies, they did have a detailed information memorandum that itself provided a great deal of information -- the Tribunal has it in the record and can review it -- to make a meaningful indicative offer for the companies.”²¹

“[Y]ou will hear from Mr Rosen with FTI [the Stati parties’ financial expert] as to his knowledge of indicative bidding strategies and the weight that can be placed on indicative offers as some suggestion of the potential value of the assets.”²²

“Not only did KMG value the assets in September 2008 based on the information memorandum that had been made available [...].”²³

¹⁸ The Stati parties’ Reply Memorial on Quantum dated 28 May 2012, Exhibit S-16, para. 66; arbitral award dated 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan, Exhibit S-07, para. 1707; Artur Lungu’s first witness statement dated 17 May 2011, Exhibit S-09, paras 30–33; Anatolie Stati’s second witness statement dated 7 May 2012, Exhibit S-10, para. 4; and transcript of the first day of the Hearing on Quantum dated 28 January 2013, Exhibit S-17, pp. 21, 27, 28, 31, 32, 34 and 49; the Stati parties’ Statement of Claim dated 18 May 2011, Exhibit S-18, para. 70–71 and 73
“Claimants and Renaissance Capital also prepared an Information Memorandum containing details about the properties [...] In mid-August 2008, Renaissance Capital distributed the Information Memorandum to 41 parties that had expressed an interest [...] including KazMunaiGas. [...] By October 1, 2008, Claimants had received eight indicative offers for the properties... KazMunaiGas tendered the third lowest bid at 754 million. The valuations for the individual property components by the bidders ranged between [...] USD 70 to 280 million for the LPG plant. [...] The non-binding indicative offers that were received prior to commencement of the State’s campaign of harassment and indirect expropriation nevertheless provide a record of the actual reaction of willing and able buyers to an offer of the properties by a willing and able seller, with each acting at arms’ length in an open and unrestricted market, without compulsion to buy or sell, and each having knowledge of the relevant facts.”

¹⁹ The Stati parties’ Reply Memorial on Quantum dated 28 May 2012, Exhibit S-16, para. 66.

²⁰ Transcript of the first day of the Hearing on Quantum of 28 January 2013, Exhibit S-17, p. 27.

²¹ Transcript of the first day of the Hearing on Quantum of 28 January 2013, Exhibit S-17, p. 28.

²² Transcript of the first day of the Hearing on Quantum of 28 January 2013, Exhibit S-17, p. 32.

²³ Transcript of the first day of the Hearing on Quantum of 28 January 2013, Exhibit S-17, p. 34.

“Since KMG made an indicative offer in September 2008, we know of \$754 million, we believe that the Tribunal should infer, at an absolute minimum, that the September presentation on asset investment that the respondent has refused to produce found that Borankol, Tolkyn and the LPG plant had a minimum value of \$754 million.”²⁴

29. Kazakhstan denied liability and opposed the Stati parties’ position on the issue of the valuation of the LPG Plant in the arbitration. However, there was no reason to question that the Stati parties had actually invested USD 245 million in the LPG Plant. This was due to the fact that the investment costs were presented in the Stati parties’ financial statements which had been reviewed and, respectively, audited by KPMG. The Stati parties themselves highlighted that the information was particularly reliable just because it had been audited by KPMG:

“Finally, Kazakhstan also criticizes FTI’s assessment of the investment value of the LPG Plant as simply relying on information provided by Claimants. That is not correct. FTI based its assessment of the book value of the LPG Plant as of October 14, 2008, on TNG’s Third Quarter 2008 financial statements. Those financial statements were prepared in the ordinary course of business, not for litigation, and were reviewed by KPMG. In its update to the LPG Plant value to reflect investments after October 14, 2008, FTI relied on the Tristan Oil Annual Report for 2009. That report likewise was prepared for investors in the ordinary course of business, and not for the purposes of litigation. Moreover, TNG’s audited 2009 financial statements, which are backup to the annual report, list the net book value of the LPG Plant as US \$248 million at December 31, 2009, which corroborates FTI’s assessment of US \$245 million. Data from the Claimants’ historical financial records, particularly data from audited financial statements, is perfectly reliable evidence, and is not simply FTI parroting the Claimants.”²⁵

30. The arbitral award was rendered on 19 December 2013. In it, the tribunal found that the measures taken by Kazakhstan as a whole violated the country’s obligations under the Energy Charter Treaty and that Kazakhstan therefore was liable to pay damages to the Stati parties.²⁶ Accordingly, Kazakhstan was ordered to pay approximately USD 497 million to the Stati parties, of which USD 199 million pertained to the LPG Plant).²⁷ The compensation awarded by the tribunal for the LPG Plant was based directly on the indicative bid which had been placed by

²⁴ Transcript of the first day of the Hearing on Quantum of 28 January 2013, Exhibit S-17, p. 49.

²⁵ Excerpt from the Stati parties’ second Post-Hearing Brief dated 3 June 2013, Exhibit S-08 para. 354.

²⁶ It is now clear that this was not true, which caused Kazakhstan to initiate a new proceeding before the Svea Court of Appeal to invalidate the arbitral award, see Kazakhstan’s statement of claim dated 25 November 2019 in the Svea Court of Appeal’s case no. T 12684-19, Exhibit S-01.

²⁷ Arbitral award dated 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan, Exhibit S-07, p. 406, section L.XIII.

KazMunaiGas.²⁸ In turn, the indicative bid was based on the book value of the LPG Plant in Tolkynneftegaz's financial statements audited by KPMG.²⁹ The fact that the Stati parties relied on the indicative bid in the arbitration is apparent from what is stated in this section and directly from the award.³⁰

D. The award was rendered on the basis of deception

D.1 The deception

31. After the award had been issued, Kazakhstan, through discovery proceedings in the US, obtained access to documents from arbitration proceedings which were mostly unknown to Kazakhstan in which the Stati parties had been involved at approximately the same time as the arbitration to which Kazakhstan had been a party.
32. The parallel arbitration proceedings addressed an issue which was also addressed in the arbitration to which Kazakhstan was a party, namely the valuation of the LPG Plant. The documents to which Kazakhstan obtained access showed that the Stati parties claimed in the parallel arbitral proceedings that they had only invested USD 200 million in the LPG Plant:

The arbitration	Parallel arbitration
”I chose in May 2009 to postpone the LPG Plant project, having already spent <u>more than USD 245 million</u> toward its construction.” ³¹ (Our emphasis.)	”Due to cash constraints and the harassment campaign conducted by Kazakhstan, Ascom, in agreement with Vitol, decided to halt the construction of the LPG Plant in April 2009. At that time, Ascom and Vitol had already <u>invested approximately US\$200 million</u> in the LPG Plant, which was almost completed.” ³² (Our emphasis.)

²⁸ KazMunaiGas's indicative bid dated 25 September 2008, Exhibit S-19.

²⁹ KazMunaiGas's indicative bid dated 25 September 2008, Exhibit S-19, pp. 2–3.

³⁰ Arbitral award dated 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan, Exhibit S-07, paras 1694–1699 and 1707.

³¹ Anatolie Stati's second witness statement dated 7 May 2012, Exhibit S-10 , paragraph 40.

³² Montvale's Statement of Defence dated 22 juli 2011 in arbitration between Vitol S.A. and Arkham S.A. on the one hand and Montvale Invest Ltd on the other, Exhibit S-20, para. 21. Montevale Invest Ltd was one of the many offshore companies controlled by Anatolie Stati.

33. The deception consisted, *inter alia*, of the fact that the Stati parties, by fraudulent invoices and similar measures, had inflated the investment costs for the LPG Plant in Tolkynneftegaz's financial statements. This occurred by virtue of an agreement and most of the transactions between Tolkynneftegaz and Perkwood Investment Ltd ("Perkwood").³³
34. Perkwood was registered in England on 14 September 2005. From 2006 to 2009, the company told the English Companies House (the equivalent of the Swedish Companies Registration Office) that the company was dormant.³⁴ A dormant company which has not performed any transactions which are subject to a reporting obligation are, according to a rule in English law, exempted from the requirement to file audited annual reports to Companies House. Company representatives are subject to sanctions in the event the company applies the exemption to transactions which were subject to a reporting obligation.³⁵
35. In relation to the Stati parties, Perkwood was a related company of which the Stati parties were aware at all relevant times, but kept secret to third parties. When the company was registered in 2005, a straw man was appointed as the sole board member.³⁶ On 2 November of the same year, Perkwood issued a general power of attorney to Anatolie Stati and Gabriel Stati which empowered them to represent Perkwood in all respects. The power of attorney was renewed on 14 September 2006, 22 August 2007, 26 August 2008 and 20 August 2009. The power of attorney issued in 2009, however, pertained only to Anatolie Stati.³⁷ Anatolie Stati and

³³ Agreement between Tolkynneftegaz and Perkwood of 17 February 2006, Exhibit S-21.

³⁴ Registration certificate for Perkwood and annual information form submitted to Companies House with respect to Perkwood for 2006–2009, Exhibit S-22. On pp. 18, 25, 32 and 39 it is stated that Perkwood used the SIC code, 9999. SIC is an acronym for Standard Industrial Classification of Economic Activities. On p. 58, it is stated that code 9999 means dormant company.

³⁵ Opinion regarding English law of 2 June 2016, S-23.

³⁶ Registration certificate for Perkwood and annual information form submitted to Companies House with respect to Perkwood for 2006–2009, Exhibit S-22, *inter alia*, p. 4, on which it is stated that Sarah Petre-Mears was the sole member of the board of directors. In the extract from Companies House regarding Sarah and Edward Petre-Mears of 12 November 2015, Exhibit S-24, it is stated that Sarah Petre-Mears had approximately 1,000 engagements in 2015. In *Sham directors: the woman running 1,200 companies from a Caribbean rock*, article from The Guardian of 25 November 2012, Exhibit S-25, a similar picture emerges.

³⁷ General powers of attorney issued by Perkwood to Anatolie Stati and Gabriel Stati for 2005, 2006, 2007 and 2008 and to Anatolie Stati for 2009, Exhibit S-26.

Gabriel Stati alone controlled Perkwood's bank account and the funds deposited with the bank, Rietumu Banka AS in Latvia,³⁸ which bank was subsequently found to have been involved in money laundering.³⁹

36. Anatolie Stati and Artur Lungu withheld, however, from the auditors from KPMG and, by extension, also from outside parties, including the tribunal and, as far as possible, Svea Court of Appeal during the invalidation claim, the fact that Perkwood was a company affiliated with the Stati parties and, not the least, Tolkynneftegaz. Instead, Anatolie Stati and Artur Lungu held out Perkwood as being independent – a third party – and that the transactions in accordance with the agreement between Tolkynneftegaz and Perkwood had thus been carried out at arm's length, i.e. between two independent parties on market terms and conditions.⁴⁰ This is addressed in greater detail in section F.1 below.
37. One of the transactions which was carried out in accordance with the agreement entailed that Tolkynneftegaz purchased central components for the LPG Plant from Perkwood. The price according to the agreement was approximately USD 93.1 million. However, the same components had already been sold by a german company independent of the Stati parties' corporate group, TGE Gas Engineering GmbH (at that time, Tractebel Gas Engineering GmbH) ("TGE"), to a company, Azalia Ltd, controlled by Anatolie Stati for USD 35.1 million.⁴¹
38. The transaction between Tolkynneftegaz and Perkwood relating to the central components for the LPG Plant was one of several transactions which made it appear as though Tristan Oil, Tolkynneftegaz and Kazpolmunay had incurred investment costs for the LPG Plant which were far greater than the actual costs. Another one of these transactions pertained to a so-called *management fee* in the amount

³⁸ See letter from the Latvian financial police to the Kazakh financial police, Exhibit S-27, and certificate regarding beneficiaries for Perkwood's bank account at Rietumu Banka AS of 28 November 2005, Exhibit S-28.

³⁹ *Latvian bank fined €80 million for money laundering, will appeal*, article from Organized Crime and Corruption Reporting Project of 10 July 2017, Exhibit S-29.

⁴⁰ See Tristan Oil, Tolkynneftegaz and Kazpolmunay's revised annual report for the 2008 financial year, Exhibit S-31, p. F-43, and KPMG Tax & Advisory's vendor due diligence report of 29 August 2008, Exhibit S-33, p. 11.

