

MEMORANDUM

KAZAKHSTAN ACTIONS; OPTIONS

Summary

- A. [The below actions represent potential threats to Stati et al that even if he wins the Arbitration against Kazakhstan, what he receives as a money arbitral award will be greatly diminished by possible actions of the Trustee, Ad Hoc Group and Kazakhstan. It can be argued to Stati that settling now would be more certain as to the amount received by Stati than waiting three or more years for an uncertain amount that may be attached, arrested or garnished. Further the Tristan Note claims will continue to accrue interest and penalties and growing larger until paid.]
- B. [The Trustee could bring a case under Article 94 (*see attached Annex 2*) against Ascom and Terra Raf resulting in a judgment that Ascom and Terra Raf are liable for the \$508 million. If the Trustee was successful the Kazakhstan Court would issue an arrest order against any future payment by Kazakhstan to Ascom or Terra Raf in an amount of up to \$508 million. The Trustee would notify the Stockholm arbitration panel of the Arbitral Awards and the Kazakhstan Article 94 court decision to arrest funds at the source of the payment under the any arbitral award resulting from the arbitration against Kazakhstan. If this action was successful then the Kazakhstan court could arrest the funds at source of payment in Kazakhstan that would be paid under any arbitration award resulting from the arbitration against Kazakhstan.]
- D. [The Ad Hoc Group could bring an action for damages in a Kazakhstan court against Ascom and Terra Raf, for fraud due to issue of Tap Note. This action seems more probable in light of the evidences determined below that there seems to have been no source of revenue for Tristan Oil Ltd. to repay the TAP notes. The only means of repayment that we have identified would be the remedial step of enforcing the Guarantees. If successful the Ad Hoc Group, could notify the Stockholm Arbitration Panel of such award and request to attach any payment as a result of the arbitration against Kazakhstan.]

Definitions:

Ad Hoc Group shall mean a sub-group of Noteholders that controls at least 51% of the Tristan Notes.

Ascom shall mean Industrial Financila Group Ascom S.A., a company registered in Republic of Moldova and a sole shareholder of KPM.

Guarantors shall mean KPM and TNG.

Indenture shall mean an indenture for the Tristan Notes dated as of December 20, 2006.

Initial Notes shall mean notes in the aggregate principal amount of \$300,000,000 issued by Tristan Oil on or about December 20, 2006 and the notes in the aggregate principal amount of \$120,000,000 issued by Tristan Oil on or about June 7, 2007.

Intercompany Notes shall mean [promissory] notes issued by the Guarantors and Terra Raf to Tristan Ltd. in a total principal amount of \$40[1] million with an interest rate of 13.5%, and dispute settlement clause submitting to arbitration in New York.

Noteholders shall mean all noteholders representing all Tristan Notes.

KPM shall mean Kapolmunai LLP, a company registered in Kazakhstan.

Operating Assets shall mean assets of the Guarantors including Borankol Processing Plant, pipelines, wells, equipment and other assets currently under trust management of JSC MNK Kazmunaiteniz.

Participations shall mean the 100% equity interests that Ascom and Terra Raf, respectively, hold in KPM and TNG.

TAP shall mean Tristan Notes for the \$111,110,000 in principal value of notes, with an interest rate of 10.5% issued by Tristan Oil and sold initially to Laren Holdings Ltd.

Terra Raf shall mean Terra Raf Trans Trading Limited, a company registered in Gibraltar and a sole shareholder of TNG.

TNG shall mean Tolkyneftegas LLP, a company registered in Kazakhstan.

Tristan Notes shall mean the \$531 million in principal value of notes, with an interest rate of 10.5% issued by Tristan Oil Ltd.

Tristan Oil shall mean Tristan Oil Ltd, a company registered in British Virgin Island and an issuer of the Tristan Notes.

Trustee shall mean Wells Fargo Bank, the Trustee under the Tristan Notes.

1. Claims to NY Arbitration and enforcement of judgment

1.1 Claim

Upon issuance of the Notes the Guarantors and Terra Raf have provided Promissory Notes to Tristan Oil to be repaid in the event of default under the Tristan Notes ("**Promissory Notes**"). Total amount of all Promissory Notes is \$401M. Some details of the all Promissory Notes are specified below.

