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By Email, Registered Post and Courier

August 5, 2021

Without Prejudice
For Settlement Purposes Only

**Re: Notice of Legal Dispute Arising Under the Energy Charter Treaty and
Offer of Amicable Settlement**

To Whom It May Concern,

We write on behalf of Anatolie Stati, Gabriel Stati, Ascom Group S.A., and Terra Raf Trans Trading Ltd. (together, the “Stati Parties”) and hereby notify you of an existing legal dispute between the Stati Parties and the Republic of Kazakhstan. The acts and omissions of

the Republic of Kazakhstan (“Kazakhstan”) described below constitute serious and repeated breaches of the protections accorded to the Stati Parties and their investment under the Energy Charter Treaty (the “ECT”), in violation of the ECT and international law.

Kazakhstan has forced the Stati Parties to provide this notice because it has deliberately flouted its obligation under the ECT to satisfy an arbitral award rendered in favor of the Stati Parties by an esteemed tribunal that concluded that the Stati Parties were grossly mistreated at the hands of senior level Kazakh governmental officials. Notwithstanding that this arbitral award has been upheld on two separate occasions by the highest court at the agreed seat of the arbitration (Stockholm, Sweden), Kazakhstan, through the auspices of its Ministry of Justice, has orchestrated an international strategy of frivolous and abusive litigation in an effort to avoid enforcement and payment of the arbitration award, causing the Stati Parties serious financial harm for which Kazakhstan should be held responsible. Stated simply, notwithstanding presenting itself to the international investment community as a sovereign that honors the rule of law, Kazakhstan has shown itself to be nothing more than an international outlaw that flouts its legal obligations designed to protect foreign investors.

The purpose of this letter is to summarize the nature of the legal dispute between the Stati Parties and Kazakhstan, and to invite Kazakhstan to resolve the dispute amicably, in accordance with Article 26 of the ECT. This letter is expressly made without prejudice to any positions that the Stati Parties may adopt in any subsequent international arbitration proceeding, should the parties fail to reach an amicable resolution of this matter within the three-month period contemplated in Article 26 of the ECT. For the avoidance of doubt, the contents of this letter are intended to be illustrative of Kazakhstan’s international law violations rather than exhaustive, and the Stati Parties expressly reserve their rights to assert claims based on any misconduct by Kazakhstan in the course of an eventual arbitration proceeding, including, without limitation, any misconduct affecting the investment described herein.

On December 19, 2013, an international arbitration tribunal constituted under the ECT and the rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”) rendered an award in the arbitration between the Stati Parties and Kazakhstan (as corrected on January 17, 2014, the “ECT Award”). The ECT Award, as you are aware, held that the Stati Parties were protected investors in Kazakhstan who owned protected investments, and that Kazakhstan violated its obligations under the ECT with respect to those investments. On this basis, the ECT Award held that Kazakhstan was liable under international law and owed compensation to the Stati Parties in excess of US\$500 million, including legal costs and interest.

Pursuant to Article 26(8) of the ECT, “the awards of arbitration, which may include an award of interest, shall be final and binding upon the parties to the dispute. . . . Each Contracting Party shall carry out without delay any such award and shall make provision for the effective enforcement in its Area of such awards.” (emphasis added).

Kazakhstan unsuccessfully applied to the Svea Court of Appeal in Sweden for set-aside of the ECT Award. In fact, the Swedish courts rejected Kazakhstan’s set-aside efforts on four

separate occasions,¹ rendering the ECT Award final, binding, and unappealable. And yet, in disregard of its obligations under the ECT Award and international law, almost eight years after the issuance of the Award, Kazakhstan has yet to comply with its terms. As a result of Kazakhstan's breaches of the ECT and international law, the Stati Parties have been forced to pursue enforcement of the ECT Award for many years and in numerous jurisdictions. To date, the ECT Award has been successfully recognized by courts in Belgium, Luxembourg, Italy, the Netherlands, Sweden, and the United States. But Kazakhstan still refuses to abide by the terms of the ECT Award, in flagrant breach of Article 26(8) of the ECT, and instead has adopted a course of strategic evasion, opposition, and harassment, causing further damage to the Stati Parties.

In addition to refusing to honor the binding, final and unappealable ECT Award and opposing its recognition and enforcement at every step, Kazakhstan has taken affirmative measures to harass and cause harm to the Stati Parties through frivolous litigation and groundless and vexatious allegations of fraud, and has engaged in sham transactions to try to shield its assets from enforcement.