⁴¹ Supplementary Agreement no. 2 of the agreement between Tolkynneftegaz and Perkwood of 17 February 2006, Exhibit S-21, p. 12; agreement between TGE, Ascom and Azalia of 31 January 2006, Exhibit S-35, pp. 4 and 10; and expert opinion from TGE of 2 June 2016, Exhibit S-34, pp. 23 and 24.

approximately USD 44 million which Tolkynneftegaz paid Perkwood,⁴² notwithstanding that Perkwood was a dormant company which could not provide services which could generate such a fee (*cf* para. 33 above in which it is stated that a dormant company is a company which has not carried out any transactions which are subject to a reporting obligation). The funds which were paid to Perkwood by means of these transactions were deposited on the company's bank account at Rietumu Banka AS, which account was controlled solely by Anatolie Stati and Gabriel Stati (para. 34 above).

39. In other words, the investment costs stated for the LPG Plant in the companies' financial statements was far greater than the actual cost. The fictitious cost was also decisive to the USD 199 million which the tribunal ordered Kazakhstan to pay to the Stati parties for the LPG Plant.⁴³

D.2 The causal link between the deception and the award

40. As described in section C.3 above, the tribunal awarded the Stati parties damages in the amount of USD 199 million in respect of the LPG Plant. The tribunal reached this value on the basis of the indicative bid made by the Kazakh-owned company, KazMunaiGas, in the autumn of 2008:⁴⁴

“On the other hand, the Tribunal considers it to be of particular relevance that an offer was made for the LPG Plant by state-owned KMG at that time for **USD 199 million**. The Tribunal considers that to be the relatively best source of information for the valuation of the LPG Plant among the various sources of information submitted by the Parties regarding the valuation for the LPG Plant during the relevant period of the valuation date accepted by the Tribunal, the Tribunal [sic].

Therefore, this is the amount of damages the Tribunal accepts in this context.”⁴⁵

⁴² See Artur Lungu's witness statement of 11 October 2013 in the arbitration between Ascom and Vitol, Exhibit S-36, para. 61.

⁴³ Award of 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan, Exhibit S-07, paras 1747 and 1748.

⁴⁴ Award of 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan, Exhibit S-07, paras 1746–1748.

⁴⁵ Award of 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan, Exhibit S-07, paras s 1747–1748.

41. In the indicative bid the LPG Plant had been valued at precisely USD 199 million, which value constituted an average of, on the one hand, the reported historical cost, i.e. the reported investment cost, and, on the other, a comparison figure.⁴⁶ The Stati parties argued during the arbitration that KazMunaiGas' indicative bid was mainly based on the investment cost of the LPG Plant. The reported investment cost was USD 193 million and was presented in the information memorandum which was expressly based on Tristan Oil, Tolkynneftegaz and Kazpolmunay's audited and unaudited financial statements.⁴⁷ The amount, USD 193 million, was obtained from Tristan Oil, Tolkynneftegaz and Kazpolmunay's reviewed financial statements for the second quarter of 2008. Therein, an investment cost of USD 192,969,994 is stated.⁴⁸ This cost, however, was inflated by the deception described in section D.1 above.⁴⁹ Consequently, the indicative bid, which formed the tribunal's immediate basis for its assessment of the amount of damages, was based on costs which has been inflated by means of the Stati parties' deception.⁵⁰
42. While aware that the deception had influenced KazMunaiGas's indicative bid, the Stati parties, in the course of the arbitration, claimed that the tribunal should award them compensation for not less than the amount of the indicative bid.⁵¹ In support of its position on the issue of the amount of damages, the Stati parties adduced the opinions from their financial expert who used KazMunaiGas's indicative bid in order to estimate the value of the LPG Plant.⁵²

⁴⁶ KazMunaiGas's indicative bid of 25 September 2008, Exhibit S-19, pp. 2–3.

⁴⁷ Information memorandum (*Project Zenith, Confidential Information Memorandum*), August 2008, Exhibit S-06, pp. 5, 10, 54 and 59.

⁴⁸ Tristan Oil, Tolkynneftegaz and Kazpolmunay's reviewed financial statement for the second quarter of 2008, Exhibit S-37, p. 27, fifth column.

⁴⁹ Expert opinion of Thomas Gruhn (Deloitte) of 12 January 2017, Exhibit S-38, para. 28(e).

⁵⁰ Expert opinion of Thomas Gruhn (Deloitte) of 12 January 2017, Exhibit S-38, para. 27, and expert opinion of Tim Allen (PwC) of 21 January 2020, Exhibit S-39, para. 20.

⁵¹ Transcript from the first day of the Hearing on Quantum of 28 January 2013, Exhibit S-17, p. 49. See para. 26 above.

⁵² Supplemental expert opinion of 28 May 2012 from the Stati parties' financial expert in the arbitration, Exhibit S-12, para. 7.5.

E. The Stati parties' allegations abroad on the judgment of the Svea Court of Appeal

43. For just over two years, proceedings regarding and relating to the enforcement of the award had been pending in several jurisdictions: Sweden, England, the US, the Netherlands, Belgium, Italy and Luxembourg. Kazakhstan has claimed in all jurisdictions that the Stati parties deceived the tribunal by means of the deception described in section D.1 above and that enforcement of the award thus violates the *ordre public* of the country of enforcement.
44. The Stati parties' position is principally that the Svea Court of Appeal had already reached the conclusion that there was no deception. This is not correct, since Svea Court of Appeal never tried whether the award was obtained by fraud, which also has been confirmed by an English court.

"No Court has decided the question whether there has been the fraud alleged. Neither the Swedish Court nor the US Court nor English Court has, although material has been put before those Courts that would allow them to decide that question"⁵³

45. In England, the High Court of Justice reached the conclusion that Kazakhstan had *prima facie* shown that the award was obtained by fraud:

"If construction costs were [...] fraudulently inflated by the Claimants [...] then, because the [...] Indicative Bid valued the LPG Plant [...] there is the clearest argument that the [...] Indicative Bid would have been lower."⁵⁴

"[I]n asking the Tribunal to rely on the [...] Indicative Bid in circumstances (concealed from the Tribunal, as from the bidder) of the alleged fraud, there was a fraud on the Tribunal."⁵⁵

⁵³ The High Court of Justice of England and Wales dated 6 June 2017 in case no. CL-2014-000070 between the Stati parties and Kazakstan, Exhibit S-40, para. 80.

⁵⁴ The High Court of Justice of England and Wales dated 6 June 2017 in case no. CL-2014-000070 between the Stati parties and Kazakstan, Exhibit S-40, para. 43.

⁵⁵ The High Court of Justice of England and Wales dated 6 June 2017 in case no. CL-2014-000070 between the Stati parties and Kazakstan, Exhibit S-40, para. 48.

"I hold [...] that the State is entitled to rely on the evidence obtained since the Award and that there is a sufficient *prima facie* case that the Award was obtained by fraud."⁵⁶

46. Thereafter, the Stati parties withdrew their application to enforce the award in England, which was opposed by Kazakhstan, but which was allowed by the Court of Appeal, as a consequence of which the Stati parties are now prevented from enforcing the award in England.
47. After the English court stated that it considered a *prima facie* case of fraud had occurred, the Stati parties initiated the majority of the enforcement proceedings mentioned in paragraph 43 (Sweden, USA, the Netherlands, Belgium, Italy and Luxembourg), and managed to obtain several overlapping enforcement orders relating to assets that was alleged to belong to Kazakhstan and which value totalled to over 28 billion USD, that is more than 50 times higher than the amount granted in the award.
48. In the enforcement proceedings, the Stati parties claim that Svea Court of Appeal has tried the allegations of fraud in its decision of 9 December 2016, that Kazakhstan's claim hence should not be tried in the enforcement proceedings and that Kazakhstan is barred from Svea Court of Appeal's decision to adduce in the relevant country of enforcement that the award was obtained by the Stati parties' fraud. In addition, the Stati parties have on several occasions incorrectly stated in foreign courts that Svea Court based its decision on evidence that refuted Kazakhstan's allegations. Kazakhstan's case in Svea Court of Appeal was built on extensive witness and expert evidence as detailed as it could be from what knowledge Kazakhstan could possibly have about the Stati parties behaviour at that point in time. The Stati parties presented no witness or expert evidence and none of Anatolie Stati, Gabriel Stati and Artur Lungu were present – less were they heard – at the hearing in Svea Court of Appeal. Neither did the Stati parties present any witness statement or expert report to refute Kazakhstan's evidence of the fraud.

⁵⁶ The decision of the High Court of Justice of England and Wales of 6 June 2017 in case no. CL-2014-000070 between the Stati parties and Kazakhstan, Exhibit S-40, para. 92. Professor George Bermann at Columbia University, specialised on *inter alia* international arbitration, came to the same conclusion in an expert opinion where he concluded that it in this case exists credible evidence of fraud in the procurement of the award, see Expert Opinion of Professor George Bermann dated 21 January 2020, Exhibit S-41, p. 12.

F. The new evidence

F.1 Testimony of Artur Lungu of 3 April 2019 (*deposition*)

49. Witness testimony under oath (*deposition*) was obtained from Artur Lungu on 3 April 2019 in accordance with a decision on 20 February 2019 by the United States District Court for the Southern District of Texas, Houston Division in the U.S.⁵⁷ The deposition took place in Houston, Texas. Artur Lungu was the CFO of Tristan Oil during the years 2004–2014 and Vice President of Ascom during the years 2006–2014, i.e. both prior to and during the arbitration. He gave written affidavits and testified orally in the arbitration. However, he did not testify in the the proceedings before the Svea Court of Appeal.
50. In his witness testimony, Artur Lungu confirmed several circumstances which show (i) that the financial reports on which the Stati parties relied before the Svea Court of Appeal and in the arbitration contained material misstatements; (ii) that Anatolie Stati and Artur Lungu systematically provided incorrect information to KPMG; (iii) that the Stati parties, at all relevant times, have been aware that the financial reports contain material misstatements but concealed it; (iv) that in the arbitration and before the Svea Court of Appeal, the Stati parties deliberately made untrue assertions on the amount of the investment cost; (v) that in the arbitration and before the Svea Court of Appeal, the Stati parties deliberately adduced evidence containing incorrect information based directly on the material misstatements in the financial reports; and (vi) that the Stati parties never obtained an independent fairness opinion for the transactions made between Perkwood and Tolkynneftegaz.
51. Artur Lungu confirmed that he and Anatolie Stati, on behalf of Tristan Oil, in written management representation letters to the accountants,⁵⁸ omitted informing

⁵⁷ Artur Lungu testified under oath due to a *subpoena ad testificandum*, a summons to testify issued through a court order under 28 United States Code § 1782, which gives American courts the possibility to decide on the taking of evidence in the United States in order to support future or ongoing legal proceedings abroad.

⁵⁸ ISA 580, *Written Representations*, provides that a written representation from the management constitutes audit evidence that is given to the auditor to confirm certain circumstances or to support other audit evidence. It further provides that the auditor shall request written statements from persons in the management with appropriate responsibilities for the financial statements and knowledge of the matters concerned.

KPMG of Perkwood's role as a related company in conjunction with the audit of Tristan Oil, Tolkynneftegaz and Kazpolmunay on several occasions:

- (1) In a letter of 11 November 2008, in conjunction with KPMG's audit of Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial reports for the nine-month period ending 30 September 2008, Anatolie Stati and Artur Lungu erroneously stated to KPMG that the letter contained a complete list of related companies notwithstanding that Perkwood was not mentioned, as a consequence of which the letter erroneously confirmed that it contained complete information regarding the identity of the related companies and the related party transactions which had been carried out.⁵⁹
- (2) In a letter of 10 June 2009, in conjunction with KPMG's audit of Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial reports for the three-month period ending 31 March 2009, Anatolie Stati and Artur Lungu erroneously stated to KPMG that the letter set forth all related companies notwithstanding that Perkwood was not mentioned, which Artur Lungu confirmed constituted a material misstatement.⁶⁰
- (3) In a letter of 25 August 2009, in conjunction with KPMG's audit of Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial statements for the six-month period ending 30 June 2009, Anatolie Stati and Artur Lungu failed to inform KPMG of Perkwood's role as a related company, which Artur Lungu confirmed constituted a false statement by omission.⁶¹
- (4) In a letter of 14 December 2009, in conjunction with KPMG's audit of Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial statements for the nine-month period ending 30 September 2009, Anatolie Stati and Artur Lungu failed to inform KPMG of Perkwood's role as a related company, which Artur Lungu confirmed was a material omission, as a consequence of which the letter erroneously stated that the information provided in the

⁵⁹ Transcript of deposition of Artur Lungu dated 3 April 2019, Exhibit S-42, pp. 144–145 and 150.