No.	Issuer	Date of Issue	Amount to be repaid
1.	Tolkyneftegaz LLP	20 December 2006	\$181,000,000
	Tolkyneftegaz LLP	14 June 2007	\$94,000,000
2.	Kazpolmunay LLP	20 December 2006	\$30,000,000
	Kazpolmunay LLP	14 June 2007	\$20,000,000
3.	Terra Raf Trans Trading LTD	20 December 2006	\$76,000,000

Terra Raf issued its Promissory Note to Tristan Oil for \$76M to secure payments under the Senior Secured Notes due 2012 (\$300M). On December 20, 2006 Tristan Oil and Trustee entered into the pledge agreement. Pursuant to this pledge agreement Tristan Oil provided to Trustee a security in the form of the Promissory Note payable to Tristan Oil by Terra Raf in the event of default under the Senior Secured Notes due 2012. According to Section 6 of the pledge agreement between Tristan Oil and Trustee, in the event of default under the Senior Secured Notes due 2012 Trustee is obliged transferring legal title to Promissory Note in the name of Trustee.

[Upon completion of necessary steps to seek repayment under the Indenture from Tristan Oil, the Trustee shall request Tristan Oil endorsing the Promissory Notes in the name of Trustee in order to be able to accelerate the Promissory Notes and collecting payments.]

[Trustee shall file a claim to the New York ICC Arbitration Court requesting confirmation of endorsement of the Promissory Notes in the name of Trustee and awarding request to repay all amounts of the Promissory Notes by Guarantors and Terra Raf to Trustee. We assume that under New York Law the New York ICC Arbitration Court is entitled to award such resolution. The total amount awarded by the New York ICC Arbitration Court can be [\$401M (\$325M to be paid by the Guarantors and \$76M to be paid by Terra Raf)]. ***[to Dechert: Please confirm it is possible. It is crucial the resolution shall contain request to repay under the notes. Otherwise we may not receive a necessary enforcement decision in Kazakhstan].***

1.2 Enforcement of New York Arbitration Court Award

The choice of New York Arbitration in Promissory Notes is not prohibited under the laws of Kazakhstan. Kazakhstan is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Accordingly, a foreign arbitral award obtained in a state which is a party to the convention should be recognised and enforced by a court in Kazakhstan (subject to qualifications provided for in the convention) upon compliance with civil procedure and the procedures established by the laws of Kazakhstan on international commercial arbitration for the enforcement of foreign arbitration decisions.

Enforcement of the Terra Raf Promissory Notes depends on a country where assets of Terra Raf is located.

Enforcement of the Promissory Notes in relation to the Guarantors and Terra Raf in Kazakhstan shall allow applying to the assets of the Guarantors in Kazakhstan, including those in possession of the other persons. However, it is known that the Guarantors do not have sufficient money and all their property are arrested at the request of Kazakhstan Finance Police and can not be disposed. Due to the ongoing dispute in Stockholm we believe that there are no any assets of Terra Raf located in Kazakhstan.

Upon filing the New York Arbitration Court judgment to a relevant Kazakhstan court and all to be accompanied documents a Kazakhstan court shall issue a resolution on enforcement and provide it to a bailiff.

Recovery part of awarded money from the Trust Fund

JSK MNK KazMunaiTeniz as a trust manager of the Operating Assets collects all money received from the sale of oil and gas and place to a special trust fund bank account ("**Trust Fund**"). Ownership to this fund is not defined yet. Under the law trust manager shall be paid a management fee only. We believe the Guarantors are entitled to the part of this fund as the Operating Assets utilized to generate the income still belongs to the Guarantors however any amount or part to be paid to Guarantors is not defined or agreed with the Guarantors. Trustee may request a bailiff to apply part of the awarded

amount to the Trust Fund in the amount of \$126M and repay to the Trustee. It is expected that the relevant state entities will need to approve releasing this amount from Trust Fund to the Trustee.

Payment of \$126M will make balance of total indebtedness under the Tristan Notes \$382M (\$400 million in principal plus \$108 million in penalties minus \$126M)

2. Claim under Article 94

2.1 Claim to repay Intercompany Notes

Trustee may file a claim to a Kazakhstan court based on Article 94 of the Kazakhstan Civil Code requesting the outstanding amount under Tristan Notes to be repaid by Terra Raf and Ascom as shareholders of the Guarantors.