Among other things, Kazakhstan initiated a baseless lawsuit against the Stati Parties in the United States District Court, District of Columbia for alleged violations of the Racketeer Influenced and Corrupt Organizations Act (the "RICO Action"). Kazakhstan alleged that the Stati Parties obtained the ECT Award by fraud (an allegation that has been rejected by courts in no fewer than six different jurisdictions: Belgium, Italy, Luxembourg, the Netherlands, Sweden, and the United States) and that their efforts to enforce and collect on the Award are unlawful. The District Court appropriately rejected all of Kazakhstan's allegations and determined that the RICO Action was nothing more than an illegitimate attack on the Stati Parties predicated entirely on the Stati Parties' "initiation and prosecution of non-frivolous litigation" to enforce "a valid and binding arbitral award." The District Court called Kazakhstan's RICO Action an "ill-advised" suit based on a "far-fetched theory of RICO liability lack[ing] legal support" and "an improper use of the auspices of this Court to revive and prolong a dispute that is over[.]" Kazakhstan's initiation and pursuit of the RICO Action was clearly designed to harass and cause harm to the Stati Parties.

Kazakhstan has also pursued bad faith litigation against various business associates of the Stati Parties, apparently aimed at branding the Stati Parties *persona non grata* and deterring third parties from doing business with them. To that end, Kazakhstan has filed numerous bad faith third-party discovery proceedings in the United States under U.S.C. Section 1782 against various financial institutions and law firms (including King & Spalding LLP) who are known to have had involvement with the Stati Parties and their business activities, not only in Kazakhstan but also elsewhere in the world. Kazakhstan also brought a frivolous civil fraud claim in the New York state court against the Stati Parties' creditor bondholder, U.S.-based private equity firm Argentem Creek Partners ("ACP") and its CEO, ostensibly on the basis of

¹ The Svea Court of Appeal upheld the ECT Award in full, dismissing all of Kazakhstan's challenges (including allegations of fraud), and denied Kazakhstan the right to appeal its judgment to the Swedish Supreme Court on December 9, 2016. The Swedish Supreme Court rejected Kazakhstan's extraordinary review application on October 24, 2017. On January 31, 2020, the Svea Court of Appeal dismissed Kazakhstan's second challenge of the ECT Award filed on the basis of alleged new evidence. The Swedish Supreme Court again upheld the ECT Award and dismissed all of Kazakhstan's challenges to the Award on May 18, 2020.

ACP providing certain financial assistance to the Stati Parties in their ECT Award enforcement efforts. These measures form part of Kazakhstan's transparent strategic course of harassment and intimidation through illegitimate and bad faith litigation.

As noted above, Kazakhstan has also engaged in sham transactions to try to shield its assets from enforcement of the legally binding and final ECT Award. Specifically, in October 2017, the Stati Parties obtained an attachment of assets of Kazakhstan's National Fund in Belgium held by BNY Mellon in its capacity as the global custodian of the National Fund, managed by the National Bank of Kazakhstan ("NBK") in its capacity as the trustee manager of the Fund. Kazakhstan and NBK appealed the attachment, arguing among other things that the attached funds were not Kazakhstan's and if they were, they were immune from attachment under the sovereign immunity doctrine.

As you are aware, the Brussels Court of Appeal recently confirmed the Stati Parties' attachment and rejected Kazakhstan's and NBK's appeal. The Court held that "the concrete circumstances of the case contain sufficient indications of the existence of simulation" deployed by Kazakhstan in order to hide its assets beyond the reach of the Stati Parties. The court further determined that "this is clearly a case of created appearances, which the Stati parties rightly contest by levying an attachment against the real holder of the bank accounts/funds" and that the underlying National Fund trust management agreement between Kazakhstan's Ministry of Finance and NBK is "a mere pretence to the outside world and third parties." The Belgian court also rejected all of Kazakhstan's and NBK's arguments relating to sovereign immunity of the attached assets, finding that the relevant National Fund assets "are invested solely with a view to maximizing long-term returns" and as such "do not fall under the protection of state immunity." Kazakhstan's instigation of sham transactions (or "simulation", as the Belgian court put it) to try to shield its assets from enforcement is yet another example of Kazakhstan's blatant violation of the ECT and international law and has caused significant damage to the Stati Parties.²