⁶⁰ Transcript of deposition of Artur Lungu dated 3 April 2019, Exhibit S-42, pp. 198–199.

⁶¹ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, pp. 182 and 183.

- letter, *inter alia*, that it contained complete information regarding the companies' related companies and transactions with related companies.⁶²
- (5) In a letter of 25 May 2010, in conjunction with KPMG's audit of Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial statements for the one-year period ending 31 December 2009, Anatolie Stati and Artur Lungu failed to inform KPMG of Perkwood's role as a related company, which Artur Lungu confirmed meant that the letter erroneously stated that the information provided in the letter, *inter alia*, that it contained complete information regarding the companies' related parties and transactions with related companies.⁶³
52. It is a fact that the Stati parties at all relevant times knew that Perkwood was a related company (*cf* section D above). In line with this, Artur Lungu confirmed, after having reviewed certain of Perkwood's payment instructions at Rietumu Banka in Latvia, which Artur Lungu confirmed were signed by Anatolie Stati, that his understanding was that Anatolie Stati had control over Perkwood's finances and could freely dispose of Perkwood's funds.⁶⁴ In addition, he confirmed that Anatolie Stati's personal chauffeur, Eldar Kasumov, who lacked business experience and competence, entered into agreements on behalf of Perkwood,⁶⁵ and that Elena Ozerova – a person who was working with bookkeeping at Ascom – also entered into agreements on behalf of Perkwood.⁶⁶
53. Artur Lungu further confirmed that his and Anatolie Stati's failure, on several occasions, to inform KPMG of Perkwood's role as a related company meant that

⁶² Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 199 and p. 200.

⁶³ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 200 and p. 201.

⁶⁴ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, pp. 120–122. Artur Lungu further confirmed that Anatolie Stati appears to have controlled and could freely dispose of Azalia Ltd's funds and, insofar as he remembered, it was Anatolie Stati who took decisions to incorporate and dissolve companies such as Perkwood and Azalia Ltd (transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, pp. 112, 127 and 129–130).

⁶⁵ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, pp. 221 and 255–258.

⁶⁶ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, pp. 95–96 and 229.

several of Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial statements contained material misstatements:

- (1) As a consequence of Anatolie Stati and Artur Lungu's failure in the letter of 11 November 2008 to inform KPMG of Perkwood's role as a related company, KPMG did not report Perkwood as a related company in Tristan Oil, Tolkynneftegaz and Kazpolmunay's audited combined interim report for the nine-month period ending 30 September 2008, as a consequence of which the interim report is incorrect.⁶⁷
- (2) As a consequence of Anatolie Stati and Artur Lungu's failure in the letter of 25 August 2009 to inform KPMG of Perkwood's role as a related company, KPMG did not report Perkwood as a related company in Tristan Oil, Tolkynneftegaz and Kazpolmunay's audited combined interim report for the six-month period ending 30 June 2009, as a consequence of which the interim report contains material misstatements.⁶⁸
- (3) The failure to notify KPMG of Perkwood's role as a related company has had as a consequence that KPMG did not report Perkwood as a related company in Tristan Oil, Tolkynneftegaz and Kazpolmunay's audited combined annual report for the financial year 2007, which constitutes a material omission in violation of IAS 24.⁶⁹
- (4) The fact that Perkwood is not reported in Tristan Oil, Tolkynneftegaz and Kazpolmunay's audited combined annual report for the financial year 2008 constitutes a material omission as a consequence of which the annual report contains material misstatements.⁷⁰
- (5) As a consequence of Anatolie Stati and Artur Lungu's failure in the letter of 25 May 2010 to KPMG to disclose Perkwood's role as a related company, KPMG has not reported Perkwood as a related company in Tristan Oil, Tolkynneftegaz and Kazpolmunay's audited combined annual report for the

⁶⁷ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 157 and p. 163.

⁶⁸ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 197–198.

⁶⁹ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 213–214.

⁷⁰ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 212–213.

- financial year 2009, which constitutes a material omission as a consequence of which the annual report contains material misstatements.⁷¹
54. Artur Lungu confirmed that Tristan Oil, Tolkynneftegaz and Kazpolmunay, in relation to their financiers, had undertaken to comply with certain terms and conditions – amongst others, obtaining an independent fairness opinion from a third party, e.g. an authorised public accountant – in respect of transactions at values exceeding USD 10 million with related companies. He also confirmed that Tristan Oil, Tolkynneftegaz and Kazpolmunay, by failing to disclose Perkwood's role as a related company, circumvented this obligation and thereby omitted to obtain independent fairness opinions for the transactions with Perkwood.⁷²
55. In conjunction with a review of the information memorandum, Artur Lungu conceded that, to the extent the underlying financial information (including the reported construction costs for the LPG Plant) is untrue, the corresponding information in the information memorandum is also untrue.⁷³
56. In conjunction with the review of a draft of KPMG Tax & Advisory's vendor due diligence report (a detailed report regarding Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial position for potential buyers) and correspondence regarding the same, Artur Lungu confirmed the following: The purpose of having an external accounting firm such as KPMG Tax & Advisory review and produce the vendor due diligence report was to give the report a measure of independence and legitimacy which it would not have had if the Stati parties themselves prepared a comparable report.⁷⁴ From the beginning, Perkwood was listed as a related company in a draft from KPMG Tax & Advisory dated 29 August 2008. In the draft, KPMG Tax & Advisory had noted that the profit margins on the agreement between Tolkynneftegaz and Perkwood had not been provided to KPMG Tax & Advisory notwithstanding that they should have been provided to KPMG Tax & Advisory.⁷⁵

⁷¹ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 205.

⁷² Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 239–242.

⁷³ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 244– 245.

⁷⁴ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 262.

⁷⁵ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 263, 265–266.

-
57. In September 2008, Artur Lungu appended to an email to KPMG Tax & Advisory a scanned draft vendor due diligence report with handwritten changes made by Artur Lungu. In the draft, Artur Lungu had struck out the reference to Perkwood as a related company.⁷⁶
 58. Artur Lungu finally confirmed also that KPMG Tax & Advisory, as a consequence of his instructions, amended the vendor due diligence report so that Perkwood was no longer identified as a related company, but instead identified as a third party and that this was erroneous.⁷⁷
 59. In summary, it is evident from Artur Lungu's testimony that he and Anatolie Stati, on several occasions, provided incorrect information to KPMG (which also means that Anatolie Stati provided incorrect information to the arbitral tribunal and the Svea Court of Appeal); that Anatolie Stati knew that the information was incorrect and that Anatolie Stati thus deliberately provided KPMG with erroneous information; that the information has given rise to material misstatements in Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial statements; that information in the information memorandum was false to the extent the corresponding underlying information in the financial statements was false; and that he instructed KPMG Tax & Advisory to change information in its vendor due diligence report that Perkwood was a related company to that Perkwood was a third party.

F.2 KPMG's statements regarding the audit opinions

60. In the summer of 2019, KPMG received certain documents from Kazakhstan's counsel at Herbert Smith Freehills. Among those documents were the written management representations of Tristan Oil (cf para. 51 and note 61 above), in which Anatolie Stati and Arthur Lungu deliberately had provided incorrect information to

⁷⁶ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 268–269.

⁷⁷ Transcript of deposition of Artur Lungu of 3 April 2019, Exhibit S-42, p. 275–276.

KPMG and an excerpt from the transcript of the deposition of Arthur Lungu on 3 April 2019.⁷⁸

61. After having received the documents, KPMG conducted an extensive and independent review which included, but was not limited to, the documents provided by Herbert Smith Freehills. On 21 August 2019, KPMG notified Herbert Smith Freehills by letter that the information which had come to light was material to the accuracy of the audit reports and the financial statements for Tristan Oil, Tolkynneftegaz and Kazpolmunay.⁷⁹
62. KPMG's review led to KPMG finding that the audit reports that KPMG had issued for all of Tolkynneftegaz' financial statements in respect of the years 2007–2009 were not reliable. This further caused KPMG to find that the audit reports issued by KPMG for all of Tristan Oil, Tolkynneftegaz and Kazpolmunay's combined financial statements in respect of 2007–2009 were not reliable either.⁸⁰
63. KPMG has – in accordance with the applicable regulatory framework – sought Anatolie Stati and Ascom, but has not received any reply.⁸¹

⁷⁸ The documents provided by Kazakhstan's counsel were (1) extract from the transcript of deposition of Artur Lungu dated 3 April 2019; (2) letter from Tristan Oil through Anatolie Stati and Artur Lungu to KPMG dated 11 November 2008; (3) letter from Tristan Oil through Anatolie Stati and Artur Lungu to KPMG dated 10 June 2009; (4) letter from Tristan Oil through Anatolie Stati and Artur Lungu to KPMG dated 25 August 2009; (5) letter from Tristan Oil through Anatolie Stati and Artur Lungu to KPMG dated 14 December 2009; (6) letter from Tristan Oil through Anatolie Stati and Artur Lungu to KPMG dated 25 May 2010; (7) Tristan Oil, Tolkynneftegaz and Kazpolmunay's combined annual report for 2007; (8) Tristan Oil, Tolkynneftegaz and Kazpolmunay's combined annual report for 2008; (9) Tristan Oil, Tolkynneftegaz and Kazpolmunay's combined annual report for 2009; (10) Tristan Oil, Tolkynneftegaz and Kazpolmunay's combined interim report for the nine-month period ending 30 September 2008; (11) Tristan Oil, Tolkynneftegaz and Kazpolmunay's combined interim report for the three and six-month periods ending 30 June 2009; (12) general powers of attorney for Anatolie Stati and Gabriel Stati issued by Perkwood and documents used for the opening of Perkwood's account at Rietumu Banka in Latvia; (13) *advokaten* Alexander Foerster's first witness statement dated 13 January 2017 in case no. CL-2014-000070 between the Stati parties and Kazakhstan before the High Court of Justice of England and Wales; (14) decision of Justice Knowles CBE dated 6 June 2017 in case no. CL-2014-000070 between the Stati parties and Kazakhstan before the High Court of Justice of England and Wales; (15) Artur Lungu's first witness statement dated 11 October 2013 in the arbitration between Ascom and Vitol FSU B.V.; and (16) transcript of day 1 of the main hearing before the Svea Court of Appeal in case no. T 2675-14 dated 8 September 2016.

⁷⁹ Letter from KPMG to Herbert Smith Freehills of 21 August 2019, Exhibit S-43, p. 1.

⁸⁰ Letter from KPMG to Herbert Smith Freehills of 21 August 2019, Exhibit S-43, p. 1 and p. 2.

⁸¹ Letter from KPMG to Herbert Smith Freehills of 21 August 2019, Exhibit S-43, p. 1.

64. On the same date, 21 August 2019, KPMG sent a letter to Anatolie Stati calling on him to take all measures necessary in order to prevent anyone from further or in the future relying on the audit reports issued for Tristan Oil, Tolkynneftegaz and Kazpolmunay.⁸²
65. In the same letter, KPMG stated, *inter alia*, that KPMG had received information that Anatolie Stati had admitted before courts that Perkwood was part of the corporate group which is controlled/owned by Anatolie Stati and Gabriel Stati; and about the fact that Artur Lungu had provided sworn information that the management of Kazpolmunay, Tolkynneftegaz and Tristan Oil gave erroneous information (“*made misrepresentations*”) to KPMG.⁸³ In light of the fact that Anatolie Stati had not replied to KPMG’s previous question on whether Perkwood was a company related to Kazpolmunay, Tolkynneftegaz and Tristan Oil in accordance with IAS 24, KPMG stated that KPMG’s working documents indicated that Tolkynneftegaz had carried out transactions with Perkwood in 2007, 2008 and 2009, which transactions rightly should have been reported in Tolkynneftegaz’s financial statements in accordance with IAS 24. The fact that that had not happened constituted, according to KPMG, a material omission in respect of both Tolkynneftegaz’ financial statements and Kazpolmunay, Tolkynneftegaz and Tristan Oil’s combined financial statements.⁸⁴
66. To declare, in the way that KPMG did, that previously issued audit reports are no longer reliable is practically tantamount to a revocation of the audit reports.⁸⁵ The measure taken by KPMG eliminates the reliability of Tristan Oil, Kazpolmunay and Tolkynneftegaz’s financial information overall and the reliability of calculations based on the financial information.⁸⁶ This is explained in greater detail in section **Error! Reference source not found.** below.