The application of *Article 94 Subsidiary Organization of the Kazakhstan Civil Code* (“**Article 94**”) and *Article 56 Execution upon Property of Legal Entities and Individual Entrepreneurs of the Law of the Republic of Kazakhstan on Enforcement Procedures and Status of Court Bailiffs*, provide that when a principal organization of a subsidiary organization have the right to issue mandatory instructions to a subsidiary organization, the principal organization bears subsidiary liability as a result of issuing such instructions. Subsidiary liability arises if primary debtor fails to repay the debt at the request of a creditor. Text of Article 94 translated in English is provided in Annex 1.

In the case of the Tristan Notes, if the Guarantors cannot pay, as a result of actions of Ascom and Terra Raf, then the principal organizations (Ascom and Terra Raf) are liable to pay under the Guarantees or under the Intercompany Notes provided that it is established that the principal organization ordered the Guarantors to enter into the Intercompany Notes. The Trustee could apply if the two preconditions exist under Article 94, to enforce such subsidiary liability against Ascom and Terra Raf, therefore it would be necessary to prove that the two principal organizations instructed or took actions that mandatorily forced the two Kazakhstan companies to issue the Intercompany Notes and then due to such action was not be able to pay obligations.

It shall be noted that application of Article 94 is not used extensively in Kazakhstan. Moreover, we are not aware of any such case in Kazakhstan and can not predict any outcome of the claim.

If successful the Trustee would receive a Kazakhstan court decision requesting Ascom and Terra Raf to repay the following amounts under the Intercompany Notes:

- \$275M plus interest by Terra Raf; and
- \$50M plus interest by Ascom.

1.2 Enforcement of a Kazakhstan court decision on Article 94

- 1) Kazakhstan court may arrest and seize any assets held by Ascom or Terra Raf in Kazakhstan but Participations are arrested at the request of Kazakhstan Finance Police and can not be disposed until released by the court. We are not aware of Ascom or Terra Raf having any other assets in Kazakhstan.
- 2) According to the Minsk Convention on Legal Support dated 22 January 1993 which is recognized by Kazakhstan and Moldova the award of a Kazakhstan court shall be enforceable in relation to Ascom and Terra Raf in Moldova. Upon receipt of a Kazakhstan court award the relevant court in Moldova shall release its resolution to enforce the judgment. Moldovan bailiff shall make necessary actions under the Moldovan law to enforce the judgment and obtain payments by freezing bank accounts and assets of Ascom and Terra Raf in Moldova. We are not aware if any assets of Ascom or Terra Raf is located in Moldova.

- 3) The future payment to Ascom or Terra Raf under an arbitral award resulting from the arbitration against Kazakhstan is a potential account receivable that could be arrested by a Kazakhstan court order. In order to implement such action Trustee shall file a petition to a Kazakhstan bailiffs requesting to apply the judgment to the payments are to be made to Ascom and Terra Raf under the Stockholm arbitral award. It is required by law that such accounts receivable exists on the day of application, however we believe that bailiff may and shall send such notice to the Kazakhstan Ministry of Finance upon receiving a petition from the Trustee. It is expected that any bailiff would seek confirming such order by a court which is taken the decision.
- 4) Trustee would notify the Stockholm arbitration panel of the Kazakhstan Article 94 court decision to arrest funds of Ascom and Terra Raf at the source of the payment under the any arbitral award resulting from the arbitration against Kazakhstan.

1.3 Court fee on claim under Article 94

Court fee is 3% of all requested amount which is \$15.2M from \$508M or \$11.4M from \$382M.

There is a Kazakhstan law which releases any trustee of noteholders from court fee if claim is made due to violation of conditions of the note prospectus by an issuer. We may succeed or may not succeed to convince judge applying this law.

In case the court requests paying the court fee the Trustee shall pay the required amount of court fee from the amounts received awarded by New York Arbitration Court and paid from the Trust Fund.