Kazakhstan's refusal to honor the ECT Award, and its abusive and bad faith litigation campaign, has drawn strong rebuke from courts involved in those proceedings. In the words of the United States District Court, District of Columbia:

"[T]he Republic of Kazakhstan had every right to litigate the petition to confirm the arbitral award, and they had every right to appeal my decision. But those proceedings are over. These are post-judgment proceedings. And the Republic of Kazakhstan and its counsel needs to get that into their heads because the level of intransigence that we've seen to date is not acceptable and it officially ends today

² A similar conclusion was reached by the Amsterdam Court of Appeal in its judgment of 9 May 2019 concerning an attachment levied by the Stati Parties on the shares in Dutch entity KMG Kashagan B.V. held by Kazakhstan via its sovereign wealth fund Samruk-Kazyna JSC ("Samruk"). In particular, the Dutch court found that "Samruk cannot invoke their legal independence vis-à-vis Kazakhstan to pursue their own policies that are different from those of (the politically responsible persons in) Kazakhstan", as a result of which the court found Samruk (jointly with Kazakhstan) to operate "as a means of keeping Kazakhstan's substantial assets out of the control of creditors".

I note that Kazakhstan repeatedly insists that this is a foreign arbitral award and its assets are in foreign countries. The way to avoid further proceedings in the United States, then, would be to satisfy the arbitral award with those assets and jointly inform the Court that that has been accomplished. And you're welcome to do that at any time.”³

Notwithstanding the above, Kazakhstan has not heeded the words of the District Court or any other court that has rejected its frivolous and abusive legal positions and condemned its failures to abide by the rule of law. Instead, Kazakhstan continues to breach its obligations under the ECT and international law.

Each of the Stati Parties qualifies as an “Investor of a Contracting Party” under Article 1(7) of the ECT. Specifically, Anatolie Stati and Gabriel Stati each hold the nationality of Moldova and Romania, which are Contracting Parties to the ECT. Ascom is incorporated in Moldova, and Terra Raf is incorporated in Gibraltar, to which the ECT applies by virtue of Article 45(1).

The Stati Parties own protected investments as crystallized in the ECT Award. As that Award held, the Stati Parties were the rightful owners of numerous protected investments in Kazakhstan. The ECT Award crystallized the Stati Parties’ rights related to those investments, and furthermore itself constitutes an investment within the meaning of Article 1(6) the ECT, which defines “investment” broadly as “every kind of asset,” including (but not limited to) “tangible and intangible . . . property, and any property rights . . . ;” “claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;” and “any right conferred by law or contract or by virtue of any licenses and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.” The ECT further provides that “[a] change in the form in which assets are invested does not affect their character as investments...” Thus, the Stati Parties are protected investors with protected investments.

The acts described above, as well as related acts and omissions of Kazakhstan since December 2013, constitute serious and material violations of the protections accorded to the Stati Parties and their investments under the ECT. In particular, the ECT requires Kazakhstan to: (i) at all times accord fair and equitable treatment to investments; (ii) provide the most constant protection and security; (iii) refrain from impairing the management, maintenance, use, enjoyment, or disposal of investments by unreasonable or discriminatory measures; (iv) treat investments in accordance with international law; (v) observe any obligations it has entered into with an investor or in relation to an investment; and (vi) refrain from unlawfully expropriating an investment.

Kazakhstan’s conduct violates those provisions, and we are confident that any arbitral tribunal constituted to hear this dispute would reach that conclusion and order Kazakhstan to pay significant compensation to the Stati Parties.

³ Transcript of the Hearing before the D.C. Federal Court on 10 August 2020, pp. 3 and 27.

Kazakhstan's violations of the ECT have substantially harmed the Stati Parties, depriving them of the compensation to which they are entitled under the ECT Award (plus interest), forcing them to incur dozens of millions of dollars in legal fees and related expenses in the pursuit of enforcement of the ECT Award, and depriving the Stati Parties of the opportunity to pursue other ventures with these funds.

Although we have little doubt that the Stati Parties would prevail in an international arbitration against Kazakhstan, the Stati Parties are hopeful that an amicable resolution can be achieved, and arbitration can be avoided. If Kazakhstan wishes to pursue such a resolution, we stand ready to discuss the matter with its representatives or duly-appointed counsel. Any response to this invitation by Kazakhstan should be directed to our attention, as the legal representatives of the Stati Parties for this matter.

Sincerely,

King & Spalding LLP

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