⁸² Letter from KPMG to Anatolie Stati and Ascom of 21 August 2019, Exhibit S-44, p. 1.

⁸³ Letter from KPMG to Anatolie Stati and Ascom of 21 August 2019, Exhibit S-44, p. 1.

⁸⁴ Letter from KPMG to Anatolie Stati and Ascom of 21 August 2019, Exhibit S-44, p. 1.

⁸⁵ Expert report of Tim Allen (PwC) of 21 January 2020, Exhibit S-39, para. 31. Cf also expert report by Mats Jakobsson (BDO) dated 25 November 2019, Exhibit S-45, p. 11–12.

⁸⁶ Expert report of Tim Allen (PwC) of 21 January 2020, Exhibit S-40, para. 40.

F.3 Correspondence between KPMG and the Stati parties

67. On 25 October 2019, Kazakhstan's counsel obtained access to correspondence between KPMG on the one hand and Anatolie Stati and Ascom on the other. Part of the correspondence took place in 2019. Another part of the correspondence took place as early as 2016 in parallel with the administration by the Svea Court of Appeal of case no. T 2675-14, that is to say the case which is the subject of this petition for new trial.
68. Kazakhstan's obtaining of the correspondence was preceded by the following. At a hearing on 27 August 2019 in the Court of Appeal in Amsterdam, the counsel of the Stati parties stated that KPMG:s letter to Anatolie Stati and Ascom on 21 August 2019 (Exhibit S-44) did not concern new circumstances, instead KPMG:s questions had already been addressed in correspondence between KPMG and the Stati parties in 2016. On 30 August 2019, Kazakhstan's Dutch counsel requested the Stati parties' Dutch counsel to disclose the correspondence from 2016. The Stati parties' Dutch counsel refused to accede the request, but did not deny that the correspondence existed. In light of this, Kazakhstan requested on 17 October 2019 a Kazakh court to order KPMG to disclose the correspondence between KPMG and the Stati parties from 2016 to the date of the request. The request was granted and on 25 October 2019 KPMG disclosed the correspondence which is summarised below.

F.3.1 The correspondence in 2019 between KPMG and the Stati parties

69. The correspondence which took place in 2019 may be summarised as follows.
70. On 5 August 2019, KPMG wrote to Anatolie Stati in his capacity as chairman of Ascom in accordance with IAS 560, *Subsequent Events*, and requested that Anatolie Stati comment on whether Perkwood was a company affiliated with Tristan Oil, Kazpolmunay and Tolkynneftegaz in accordance with IAS 24 and whether Perkwood's status as an affiliated company and the transactions with Perkwood should have been reported in Tristan Oil, Kazpolmunay and Tolkynneftegaz's financial statements for 2007-2009.⁸⁷

⁸⁷ Letter from KPMG to Anatolie Stati and Ascom of 5 August 2019, Exhibit S-46.

71. Anatolie Stati did not reply to KPMG's letter.
72. On 21 August 2019, KPMG sent a new letter to Anatolie Stati in his capacity as chairman of Ascom in which KPMG encouraged him to take all necessary steps to prevent anyone from further or subsequently relying on the audit opinions issued for Tristan Oil, Tolkynneftegaz and Kazpolmunay (*cf* paragraphs 64–65 above).⁸⁸
73. On 6 September 2019, Ascom sent a response to KPMG in which Ascom did not reply to the substantive issues raised by KPMG in its previous correspondence. Ascom instead alleged that KPMG had violated a number of professional undertakings and requested that KPMG withdraw the letter KPMG had sent to Anatolie Stati on 21 August 2019.⁸⁹
74. KPMG responded to Ascom's letter of 20 September 2019. In its reply, KPMG stated, *inter alia*, that KPMG maintained its position and that Anatolie Stati had not presented any evidence which suggested that any other position was justified:
- “[W]e strongly dispute your contention that the actions taken by KPMG Audit LLC (KPMG) in seeking to prevent any further or future reliance on the financial statements in question were in any way unjustified. [...]”
- In the absence of any evidence to the contrary—which, to date, Mr. Stati has failed to provide—there is no justification for a change in KPMG’s position.”⁹⁰
75. On 25 September 2019, Ascom replied to KPMG's letter. In the response, Ascom explained that it did not intend to comment on KPMG's substantive assertions before KPMG had commented on Ascom's claims that KPMG had violated its professional undertakings.⁹¹
76. KPMG replied to Ascom in a letter of 3 October 2019. In the letter, KPMG noted that Ascom had made no effort to deny KPMG's assertions and that Ascom's shifting explanations as to why Ascom had not answered KPMG's letter of 5 August 2019 were without basis.⁹²

⁸⁸ Letter from KPMG to Anatolie Stati and Ascom of 21 August 2019, Exhibit S-44, p. 1.

⁸⁹ Letter from Ascom to KPMG of 6 September 2019, Exhibit S-47.

⁹⁰ Letter from KPMG to Ascom of 20 September 2019, Exhibit S-48, p. 1.

⁹¹ Letter from Ascom to KPMG of 25 September 2019, Exhibit S-49, paragraph 15.

⁹² Letter from KPMG to Ascom of 3 October 2019, Exhibit S-50, p. 1.

F.3.2 Correspondence in 2016 between KPMG and the Stati parties

77. As stated in paragraphs 67–68 above, KPMG on the one hand, and Anatolie Stati and Ascom on the other, exchanged correspondence as early as 2016. That correspondence may be summarised as follows.
78. On 15 February 2016, KPMG sent a letter to Anatolie Stati in his capacity as chairman for Ascom in which KPMG asked questions regarding, among other things, the management fee Tolkynneftegaz had paid to Perkwood (*cf* paragraph 38 above), Perkwood's role as an affiliated company or not in accordance with IAS, and the difference between, on the one hand, the prices Tolkynneftegaz had paid to Perkwood for the components for the LPG Plant and, on the other hand, the prices Azalia Ltd had paid to TGE for the same components (*cf* paragraph 37 above).⁹³ KPMG requested that Anatolie Stati reply with explanations and evidence in support of such explanations.⁹⁴ In addition, KPMG informed that KPMG, in the event Anatolie Stati did not reply with the requested information, retained the right to revoke its audit opinions and inform parties who relied upon them, such as Kazakhstan and the Svea Court of Appeal, of such revocation:

“In case if [sic] we receive no explanations or additional representations, we remain our [sic] rights to seek to prevent future reliance on our audit reports and in particular to withdraw our audit reports and to inform about such withdrawal all parties who are still, in our view, relying on these reports, including but not limited to, Ministry of Justice of the Republic of Kazakhstan and the Svea Court of Appeals.⁹⁵ (Our emphasis.)

79. On 26 February 2016, Anatolie Stati replied to KPMG's letter with a number of questions regarding how KPMG obtained access to information and thereby avoided replying to the substance of KPMG's questions.⁹⁶ In addition, Anatolie Stati

⁹³ Letter from KPMG to Anatolie Stati and Ascom of 15 February 2016, Exhibit S-51, p. 2.

⁹⁴ Letter from KPMG to Anatolie Stati and Ascom of 15 February 2016, Exhibit S-51, p. 2.

⁹⁵ Letter from KPMG to Anatolie Stati and Ascom of 15 February 2016, Exhibit S-51.p. 2.

⁹⁶ Letter from Anatolie Stati and Ascom to KPMG of 26 February 2016, Exhibit S-52.

reserved the right to hold KPMG liable in the event KPMG did not cooperate or if KPMG revoked its audit opinions.

"In the meantime, we expressly reserve the right to hold your firm accountable should you choose not to co-operate with us and/or proceed to withdraw your audit reports."⁹⁷

80. As a consequence of the fact that Anatolie Stati did not reply to KPMG's questions, KPMG once again encouraged him, on 10 March 2016, to reply, once again without result.⁹⁸

81. Anatolie Stati was consequently aware that KPMG had cause to question the accuracy of the information which Anatolie Stati had previously provided to KPMG and thus also the accuracy of the information in the financial reports of Tristan Oil, Tolkynneftegaz and Kazpolmunay which contained the information. Anatolie Stati was aware of this before the main hearing in the Svea Court of Appeal. Notwithstanding the same, Anatolie Stati and the other Stati parties told the following to Kazakhstan and the Svea Court of Appeal on 18 May 2016.

"In conjunction with the audit of the prepared annual reports, TNG's auditors (KPMG) had full access to all accounting documents. KPMG was aware of Perkwood's function."⁹⁹

"It is denied that information regarding the Investors' assets in Kazakhstan, as included in the consolidated annual reports for Tristan Oil, KPM and TNG, was incorrect or misleading.

KPMG was aware of Perkwood's function."¹⁰⁰

82. The information which KPMG saw cause to question (and for which it attempted to obtain clarifications from Anatolie Stati) concerned, *inter alia*, Perkwood's role and function in the transactions which Tolkynneftegaz and Perkwood had carried out prior to the arbitration. With this in mind, the Stati parties nonetheless erroneously claimed in Svea Court of Appeal that KPMG knew Perkwood's function and had

⁹⁷ Letter from Anatolie Stati and Ascom to KPMG of 26 February 2016, Exhibit S-52., p. 2.

⁹⁸ Letter from KPMG to Anatolie Stati and Ascom of 10 March 2016, Exhibit S-53.

⁹⁹ Judgment of the Svea Court of Appeal of 9 December 2016 in case no. T 2675-14, p. 24 (Translation, p. 25.), Cf. the Stati parties comments on Svea Court of Appeal's recital on 18 May 2016, Court of Appeal's file appendix 246, p. 22 and 26.

¹⁰⁰ Judgment of the Svea Court of Appeal of 9 December 2016 in case no. T 2675-14, p. 28. (Translation, p. 28.), Cf. the Stati parties comments on Svea Court of Appeal's recital on 18 May 2016, Court of Appeal's file appendix 246, p. 22 and 26.

complete access to all of the accounting documents. In addition, the Stati parties adduced a draft vendor due diligence report by KPMG Tax and Advisory dated 29 August 2008 in order to prove that the Stati Parties had not mislead KPMG about Perkwood's role.¹⁰¹ This is the same draft that Artur Lungu now has confirmed that he in September 2008 instructed KPMG to change so that Perkwood was listed as a third party, and not a related party (paragraphs 56-58 and notes 75-78 above).

F.4 Tim Allen's opinion of 21 January 2020

83. In order to facilitate an understanding of what KPMG's measures entail, Kazakhstan has obtained an expert opinion from Tim Allen at the accounting firm, PricewaterhouseCoopers LLP ("PwC"), in England.

84. In the opinion, Tim Allen observes that KPMG's questions in the letters sent by KPMG to the Stati parties concern grave accusations that the Stati parties distorted information ("[t]he issues raised by KPMG in the 2016 and 2019 KPMG Correspondence [...] relate to serious and material allegations of misstatement"¹⁰²) and that the fact that the Stati parties have not responded in substance to these questions undermines the trustworthiness of the financial reports and the information relating thereto:

"The absence of a substantive response from the Stati Parties to the issues raised by KPMG is concerning and entirely undermines the reliability of the Financial Statements and related information."¹⁰³

85. In addition, Tim Allen explains that the fact that KPMG itself could not answer the questions presented by KPMG to the Stati parties by means of the information to which KPMG had access suggests that the information provided by the Stati parties to KPMG was erroneous and/or incomplete:

"Further, the fact that KPMG itself apparently was unable to answer the questions raised to the Stati Parties from the information it possessed suggests an inaccuracy and / or incompleteness in the relevant information provided previously by the Stati Parties to KPMG."¹⁰⁴

¹⁰¹ The Stati parties' final statement of evidence of 15 September 2016, Court of Appeal'sfile appendix 410, item 89.

¹⁰² Expert opinion of Tim Allen (PwC) of 21 January 2020, Exhibit S-40, paragraph 29

¹⁰³ Expert opinion of Tim Allen (PwC) of 21 January 2020, Exhibit S-40, paragraph 29.

¹⁰⁴ Expert opinion of Tim Allen (PwC) of 21 January 2020, Exhibit S-39, paragraph 30.