As an option the Trustee may file a claim for a small amount and pay relevant amount of the court fee aiming to receive a test judgment. This judgment can be used as an additional argument to force Stati to commence negotiation on the proposed conditions. Upon obtainment of the court judgment depending on a status at that time Trustee may pursue the Option 5 described below.

3. *Unjust Enrichment Claim*

Trustee may also file a claim to a Kazakhstan court for unjust enrichment requesting Ascom, Terra Raf, Anatol Stati and Gabriel Stati to repay the amounts received on unjust basis. This option requires more review and analysis of the relevant documents which we hope to be able to locate and review. The documents we have reviewed are not sufficient to suggest expressly applying this option.

At the court we must establish that the defendants benefitted at the expense of all Initial Noteholders.

We believe that the following further actions of Anatol Stati, Gabriel Stati, Tristan Oil, Terra Raf and Ascom shall assist in proving that defendants benefitted at the expense of all Initial Noteholders:

- 1) KPM at the request of Ascom in violation of Indenture declared dividends in the amount of \$72M leaving KPM with significant amounts of outstanding debts and placing it in position to not to be able repaying the Initial Notes under the Guarantee; Tristan Oil had no assets to repay the Initial Notes;
- 2) Defendants intended to hinder, delay or defraud Initial Holders by issuing of the TAP;
- 3) Guarantors assumed debt obligations of Tristan Oil under TAP by guaranteeing repayment of TAP;

- 4) Guarantors assumed debt obligations of another \$60M by agreeing to buy loans outstanding under the highly expensive Laren Credit Facility utilized to purchase the TAP;
- 5) Terra Raf and Ascom in violation of the Indenture walked off the management of the Guarantors to handle properly investigations and disputes with the Kazakhstan state agencies as well as the operations and existing indebtedness of the Guarantors which lead to downgrading the credit ratings of the Guarantors and devaluation of the Initial Notes and inability of Guarantors to generate funds and repay the Initial Notes;
- 6) Issuance of TAP and other actions of defendants violated requirements of Indenture not to create any new debts to satisfy minimum cash flow and transactions with affiliates of the group;
- 7) Defendants defended the TAP at the Minnesota court and were against of merger of TAP and Initial Notes;
 - a) All actions of Anatol Stati and Gabriel Stati from 2006 till 2009 demonstrate that they were intending to sell KPM and TNG and perhaps repay the Initial Notes by part of sale price. After claims of the state agencies they took out all money funded by the Initial Noteholders ignoring interests of Initial Noteholders and requirements of Indenture.

If Kazakhstan court will support the position that the Guarantors are unable to repay the Tristan Notes due to the other significant outstanding debts and arrest of the shares of Guarantors which prevents foreclosure Participations and issue award requesting repayment by defendants the requested amounts.

2.2 Enforcement of a Kazakhstan court decision on unjust enrichment

- 1) The award of a Kazakhstan court shall be enforceable in relation to Ascom, Terra Raf, Anatol Stati and Gabriel Stati in Moldova according to the Minsk Convention on Legal Support dated 22 January 1993.
- 2) The future payment to Ascom or Terra Raf under an arbitral award resulting from the arbitration against Kazakhstan is a potential account receivable that could be arrested by a Kazakhstan court order.
- 3) Trustee would notify the Stockholm arbitration panel of the Kazakhstan court decision to arrest funds of Ascom, Terra Raf, Anatol Stati and Gabriel Stati at the source of the payment under the any arbitral award resulting from the arbitration against Kazakhstan.

Provided we confirm utilizing this option the Trustee may file this claim together with the claim on Article 94. This claim can be filed after the claim on Article 94 depending on the expecting or final outcome of the claim under Article 94.

This option would require the execution of steps [●].

2.3 Court Fee on claim for Unjust Enrichment

Litigation fee is 3% of all requested amount. Trustee may pay the required amount of court fee from the amounts received awarded by New York Arbitration Court and paid from the Trust Fund.

As an option the Trustee may file a claim for the small amount to pay relevant amount of the court fee aiming to receive a test judgment.

4. Split of Amounts of Claim and Court Fee

The amounts of claim to be made under Article 94 and for unjust enrichment are to be defined but we assume they shall not exceed jointly the amounts outstanding under the Notes and accrued interests and penalty.