86. In addition, according to Tim Allen, KPMG's measures show that KPMG reached the conclusion that the financial statements and the supporting documents were materially misstated:

“The actions of KPMG, and the KPMG Correspondence, show that KPMG had reached the conclusion that the Financial Statements and supporting documents / records of TNG were materially misstated.”¹⁰⁵

87. KPMG's decision to pursue measures to prevent parties from relying on the audit opinions previously issued by KPMG is, according to Tim Allen, tantamount to a complete withdrawal of all audit opinions. Tim Allen further states that such a measure is a last resort for an auditor and is taken only in rare cases:¹⁰⁶

“The decision by KPMG in 2019 to take steps to prevent any further, or future, reliance on the audit opinions that had previously been issued by KPMG in respect of TNG et al. is a highly unusual and serious issue. The actions taken by KPMG do not only go to specific transactions, for example in relation to those between Perkwood and TNG, but represent in effect a complete ‘withdrawal’ by KPMG of its audit opinions over all of the financial information of the Financial Statements.”¹⁰⁷

“The effective ‘withdrawal’ of an audit opinion is a last resort by an auditor and only arises in rare circumstances [...].”¹⁰⁸

88. Tim Allen notes, in summary, that the actions taken by KPMG eliminate the reliability of Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial information overall as well as the reliability of everything based on such information:¹⁰⁹

“In short, the actions taken by KPMG and their subsequent actions would entirely remove confidence in the reliability of Tristan's, TNG's and KPM's overall financial information and anything derived therefrom or based thereon (including, but not limited to, any written and oral testimony in the ECT Arbitration, expert opinions and statements from counsel based on such financial information).”¹¹⁰

89. Accordingly, it may be observed that the measures taken by KPMG are extremely rare, and that the measures eliminate the reliability of Tristan Oil, Tolkynneftegaz,

¹⁰⁵ Expert opinion of Tim Allen (PwC) of 21 January 2020, Exhibit S-39, paragraph 39.

¹⁰⁶ Cf. also expert opinion of Mats Jakobsson (BDO) of 25 November 2019, Exhibit S-45 p. 10 and 12.

¹⁰⁷ Expert opinion of Tim Allen (PwC) of 21 January 2020, Exhibit S-39, paragraph 31.

¹⁰⁸ Expert opinion of Tim Allen (PwC) of 21 January 2020, Exhibit S-39, paragraph 33.

¹⁰⁹ Expert opinion of Tim Allen (PwC) of 21 January 2020, Exhibit S-39, paragraph 40.

¹¹⁰ Expert opinion of Tim Allen (PwC) of 21 January 2020, Exhibit S-39, paragraph 40.

and Kazpolmunay's financial statements for 2007–2009 as well as the reliability of everything based on that information.

G. The Stati parties' information regarding Perkwood in the proceedings before the Court of Appeal

90. According to what is stated in section D.1 above, Kazakhstan, following the award, learned of circumstances which demonstrated that the award was a result of deception on the part of the Stati parties. At that time, Kazakhstan had already brought challenge proceedings against the award in the Svea Court of Appeal in case no. T 2675-14. Accordingly, Kazakhstan broadened the action on 5 October 2015 by asserting that the facts which had been learned by Kazakhstan had the consequence that the award violated Swedish *ordre public* and was thus invalid.¹¹¹ In support of this new ground, Kazakhstan alleged, *inter alia*, that the LPG Plant was shrouded in an extensive and advanced fraudulent scheme, constituting corruption, on the part of the Stati parties and that the scheme, by means of sham agreements and sham transactions, was designed to create substantially fictitious value for the LPG Plant.¹¹² The Stati parties responded to Kazakhstan's new ground on 30 October 2015 and thereupon denied what had been asserted by Kazakhstan.¹¹³

91. On 1 April 2016, Kazakhstan filed a submission containing a number of questions presented to the Stati parties. In brief, the issues pertained to Perkwood's role as a secret affiliated company and the scheme transactions carried out by the company.¹¹⁴ Furthermore, Kazakhstan stated that the Stati parties, notwithstanding the request by the Court of Appeal therefor, had not given an account of their position in respect of Perkwood's role.¹¹⁵ It may be added that Kazakhstan, on several occasions during

¹¹¹ Kazakhstan's submission of 5 October 2015 in Svea Court of Appeal case no. T 2675-14, Court of Appeal file appendix 104, subsequently 113.

¹¹² Kazakhstan's action with respect to the basis that the award violated Swedish *ordre public* is summarised in section 3.1.2.1 of the judgment of the Svea Court of Appeal 9 December 2016 in case no. T 2675-14.

¹¹³ The Stati parties' submission of 30 October 2015 in Svea Court of Appeal case no. T 2675-14, Court of Appeal file appendix 147.

¹¹⁴ Kazakhstan's submission of 1 April 2016 in Svea Court of Appeal case no. T 2675-14, Court of Appeal file appendix 231, pp. 2–4.

¹¹⁵ Kazakhstan's submission of 1 April 2016 in Svea Court of Appeal case no. T 2675-14, Court of Appeal file appendix 231, p. 2.

the administration of the case, requested that the Stati parties clarify Perkwood's role.

92. Instead of responding to Kazakhstan's questions, the Stati parties moved that the Court of Appeal dismiss all evidence adduced by Kazakhstan in support of its new ground.¹¹⁶ In addition, the Stati parties incorrectly asserted that KPMG was aware of Perkwood's function:

“Upon a review of the prepared annual reports, TNG's auditors, KPMG, had full access to all of the accounting documents. KPMG knew of Perkwood's function.”¹¹⁷

93. In addition, the Stati parties denied that they had reported a fictitious cost for the *management fee*:

“It is denied that the Investors reported a fictitious Management Fee. The legal basis for the payment of a “management fee” is set forth in section 10.1 of the Perkwood agreement.”¹¹⁸

94. As regards Perkwood's relationship to the Stati parties, the Stati parties initially claimed during the proceedings before the Court of Appeal that they neither denied nor stipulated that Perkwood was an affiliated company.

The Investors have not claimed that Perkwood is ‘independent of the Investors’ sphere’. What the Investors have stated is that it is not stipulated that Perkwood was in any respect – still undefined by Kazakhstan – an affiliated company.”¹¹⁹

“If, which the Investors do not testify to, Perkwood in some vague sense has been the Investors' affiliated company, and if, which again is not testified to, the pricing between Perkwood and TNG has entailed an element of pricing that was not at arm's length, this raises no more serious questions than which dispositions that are acceptable under Kazakh tax law.”¹²⁰

¹¹⁶ The Stati parties' submission of 18 May 2016 in Svea Court of Appeal case no. T 2675-14, Court of Appeal file appendix 247, p. 3.

¹¹⁷ Judgment of the Svea Court of Appeal of 9 December 2016 in case no. T 2675-14, p. 24.

¹¹⁸ The Stati parties' comments of 18 May 2016 to the Recitals of the Svea Court of Appeal in case no. T 2675-14, Court of Appeal file appendix 246, p. 21.

¹¹⁹ The Stati parties' submission of 15 July 2016 in Svea Court of Appeal case no. T 2675-14, Court of Appeal file appendix 329.

¹²⁰ The Stati parties' submission of 13 June 2016 in Svea Court of Appeal case no. T 2675-14, Court of Appeal file appendix 300, paragraph. 24.

95. As described in section F.3 above, Kazakhstan has now learned that KPMG presented a number of questions to the Stati parties as early as 15 February 2016, i.e. a relatively short period of time before Kazakhstan, on 1 April 2016, presented the aforementioned questions to the Stati parties.¹²¹ Neither Kazakhstan nor the Svea Court of Appeal was then aware that KPMG had posed these questions to the Stati parties. KPMG's question to the Stati parties pertained, precisely as Kazakhstan's questions did, to Perkwood's role in the transactions carried out by the company.¹²² It follows from the letter by KPMG of 15 February 2016 that KPMG already at that time saw a risk that courts and others would rely on the Stati parties' incorrect financial reports.
96. In light of the correspondence between KPMG and the Stati parties from 2016 which has now been obtained by Kazakhstan, it may be noted that the Stati parties, at the same time they made the aforementioned assertions regarding Perkwood in the proceedings before the Court of Appeal, were aware that KPMG questioned precisely such assertions. In addition, the Stati parties were aware that KPMG, in the event the Stati parties did not respond to the questions, was considering withdrawing the audit opinion and informing, *inter alia*, the Svea Court of Appeal and Kazakhstan regarding the same.¹²³

H. The new evidence would probably have altered the outcome of the case before the Svea Court of Appeal

H.1 What has come to light by virtue of the new evidence

97. That which has come to light by virtue of the new evidence may be summarised as follows.
98. Due to the witness testimony of Artur Lungu of 3 April 2019, Exhibit S-42, the following is clear.

¹²¹ KPMG's letter to Anatolie Stati of 15 February 2016, Exhibit S-39, p. 2

¹²² KPMG's letter to Anatolie Stati of 15 February 2016, Exhibit S-39, p. 2.

¹²³ Cf KPMG's letter to Anatolie Stati of 15 February 2016, Exhibit S-39, p. 2.

- (i) Anatolie Stati founded Perkwood in 2005 and he did not disclose to anybody that the company was affiliated with the Stati parties.
 - (ii) Anatolie Stati and Artur Lungu systematically submitted, on several occasions, during the years, 2008–2010, false information to auditors at KPMG and KPMG Tax & Advisory regarding Perkwood’s role as an affiliated company which had as a consequence the fact that Tristan Oil, Tolkynneftegaz and Kazpolmunay’s financial statements for the years 2007–2009 and KPMG Tax & Advisory’s vendor due diligence report contained false information.¹²⁴
 - (iii) Anatolie Stati intentionally provided KPMG with false information.
 - (iv) The false information in Tristan Oil, Tolkynneftegaz and Kazpolmunay’s financial reports created an erroneous impression that the Stati parties had invested USD 193 million in the LPG Plant as of 30 June 2008, and USD 245 million as per 31 December 2009.
 - (v) The information memorandum contained erroneous information according to which the Stati parties, as per 30 June 2008, had invested USD 193 million in the LPG Plant.
 - (vi) KazMunaiGas’s indicative bid was based on the false information regarding the Stati parties’ investment costs presented in Tristan Oil, Tolkynneftegaz and Kazpolmunay’s financial statements and in the information memorandum. (In the arbitration, the Stati parties asserted that KazMunaiGas’ indicative bid was based on historical costs, paragraphs 26–27 above.)
99. Based on KPMG’s statements regarding the audit opinions in the letter to Herbert Smith Freehills of 21 August 2019 (Exhibit S-43), which is explained in Tim Allen’s expert opinion of 21 January 2020 (Exhibit S-40), the following is clear.

¹²⁴ As described in section D.1 above, the fact that the Stati parties concealed Perkwood’s role as an affiliate was central for the Stati parties being able to manipulate the costs of the LPG Plant in Tristan Oil, Tolkynneftegaz and Kazpolmunay’s financial reports, which KazMunaiGas placed confidence when KazMunaiGas submitted its indicative bid.

- (vii) Anatolie Stati and Artur Lungu systematically submitted, on several occasions, during the years, 2008–2010, false information to auditors at KPMG regarding Perkwood’s role as an affiliated company which had as a consequence the fact that Tristan Oil, Tolkynneftegaz and Kazpolmunay’s financial statements for the years 2007–2009 contained false information.
 - (viii) The false information in Tristan Oil, Tolkynneftegaz and Kazpolmunay’s financial reports created an erroneous impression that the Stati parties had invested USD 193 million in the LPG Plant as of 30 June 2008, and USD 245 million as per 31 December 2009.
 - (ix) KPMG’s statements are tantamount to a complete withdrawal of all audit opinions, and the measures taken by KPMG completely undermines the confidence in Tristan Oil, Tolkynneftegaz and Kazpolmunay’s financial information and the reliability of everything which has been based on the information, including the indicative bid by KazMunaiGas.
100. Due to the correspondence between KPMG and the Stati parties of 2016, Exhibits S-51–S-53, and in 2019, Exhibit S-44 and S-46–S-50, the following is clear.
- (x) Notwithstanding that KPMG, in 2016, questioned the correctness of the information which Anatolie Stati had previously provided to KPMG in the representation letters and accounts, and especially questioned the correctness of the costs that had been reported for the LPG Plant (which was the exact basis for Kazakhstan’s action in the case) the Stati parties claimed, in spite of knowing better, in the Svea Court of Appeal that KPMG had full access to all accounting documents, that KPMG was aware of Perkwood’s function.
 - (xi) In the Svea Court of Appeal, the Stati parties, in spite of knowing better, denied that Tristan Oil, Kazpolmunay and Tolkynneftegaz’s annual reports contained erroneous or misleading information regarding the Stati parties’ Kazakh assets.
101. Together and separately, the new evidence demonstrates that, Anatolie Stati was aware that the indicative bid by KazMunaiGas was based on fictitious figures but nonetheless presented and relied upon the bid as a supposedly reasonable and fair presentation of the LPG Plant’s value in the arbitration. Thus, the Stati parties

presented and relied upon evidence the contents of which came about based on information which the Stati parties knew to be untrue.

102. This was the case since KazMunaiGas's indicative bid was based on the consciously false information provided by Anatolie Stati in Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial statements for the years 2007-2009 as a consequence of, *inter alia*, the scheme described in section D.1 above.
103. By consciously providing KPMG erroneous information regarding that Perkwood was not a company affiliated with Tristan Oil, Tolkynneftegaz and Kazpolmunay, Anatolie Stati caused the auditors at KPMG to revise and issue audit opinions for Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial reports for the years 2007–2009, even though Anatolie Stati was aware that the reports contained erroneous information.
104. One of the reports which contained erroneous information as a consequence of Anatolie Stati's aforementioned pledges was Tristan Oil, Tolkynneftegaz and Kazpolmunay's reviewed financial statements for the second quarter of 2008. Therein, KPMG stated the following:

“Based on our review, nothing has come to our attention that causes us to believe that the combined interim financial statements do not present fairly, in all material respects, the combined interim financial position of the Companies as at June 30, 2008, and their combined interim financial performance for the three- and six-month periods ended June 30, 2008 and their combined interim cash flows for the six-month period then ended in accordance with International Financial Reporting Standard IAS 34 *Interim Financial Reporting*.¹²⁵

105. This report, which KPGM reviewed and stated that it presented a fair impression of the companies' financial position, contains the reported manipulated investment cost of USD 193 million which was reproduced in the information memorandum in accordance with what is described in paragraphs 40–42 above. By means of the erroneous financial information in the financial report mentioned above, the other financial reports and the information memorandum that was distributed before the sale of the Stati parties' Kazakh business, Anatolie Stati succeeded in obtaining several indicative bids from potential buyers. Amongst the potential buyers was

¹²⁵ Tristan Oil, Tolkynneftegaz and Kazpolmunay's reviewed financial statements for the second quarter of 2008, Exhibit S-38, p. F-2.

KazMunaiGas, which submitted an indicative bid in which the LPG Plant was valued at USD 199 million, which value constituted an average of, on the one hand, the reported manipulated historical cost, that is to say the reported manipulated investment cost, and, on the other hand, a comparison figure.¹²⁶ This has been described in section **Error! Reference source not found.** above. It may be added that the Stati parties asserted in the arbitration that KazMunaiGas' indicative bid was based on historical costs, paragraphs 26–27 above.

106. As set forth in Nuran Bakhytovich Kairakbayev's witness statement, KazMunaiGas would not have tendered any indicative bid at all in order to acquire the Stati parties' Kazakh business had it been known at that time that Kazpolmunay and Tolkynneftegaz's management had provided KPMG with materially false information and that KPMG's audit opinions were not reliable:

“[S]hould it have been known to me that during the preparation of the financial statements the management of TNG, KPM and Tristan Oil represented materially false information to their auditors and that the KPMG audit reports were not to be relied upon, which, in turn, would have meant that the financial information in the Information Memorandum was false, I would have recommended the management of KMG EP not to submit the Indicative Offer at all.”¹²⁷

107. The false information which Anatolie Stati had intentionally included in Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial statements and the true information Anatolie Stati had intentionally withheld from the auditors at KPMG was thus directly decisive to KazMunaiGas's indicative bid, and therefore at least indirectly decisive to the tribunal's assessment during the arbitration in accordance what is described further in H.3 below..
108. As explained in section F.1 above, it is set forth in the deposition of Artur Lungu of 3 April 2019 that Anatolie Stati intentionally submitted erroneous information to KPMG. Thus, Anatolie Stati was aware at all times that KazMunaiGas's indicative bid was based on false financial information and that the indicative bid was much

¹²⁶ KazMunaiGas's indicative bid of 25 September 2008, Exhibit S-19, p. 2–3.

¹²⁷ Nuran Bakhytovich Kairakbayev's witness statement of 2 April 2020, Exhibit S-54, p. 3–4.

higher than it would have been had Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial information been correct.¹²⁸

H.2 The Svea Court of Appeal's view of *ordre public* and the court's conclusions

109. As stated in section G above, Kazakhstan brought an action before the Svea Court of Appeal, case no. T 2675-14, asserting that the award violated Swedish *ordre public* and was therefore invalid, in accordance with the summarised presentation in section 3.1.2.1 of the judgment of the Court of Appeal of 9 December 2016.
110. At the outset, the Court of Appeal stated in the reasons, section 5.2.1, some legal starting points for the trial of *ordre public* under section 33, first paragraph, subsection 2 of the Swedish Arbitration Act. Thereby, the Court of Appeal noted that it is stated in the preparatory works to the provision, *inter alia*, that it is intended to cover only highly objectionable cases and that it covers cases where fundamental principles of law of a substantive or procedural nature have been disregarded (Government Bill 1998/99:35, p. 142 and 234). Furthermore, the Court of Appeal stated that it follows from the decision of the Supreme Court in the case reported in NJA 2015 p. 433 that if the parties' evidence supports that an award clearly violates fundamental principles of law, the court should, *sua sponte*, draw the attention of the parties to such fact and afford them an opportunity to present in detail their views on the matter. As an example of when an award may be deemed clearly incompatible with the basic principles of the Swedish legal system the Court of Appeal stated, with support in the preparatory works (Government Bill 1998/99:35, p. 141 f.), the case of when the arbitral tribunal has considered an issue that a court of general jurisdiction would decline to entertain as comprising a claim based on criminal activity.¹²⁹
111. The Court of Appeal's reasons regarding Kazakhstan's action on invalidity are found in section 5.3.1 of the judgment. Thereby, the Court of Appeal began by

¹²⁸ This is also supported by the fact that Anatolie Stati himself was authorised in all respects to represent and in fact did represent Perkwood (the affiliated company through which the Stati parties carried out the sham transactions which made it possible for Tristan Oil, Tolkynneftegaz and Kazpolmunay to inflate the reported investment costs, see paragraphs 35–39 above)).

¹²⁹ Svea Court of Appeal judgment of 9 December 2016 in case no. T 2675-14, p. 38–39 (Translation, p. 39–40)

providing an account of the general circumstances under which it was of the belief that false evidence could render an award invalid:

“In the arbitration, the Investors invoked evidence in the form of witness testimony, witness affidavits and expert reports to prove that the investment costs in the LPG plant had amounted to the alleged sum. However, the arbitral award states that the arbitral tribunal based its assessment of the damages with respect to the LPG plant on the so-called indicative bid which had been submitted by [KazMunaiGas]; see paragraphs 1746–1748 in the award.

As the Court of Appeal has described above, the scope of application of the public policy provision is very narrow and the legislature has also clearly decided not to introduce into the Arbitration Act any provision corresponding to the concept of new trial. Accordingly, in the Court of Appeal’s opinion there can be no question of declaring an arbitral award invalid solely on the ground that false evidence or untrue testimony has occurred, when it is not clear that such have been directly decisive for the outcome (cf. Heuman, *supra*, p. 600 et seq). However, situations are conceivable in which the invocation of false evidence may have an indirect impact on the arbitral tribunal in its assessment of the dispute. In light of the narrow scope of application and the restrictive approach that should pertain as regards opening up a new substantive assessment of the arbitrated dispute within the scope of challenge proceedings, in the Court of Appeal’s opinion there should be no question of allowing such an indirect impact on the arbitral tribunal to result in the arbitral award being deemed invalid, except when it appears to be obvious that such indirect influence has been of decisive significance for the outcome in the case.”¹³⁰

112. The view of the Court of Appeal must be understood such that there are two situations in which invalidity may arise based on false evidence:

- (xii) if it is clear that the false evidence was decisive to the outcome of the arbitration, or
- (xiii) if it appears obvious that false evidence indirectly influenced the tribunal and thereby was of decisive significance to the outcome of the arbitration.

113. In its more detailed assessment of Kazakhstan’s assertions, the Court of Appeal began by stating the following.

“Since the arbitral tribunal based its assessment on the indicative bid, the evidence invoked by the Investors in the form of witness testimony, witness affidavits and expert reports regarding the size of the investment cost – which evidence Kazakhstan has claimed was false – has not been of immediate importance for the outcome. In the Court of Appeal’s opinion, already in these circumstances, such evidence per se – even if it were proven to be false – does not constitute sufficient reason to consider the arbitral award invalid. In the

¹³⁰ Svea Court of Appeal judgment of 9 December 2016 in case no. T 2675-14, p. 43. (Translation, p. 45.)

Court of Appeal's opinion, it is also not obvious that this evidence, through indirect influence on the arbitration tribunal, was decisive for the outcome of the case.”¹³¹

114. With the indicative bid in the foreground, the Court of Appeal was of the opinion that the testimony, witness statements and expert reports adduced by the Stati parties in the arbitration and which had been claimed by Kazakhstan to be false was not decisive to the outcome of the arbitration. According to the Court of Appeal, it was also not obvious that the testimony, witness statements and expert reports indirectly influenced the tribunal and were of decisive significance to the outcome of the arbitration. As a consequence, the Court of Appeal was not of the opinion that a determination needed to be made as to whether the evidence was false..

115. As regards the indicative bid, the Court of Appeal thereafter stated the following.

“Moving on to the question of whether the indicative bid per se constituted false evidence, it is undisputed that, prior to the initiation of the arbitration, [KazMunaiGas] had submitted the relevant offer of USD 199 million for the LPG plant. Thus, the indicative bid per se is not to be regarded as false evidence, even if—through the annual reports for Tristan Oil, [Kazpolmunay] and [Tolkynneftegaz] – possibly incorrect information regarding the amount invested in the LPG plant was among the factors that [KazMunaiGas] took into account when calculating the size of the offer. Accordingly, the allegedly false information in the annual reports did not directly constitute any basis for the arbitral tribunal’s assessment of the value of the LPG plant. Against this background, the invocation of the indicative bid by the Investors did not constitute an invocation of false evidence.”¹³²

116. The view of the Court of Appeal appears to be that the fact that the indicative bid was actually made means that the bid per se did not constitute false evidence notwithstanding that the Stati parties adduced it as allegedly reliable evidence with the awareness that it was erroneous and misleading since it was based on fictitious investment costs.
117. The Court of Appeal does not appear to have considered it necessary to determine whether Tristan Oil, Tolkynneftegaz and Kazpolmunay’s annual reports constituted false evidence. As it may be understood, this was due to the fact that the Court of

¹³¹ Svea Court of Appeal judgment of 9 December 2016 in case no. T 2675-14, pp. 43 and 44. (Translation, p. 45.)

¹³² Svea Court of Appeal judgment of 9 December 2016 in case no. T 2675-14, p. 44. (Translation, p. 46.)

Appeal was of the opinion that the information in the annual reports was not decisive to the outcome of the arbitration.

118. The Court of Appeal did not at all examine whether the information in the annual reports (which were issued by the companies Tristan Oil, Tolkynneftegaz and Kazpolmunay, that were controlled by Anatolie Stati) was false and in that case, by virtue of indirect influence on the tribunal, was of decisive significance to the outcome of the arbitration.¹³³
119. The conclusions reached by the Court of Appeal in the relevant respect may be summarised as follows:
 - (xiv) It was not clear that the testimony, witness statements and expert reports adduced by the Stati parties in the arbitration and which were claimed by Kazakhstan to be false were decisive to the outcome of the arbitration.
 - (xv) It was not obvious that the testimony, witness statements and expert reports adduced by the Stati parties in the arbitration and which were claimed by Kazakhstan to be false were, by virtue of indirect influence on the tribunal, of decisive significance to the outcome of the arbitration.
 - (xvi) The indicative bid was not false evidence since it had been tendered before the arbitration was initiated.
 - (xvii) It was not clear that the information in Tristan Oil, Tolkynneftegaz and Kazpolmunay's annual reports was decisive to the outcome of the arbitration.
120. It is worth repeating and emphasising that the Court of Appeal – over and above what is stated regarding the indicative bid – did not examine whether Kazakhstan's assertions regarding false evidence were correct, and failed to examine whether the false information in the annual reports issued by Tristan Oil, Tolkynneftegaz and Kazpolmunay, companies that were ultimately controlled by Anatolie Stati, by virtue

¹³³ The High Court of Justice of England and Wales on 6 June 2017 in case no. CL-2014-000070 between the Stati parties and Kazakhstan, Exhibit S-40.

of indirect influence on the tribunal, was of decisive significance to the outcome of the arbitration.