5. Further Actions

If Stati will start negotiation the Step Plan dated April 19, 2012 is to be discussed and implemented.

If any agreement with Stati would not be reached and the Stockholm arbitration awards paying the Republic of Kazakhstan damages the new action plan and discussions is required as to repayment of the Tristan Notes and destiny of the KPM and TNG assets.

However, all above proposed actions do not eliminate ability of Noteholders to enforce all obtained judgments and pledge over Participations to apply to the Operating Assets and/or Participants.

Also assuming that Stati prevails in its claim against Kazakhstan and there are still amounts outstanding, arbitration could be brought against Kazakhstan based upon Stati's precedent that Kazakhstan was at fault.

The Action Plan			
No.	Actions	Timing and Costs	Comments
1.	The Ad Hoc Group notifies the Trustee of the Ad Hoc Group's intention to enforce the Tristan Notes (based upon the rights of a 51% majority under the Indenture to the Tristan Notes) through the execution of the Action Plan, and agrees with the Trustee a reasonable indemnification of the Trustee.	<p>Timing: Upon approval by AdHoc Group.</p> <p>Costs: Cost of to indemnify the Trustee to be determined, possibly an undertaking to pay all legal fees.</p>	This action should be taken by the Ad Hoc Group.
2.	Ad Hoc Group instructs the Trustee to send the demand letters to Tristan Oil and Guarantors demanding payment in	Timing:	This action should be taken

	full under the Tristan Notes (“ Demand Letters ”).	Immediately after Step 1.	by the Ad Hoc Group under all options.
3.	Assuming that neither Tristan Oil nor the Guarantors pay as a result of the Demand Letters, the Ad Hoc Group instructs the Trustee to send demand letters to Tristan Oil to assign the Intercompany Notes to the Trustee.	Timing: After Step 2 upon expiring the Demand Letters.	
4.	Trustee files claim to a New York Arbitration Court under ICC Rules requesting assign Promissory Notes and repay the Promissory Notes by Guarantors and Terra Raf and obtains seeking award.	Timing:	
5.	Collection from Trust Fund.		
6.	Trustee files claim to a Mangistau Economic Court under Article 94 requesting to be repaid under the Tristan Notes by Terra Raf and Ascom as shareholders of the Guarantors.		
7.	Trustee with the assistance of lawyers collects and prepares necessary documents and files a NY Arbitration Court Award to a Mangistau Economic Court for enforcement and files petition to send an enforcement order to Moldova.	Timing:	We have to indicate in petition which city and which bank in Moldova Ascom may have assets.
8.	Court takes decision to enforce the award and provides this decision to the bailiff. Court sends enforcement decision to the requested Moldovan court.	Timing:	
9.	Kazakhstan bailiff reviews the current status of Guarantors and takes necessary actions to find money and assets.		
10.	Moldovan bailiff makes necessary actions under the Moldovan law to enforce the judgment and obtain payments: freezing bank accounts and assets of Ascom.		
11.			
12.	Kazakhstan Court awards to repay the Tristan Notes by Terra Raf and Ascom under Article 94.	Timing:	
13.			
14.			
15.			

16.			
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ANNEX 1

Article 94. A Subsidiary Organisation

1. A legal entity whose predominant part of the authorized capital is formed by another legal entity (henceforth - the principal organization), or when in accordance with an agreement concluded by them (or otherwise) the principal organization has the possibility to control the decisions of a given organization, shall be recognized as a subsidiary organization.

2. A subsidiary organization shall not be liable for the debts of its principal organization.

The principal organization which pursuant to its agreement with a subsidiary organization (or otherwise) has the right to issue instructions which are mandatory for it, shall be liable subsidiarily with the subsidiary with regard to the transactions entered into by the latter in order to implement such instructions.

In the case of bankruptcy of a subsidiary organization, due to a fault of the principal organization, the latter shall bear subsidiary liability with regard to its debts.

3. The participants of a subsidiary organization shall have the right to demand from the principal organization of the compensation of losses caused by its fault to the subsidiary organization, unless it is otherwise established by legislative acts.

4. Special considerations with regard to the status of subsidiary organizations, which are not specified in this Article, shall be defined by legislative acts.