121. The Court of Appeal concluded with an overall assessment of all circumstances adduced by Kazakhstan and stated that these circumstances, neither separately nor together, were such that the award or the manner in which it arose is clearly incompatible with the basic principles of the Swedish legal system.¹³⁴
122. The Court of Appeal found, based on the above, that the award, or the manner in which the award arose, was not clearly incompatible with the basic principles of the Swedish legal system.

H.3 Had it been aware of the new evidence, the Court of Appeal would probably have declared the award invalid

H.3.1 Introduction

123. Had it been aware of the new evidence, the Court of Appeal would probably have reached the conclusion that the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system and thus declared the award invalid. There are two reasons for this. Firstly, the testimony of Atrur Lungu – a testimony from a person who, during the relevant time period, was a part of Ascom's and Tristan Oil's management – and KPMG's subsequent statement regarding the audit opinions that the financial reports which the Stati parties presented in the arbitration constitute false evidence and it is obvious that these, by virtue of an in any event indirect influence on the arbitral tribunal, was of decisive significance to the outcome in the arbitration. Secondly, it is clear by an overall assessment of all circumstances that the Stati parties' behaviour, which the award is based on, is highly objectionable and that the award, therefore, violates *ordre public*. These two reasons are described more closely in the following.

H.3.2 The Court of Appeal would probably have reached the conclusion that false evidence was of decisive significance to the outcome in the arbitration

124. The new evidence shows that the Stati parties in the arbitration presented and relied upon financial reports which contained false information, which Anatolie Stati knew

¹³⁴ Svea Court of Appeal on 9 December 2016 in case no. T 2675-14, p. 44 (Translation, p. 46).

to be false. Before the arbitration, the financial reports had been issued by Tristan Oil, Tolkynneftegaz and Kazpolmunay, companies that were represented by Anatolie Stati and ultimately owned and/or controlled by him and the other Stati parties. Anatolie Stati, have, by the time of the issuance of the financial reports and at all relevant times thereafter, known that the financial reports contains false information. Thus, the new evidence confirms that the financial reports constitutes false evidence, which the Stati parties consciously presented to deceive the arbitral tribunal.

125. In order to assess whether a document is false, Chapter 58, section 1, first paragraph, subsection 2 of the Swedish Code of Judicial Procedure, which concerns the possibility to grant a new trial when a written document that was invoked as evidence was false, can be used as inspiration. A document is considered to be false if the issuer has consciously given the document an erroneous content.¹³⁵ In other words, a document is considered to be false if the issuer of the document is aware of the fact that it contains erroneous information. It is not set forth in the Svea Court of Appeal's reasons which standard the Court of Appeal applied, however, the Court of Appeal presumably used the now mentioned standard.
126. Had the Court of Appeal known that Artur Lungu, who during the relevant time period was a part of Ascom's and Tristan Oil's management, has confirmed that the financial reports were materially false, and that KPMG, thereafter, has taken measures that are tantamount to a complete withdrawal of the audit opinions issued for the financial reports, the Court would probably have made the assessment that it was obvious that false evidence, by virtue of an in any event indirect influence on the arbitral tribunal, was of decisive significance for the outcome in the arbitration. This is described in more detail below.
127. The false information in Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial reports was decisive to several parties' economic decisions. Amongst those parties was KazMunaiGas, which calculated and tendered the indicative bid based on the information memorandum which contained erroneous financial information obtained from the financial reports; FTI Consulting, Inc. and Deloitte GmbH, who acted as damages experts retained by the parties in the arbitration and whose expert opinions

¹³⁵ Cf NJA 2016 p. 18

and calculations were based on the financial reports; Kazakhstan, whose position on the issue of the amount of damages in the arbitration was based on the financial reports; and the arbitral tribunal, which considered the Stati parties' testimony, expert opinions and calculations regarding the valuation of the LPG Plant in the arbitration and accepted KazMunaiGas's valuation of the LPG Plant in the indicative bid and thus awarded damages in the amount of USD 199 million to the Stati parties.

128. In light of KPMG's statements regarding the audit opinions issued by KPMG for Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial reports being tantamount to a complete withdrawal of the audit opinions which completely undermines the reliability of all financial information from and about the companies (paragraphs 87–88 above), none of the parties mentioned above would have based any decision on the financial information.
129. The arbitral tribunal did not only consider KazMunaiGas' indicative bid when assessing the amount of damages, however, it considered the indicative bid to be of particular relevance and the relatively best source of information for the valuation of the LPG Plant among the sources presented in the arbitration:

“On the other hand, the Tribunal considers it to be of particular relevance that an offer was made for the LPG Plant by state-owned KMG at that time for USD 199 million. The Tribunal considers that to be the relatively best source of information for the valuation of the LPG Plant among the various sources of information submitted by the Parties regarding the valuation for the LPG Plant during the relevant period of the valuation date accepted by the Tribunal, the Tribunal [sic].

Therefore, this is the amount of damages the Tribunal accepts in this context.”¹³⁶ (Our emphasis.)

130. Accordingly, the arbitral tribunal placed a high evidentiary value on the indicative bid. Therefore, the indicative bid and its quality as evidence according to the arbitral tribunal was of decisive significance to the outcome in the arbitration on the issue of the valuation of the LPG-Plant. Had the tribunal known that Artur Lungu, who during the relevant time period was a part of Ascom's and Tristan Oil's management, has confirmed that Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial reports for the years 2007–2009 were materially false and that KPMG,

¹³⁶ Award of 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan, Exhibit S-07, paragraphs 1747–1748.

thereafter, took measures that was tantamount to a complete withdrawal of the audit opinions issued by KPMG for the financial reports (paragraph 87 above), the arbitral tribunal would not have placed any evidentiary value on the indicative bid, that was based on these reports, at all. With this knowledge, the arbitral tribunal would not have awarded any compensation for the LPG Plant. Had the arbitral tribunal awarded any damages at all, which is improbable, it would have, in any case, not used the indicative bid as the basis for the calculation of the amount of compensation.¹³⁷

131. The Court of Appeal appears to have found that the indicative bid was of direct significance to the outcome in the arbitration.¹³⁸ Had Kazakhstan been able to invoke the new evidence in the case before the Court of Appeal, Kazakhstan would have been able to show that the financial reports that formed the basis of the indicative bid were false evidence. In such case, the Court of Appeal would probably have found that no evidentiary value should rightly have been placed on the indicative bid, since it rightly should not have existed or in any event was based on false evidence. This had been of decisive significance to the outcome in the arbitration since the arbitral tribunal placed a high evidentiary value on the indicative bid.

132. What has emerged through the new evidence would have meant that the Court of Appeal would probably have reached the conclusion that it was obvious that false evidence, by virtue of an in any event indirect influence on the arbitral tribunal, was of decisive significance to the outcome in the arbitration. Consequently, the Court of Appeal would probably have found that the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system and, thus, declared the award invalid.

- H.3.3 The Court of Appeal would probably have, by an overall assessment of all circumstances, reached the conclusion that the award or the manner in which the

¹³⁷ In this context, it should be considered that KazMunaiGas would not have submitted any indicative bid to purchase the Stati parties' Kazakh business if it had been known at the time that the Stati parties' financial reports contained false information. See paragraph 106 and footnote 128 above with reference to Nuran Bakhytovich Kairakbayev's witness statement of 2 April 2020, Exhibit S-54, p. 3–4

¹³⁸ Judgment of the Svea Court of Appeal of 9 December 2016 in case no. T 2675-14, p. 43–44

award arose, is clearly incompatible with the basic principles of the Swedish legal system

133. Even if the Court of Appeal would not have reached the conclusion that it was obvious that false evidence, by virtue of an in any event indirect influence on the arbitral tribunal, was of decisive significance to the outcome in the arbitration, the Court of Appeal would probably have, by its overall assessment of all circumstances in light of the new evidence, found that the Stati parties', which the award is based on, is reprehensible to the extent that it would be highly objectionable, and thereby incompatible with the basic principles of the Swedish legal system, to uphold the validity of the award.¹³⁹ This is explained in the following.
134. Firstly, the new evidence shows that the Stati parties systematically and consciously provided several parties and the world at large with erroneous information. To begin with, the Stati parties provided their own auditors at KPMG with materially false information in written statements from the management to KPMG, as well as in the financial reports that KPMG audited and which were decisive to several parties' financial decisions.
135. On the basis of the financial reports, the Stati parties consciously claimed in the arbitration that they had had an investment cost which was far greater than their actual investment cost. Basically all evidence regarding the amount of damages in this part were based on the financial reports, which the new evidence confirms to be false. The Stati parties invoked, *inter alia*, testimony, witness statements and expert reports which included figures that were false since they were directly based on the materially false information in Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial reports. The figures – which were thus based on false financial information – led the arbitral tribunal, on erroneous grounds, to a belief regarding the investment cost which was incurred by the Stati parties for the LPG Plant. The understanding thereby had by the arbitral tribunal led to the arbitral tribunal's determination that KazMunaiGas's indicative bid corresponded to just and reasonable damages.
136. Secondly, the Stati parties, in spite of knowing better, claimed before the Svea Court of Appeal that KPMG had full access to all of the accounting documents and that KPMG was aware of Perkwood's function (see paragraph 100 above).

¹³⁹ Cf. paragraph 100 above.

Notwithstanding that the correspondence between KPMG and the Stati parties in 2016 shows that KPMG, while the proceedings before the Court of Appeal were pending, questioned the correctness of the information previously provided by Anatolie Stati to KPMG in the form of representation letters and accounts and presented the Stati parties with questions regarding precisely Perkwood's role and the transactions which the company had carried out. KPMG also questioned the correctness of the costs the Stati parties had reported for the LPG Plant (which was the exact basis for Kazakhstan's action in the case).

137. Had Kazakhstan been able to adduce the new evidence in the proceedings before the Court of Appeal, it would have been clear to the Court of Appeal that the Stati parties systematically and consciously provided false information, not only to KPMG and to the world at large through Tristan Oil, Tolkynneftegaz and Kazpolmunay's financial statements but, also, to the arbitral tribunal, Kazakhstan and the Court of Appeal.¹⁴⁰
138. Had it been discovered that the Stati parties attempted to deceive the Svea Court of Appeal by making untrue assertions that KPMG was aware of Perkwood's role and that the Stati parties' Kazakh companies' financial information was in order, the view of the Court of Appeal regarding everything asserted by the Stati parties during the proceedings before the Court of Appeal would have been affected to such an extent that the Court of Appeal would have been more cautious and critical of all of the Stati parties' assertions. In other words, the general trust of the Court of Appeal in the Stati parties would have been reduced substantially, or been entirely undermined, had Kazakhstan been able to adduce this new evidence.
139. Thirdly, the Court of Appeal, with knowledge of the new evidence, would probably have taken into account that the Stati parties' claims in the arbitration were based on

¹⁴⁰ George Bermann, as well, states in his opinion that it has been of significance that Svea Court of Appeal did not have before it a complete record of the relevant facts, considering the fact that additional evidence of the deception has emerged after the judgment of Svea Court of Appeal, and refers to KPMG's letter of 21 August 2019 and to the correspondence between KPMG and the Stati parties in 2016, see opinion by George Bermann of 21 January 2020, Exhibit S-41, p. 8.

criminal acts (*cf* Government Bill 1998/99:35 p 141 f.) in accordance with what is described in the following.¹⁴¹

140. What emerged through the new evidence indicates that Anatolie Stati's actions correspond to several crimes in Sweden, amongst them gross bookkeeping crime under Chapter 11, section 5 of the Swedish Penal Code, had Tristan Oil, Tolkynneftegaz and Kazpolmunay had a duty to provide accounts under the Swedish Accounting Act (Swedish Code of Statutes 1999:1078).
141. Anatolie Stati has systematically provided erroneous information regarding Perkwood's role as an affiliated company in Tristan Oil, Tolkynneftegaz and Kazpolmunay's accounts and to KPMG on not less than five occasions during the years 2008–2010 (*cf* paragraph 51 above). The fact that KPMG, after having learned the same, stated in a letter of 21 August 2019 that the audit opinions for the financial reports were not reliable (which corresponds to a withdrawal of the audit reports) shows that the companies' affairs, financial results and financial position essentially could not be assessed based on the accounts as a consequence of the erroneous information (*cf* section **Error! Reference source not found.** above). Anatolie Stati has committed the acts with intent given that, at all relevant times, he was aware that Perkwood was an affiliated company (*cf* paragraphs 52–52 above). Withholding the fact that Perkwood was an affiliated company allowed the Stat parties to be able to hide the affiliated transactions in respect of very substantial amounts to be able to inflate the costs of the LPG Plant, and such withholding took place systematically at least during the years 2008–2010, *inter alia*, by means of erroneous affirmations to the companies' auditors.
142. In this context, it must also be considered that the new evidence indicates that Anatolie Stati obtained the indicative bid, by consciously basing the information memorandum on the false financial reports, is tantamount to deceit under section 30 of the Swedish Contracts (Swedish Code of Statutes 1915:218) if it was to be determined under Swedish law. This is also supported by Nuran Bakhytovich Kairakbayev's witness statement of 2 April 2020, Exhibit S-54, where it is set forth that KazMunaiGas would not have provided any indicative bid at all had the

¹⁴¹ See also Kazakhstan's statement of claim of 25 November 2019 in Svea Court of Appeal's case no. T 12462-19, Exhibit S-01, section N.2.

company, at the time, known that Kazpolmunay and Tolkynneftegaz's management provided KPMG with materially false information and that KPMG's audit opinions were not reliable.

143. Finally, the Court of Appeal would have taken into account the principle of good faith in international law. The principle – and which consequences applying it on this case would have had – is described more closely in an opinion by Professor Emeritus Christoph Schreuer of 21 January 2020.¹⁴² A result of this principle is the clean hands doctrine, which means that the one who has acted unlawfully does not have the right to present any claims based on the unlawful actions (*nemo auditur propriam turpitidinem alleans*).¹⁴³ In the opinion, Schreuer concludes that arbitral tribunals in investment disputes, where the claimant has submitted false evidence, have invariably dismissed the claims,¹⁴⁴ and his conclusion is that the correspondence between KPMG and the Stati parties in 2016 and 2019 would have had a material influence on the arbitration and the award.¹⁴⁵
144. Had the Court of Appeal been aware of the new evidence, it would probably have, by way of an overall assessment of all circumstances, found that the Stati parties' had deceived the arbitral tribunal, *inter alia*, by presenting and relying on false evidence in the arbitration and thereby procuring an award according to which Kazakhstan is obligated to compensate a supposed damage that actually is the result of the Stati parties' criminal actions, that the Stati parties had tried to deceive the Court of Appeal and that the Stati parties' behaviour is reprehensible to the extent that it would be highly objectionable to uphold the validity of the award. Therefore the Svea Court of Appeal would probably have come to conclusion that the award is

¹⁴² Opinion by Professor Emeritus Christoph Schreuer of 21 January 2020, Exhibit S-55.

¹⁴³ Opinion by Professor Emeritus Christoph Schreuer of 21 January 2020, Exhibit S-55, section B.

¹⁴⁴ Opinion by Professor Emeritus Christoph Schreuer of 21 January 2020, Exhibit S-55, paragraph 69: "*In investment arbitration, the submission of false or fraudulent evidence by claimants has invariably led to the dismissal of claims. Tribunals have based their decisions to disallow claims under these circumstances on the principles of good faith and clean hands, on the doctrine of abuse of process and on the finding that reliance of [sic] fraudulent evidence is contrary to public policy.*"

¹⁴⁵ Opinion by Professor Emeritus Christoph Schreuer of 21 January 2020, Exhibit S-55, paragraph 71: "*In the present case, the conclusion seems inevitable that the KPMG Correspondence would have had a material impact on the ECT Arbitration and the Award. The unusual and serious step of auditors withdrawing their audits, because their client has provided them with false information, renders the entire financial information relating to the investment unreliable and thus deprives the Award providing compensation for losses relating to such investment of any reliable basis.*" (Our emphasis.)

clearly incompatible with the basic principles of the Swedish legal system , and thereby declared the award invalid.

I. Kazakhstan was not able to adduce the new evidence in the Svea Court of Appeal's case no. T 2675-14

145. Most of the new evidence did not exist during the period of time at which case no. T 2675-14 was pending before the Svea Court of Appeal. That part of the evidence which existed was unknown to Kazakhstan during the period of time the case was pending, because it was at that time withheld from Kazakhstan (and the Svea Court of Appeal). Accordingly, Kazakhstan could not adduce the evidence in the case. The Svea Court of Appeal was of the opinion that there was no reason to allow an appeal of the judgment, as a consequence of which Kazakhstan could not have adduced the evidence by means of appealing the judgment.

J. Grounds

146. If Kazakhstan had been able to invoke as evidence Artur Lungu's oath-sworn information, KPMG's declaration and the correspondence from 2016 between KPMG and the Stati parties in the case before the Svea Court of Appeal, the case would probably have had another outcome. The Court of Appeal would probably have reached the conclusion that the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system and thus declared the award invalid for the following two reasons.
147. Firstly, the financial reports which the Stati parties presented in the arbitration constitute false evidence and it is obvious that these, by virtue of an in any event indirect influence on the arbitral tribunal, was of decisive significance to the outcome in the arbitration.
148. Secondly, it is clear by an overall assessment of all circumstances that the behaviour of the Stati parties is reprehensible to the extent that it would be highly objectionable to uphold the validity of the award. The Stati parties carried out sham transactions and manipulated their companies' financial reports, *inter alia*, by systematically and consciously providing their auditors with false information, which behaviour, if it was to be judged under Swedish law, would have corresponded to, *inter alia*, gross bookkeeping crime. By means of the manipulated financial information, the Stati

parties caused third parties to submit indicative bids for the Stati parties' business in Kazakhstan. The Stati parties presented and relied upon the manipulated financial information in the arbitration, in which the information formed the basis for all assertions and evidence concerning, and all calculations of, the value of the LPG Plant. The information also formed the basis for the damages that the arbitral tribunal awarded. The Svea Court of Appeal had also considered that the Stati parties, in order to conceal their criminality, consciously made untrue assertions in the challenge and invalidation case, which would have caused the Svea Court of Appeal to consider the Stati parties to be not trustworthy and the information presented by the Stati parties to be unreliable.

149.

K. Evidence

Index of exhibits

Bilaga	Beskrivning	HAB
S-01	Kazakhstan's statement of claim on dated 25 November 2019 in the Svea Court of Appeal's case no. T 12462-19	–
S-02	Article from Accent-TV, Special Commission: <i>Vlad Plahotniuc is the main beneficiary of the theft of a billion</i> , published on 20 September 2019	–
S-03	Article from Hromadske International, <i>Fugitive Oligarch Wanted in Moldova's "Theft of the Century" Case</i> , published on 15 October 2019	–
S-04	Federal Register /Vol. 83, No. 56/Thursday, March 22, 2018/Rules and Regulations	–
S-05	Press release on the US Chamber of Commerce's website, https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear/17-regulations	–
S-06	Information memorandum (<i>Project Zenith, Confidential Information Memorandum</i>), August 2008	114(8)
S-07	Arbitral Award of dated 19 December 2013 in SCC case V (116/2010) between the Stati parties and Kazakhstan	5
S-08	Excerpt from the Stati parties' second Post-Hearing Brief of dated 3 June 2013	114(8)
S-09	Artur Lungu's first witness statement of dated 17 May 2011	114(22)
S-10	Anatolie Stati's second witness statement of dated 7 May 2012	289
S-11	Kompletterande sakkunnigutlåtande den 28 maj 2012 from Investerarnas finansiella expert i skiljeförfarandet	114(2)
S-12	Supplemental expert opinion of dated 28 May 2012 from the Stati parties' financial expert in the arbitration	114(2)
S-13	Supplemental expert opinion of dated 8 April 2013 from the Stati parties' financial expert in the arbitration	–
S-14	Extract from the Stati parties' first Post-Hearing Brief of dated 8 April 2013	114(28)
S-15	Transcript of the fourth day of the Hearing on Quantum of 31 January 2013	–
S-16	The Stati parties' Reply Memorial on Quantum of dated 28 May 2012	114(27)
S-17	Transcript of the first day of the Hearing on Quantum of dated 28 January 2013,	114(16)
S-18	The Stati parties' Statement of Claim dated 18 May 2011	288
S-19	KazMunaiGas's indicative bid of dated 25 September 2008	114(17)
S-20	Montvale's Statement of Defence dated 22 juli 2011 in arbitration between Montvale	114(36)
S-21	Agreement between Tolkynneftegaz and Perkwood of 17 February 2006	114(10)
S-22	<i>Registration certificate for Perkwood and annual information form submitted to Companies House with respect to Perkwood for 2006–2009</i>	290
S-23	Opinion regarding English law of 2 June 2016	292

Bilaga	Beskrivning	HAB
S-24	Extract from Companies House regarding Sarah and Edward Petre-Mears of 12 November 2015	291
S-25	<i>Sham directors: the woman running 1,200 companies from a Caribbean rock</i> , article from The Guardian of 25 November 2012	295
S-26	General powers of attorney issued by Perkwood to Anatolie Stati and Gabriel Stati for 2005, 2006, 2007 and 2008 and to Anatolie Stati for 2009	378
S-27	Letter from the Latvian financial police to the Kazakh financial police	350
S-28	Certificate regarding beneficiaries for Perkwood's bank account at Rietumu Banka AS of 28 November 2005	–
S-29	Latvian bank fined €80 million for money laundering, will appeal, article from Organized Crime and Corruption Reporting Project of 10 July 2017	–
S-30	Tristan Oil, Tolkynneftegaz and Kazpolmunay's revised annual report for the 2007 financial year	– (cf. 114(42))
S-31	Tristan Oil, Tolkynneftegaz and Kazpolmunay's revised annual report for the 2008 financial year	257
S-32	Tristan Oil, Tolkynneftegaz and Kazpolmunay's revised annual report for the 2009 financial year	–
S-33	KPMG Tax & Advisory's vendor due diligence report of 29 August 2008	114(29)
S-34	Agreement between TGE, Ascom and Azalia of 31 January 2006	114(22)
S-35	Expert opinion from TGE of 2 June 2016	289
S-36	Artur Lungu's witness statement of 11 October 2013 in the arbitration between Ascom and Vitol	297
S-37	Tristan Oil, Tolkynneftegaz and Kazpolmunay's reviewed financial statement for the second quarter of 2008	114(49)
S-38	Expert opinion of Thomas Gruhn (Deloitte) of 12 January 2017	–
S-39	Expert opinion of Tim Allen (PwC) of 21 January 2020	–
S-40	High Court of Justice of England and Wales dated 6 June 2017 in case no. CL-2014-000070 between the Stati parties and Kazakhstan	–
S-41	Expert Opinion of Professor George Bermann dated 21 January 2020	–
S-42	Transcript of deposition of Artur Lungu of dated 3 April 2019	–
S-43	Letter from KPMG to Herbert Smith Freehills of 21 August 2019	–
S-44	Letter from KPMG to Anatolie Stati and Ascom of 21 August 2019	–
S-45	Expert opinion by Mats Jakobsson (BDO) of 25 November 2019	–

Bilaga	Beskrivning	HAB
S-46	Letter from KPMG to Anatolie Stati and Ascom of 5 August 2019,	–
S-47	Letter from Ascom to KPMG of 6 September 2019	–
S-48	Letter from KPMG to Ascom of 20 September 2019,	–
S-49	Letter from Ascom to KPMG of 25 September 2019	–
S-50	Letter from KPMG to Ascom of 3 October 2019	–
S-51	Letter from KPMG to Anatolie Stati and Ascom of 15 February 2016	–
S-52	Letter from Anatolie Stati and Ascom to KPMG of 26 February 2016	–
S-53	Letter from KPMG to Anatolie Stati and Ascom of 10 March 2016	–
S-54	Nuran Bakhytovich Kairakbayev's witness statement of 2 April 2020	–
S-55	Expert opinion of professor emeritus Christoph Schreuer of 21 January 2020	–