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**By E-Mail and Courier**

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*Ref: 04-6-/34083 dated August 16, 2021*

**Re: 5 August 2021 "Notice of Legal Dispute Arising Under the Energy Charter Treaty and Offer of Amicable Settlements"**

Dear Sirs,

1. This responds to the above-referenced notice dated 5 August 2021 (the "**Notice**") addressed to the Ministry of Justice of Kazakhstan and other state agencies of the Republic of Kazakhstan (the "**Republic**" or "**Kazakhstan**") by your law firm on behalf of your clients Anatolie Stati, Gabriel Stati, Terra Raf Trans Trading Ltd. and Ascom Group S.A. (the "**Stati Parties**").
2. This letter is being sent on behalf of Kazakhstan without prejudice to the Republic's legal position in the current and/or future legal proceedings against the Stati Parties or any other parties. If this letter does not address certain matters in the Notice, it does not mean that the Republic agrees with them and it expressly reserves its right to address them in the future.
3. The Notice states that Kazakhstan has "...*deliberately flouted its obligation under the ECT to satisfy an arbitral award rendered in favor of the Stati Parties....*" and that the alleged purpose



of the letter is "...to summarize the nature of the legal dispute and to invite Kazakhstan to resolve the dispute amicably."

4. Kazakhstan would welcome a good faith assessment of the dispute in full transparency and on the basis of a complete and truthful record. Your approach, however, raises doubts whether this Notice can be considered an honest attempt to resolve a long standing dispute.
5. **First**, you provided the Notice to various media outlets in advance and served it only five days later officially on the Ministry of Justice of Kazakhstan.
6. **Second**, the Notice states that any "... response to this invitation by Kazakhstan should be directed to our attention, as the legal representatives of the Stati Parties for this matter." The Notice, however, does not identify what attorney at King & Spalding LLP actually signed the Notice and thus approved its issuance; it makes no reference to any individual member of your firm. Please provide this information immediately. In the absence of this information, this letter is addressed to you, the firm's management.
7. **Third** and most importantly, despite the fact that your firm has represented the Stati Parties from the initial arbitration against Kazakhstan under the Energy Charter Treaty ("**ECT**") (the "**ECT Arbitration**") leading to the arbitral award of December 2013 (the "**Award**") until today in all related proceedings, you purport to "*summarize the nature of the legal dispute*" without addressing the evidence that gradually emerged after the ECT Arbitration proving that the Award was procured by fraud. The Stati Parties and your law firm are fully aware of this evidence and the Notice therefore contains a number of wilful misrepresentations, false statements, and material omissions.
8. From the ECT Arbitration until today the Stati Parties systematically withheld evidence of their fraudulent actions. Where evidence was exposed, the Stati Parties systematically suppressed it, thereby creating a deliberately false and incomplete record. This is ongoing. The most salient example is the decision of the Stati Parties' auditors KPMG Audit LLP ("**KPMG**") to invalidate their audit reports issued for the financial statements of the Stati Parties' companies in Kazakhstan (the "**Financial Statements**") because of materially false representations made by the Stati Parties. The Notice does not mention the Stati Parties' continued use of falsified Financial Statements even though this is a central issue of the dispute.
9. Other material misrepresentations and omissions are set out in more detail below and include:
  - a. The Notice relies on decisions of the courts of the seat in Sweden without mentioning that the Swedish courts never had the benefit of a truthful and complete record because crucial evidence was intentionally withheld by the Stati Parties.
  - b. The Notice makes no mention of the decision of the English High Court finding *prima facie* that the Award was procured by fraud and that the fear of being exposed led the Stati Parties to abandon the English proceedings and instead initiate proceedings in other jurisdictions.
  - c. The Notice states that the Stati Parties were "*forced to pursue enforcement in numerous jurisdictions*" thereby creating the appearance that the multiple enforcement proceedings were caused by Kazakhstan when instead it was prompted by the wish to avoid a final decision in the English courts which would have fully exposed the fraudulent schemes of the Stati Parties as well as everyone supporting them.
  - d. The Notice states that the Award was recognized in Belgium, Luxembourg, Italy, the Netherlands, Sweden and the U.S without mentioning that not all proceedings are final and, more importantly, were procured on the basis of an intentionally false and incomplete record. For example in the Netherlands, the lawyers of the Stati Parties have been asked repeatedly to set the record straight and inform the Dutch courts fully about the decision of KPMG to invalidate their audit reports.



- e. The Notice states that Kazakhstan's allegation that the Award was procured by fraud "*..has been rejected by courts in no fewer than six different jurisdictions: Belgium, Italy, Luxembourg, the Netherlands, Sweden and the U.S.*" The Stati Parties know that they procured these decisions on the basis of an incomplete and false record, and that none of the courts decided on the merits of the fraud.
- f. The Notice makes no reference of the evidence of fraud presented by Kazakhstan. The Stati Parties continue to avoid any engagement in substance with the evidence that remains unrebutted.

## Executive Summary

10. It is now known that your clients – the Stati Parties – have been engaged in multiple criminal schemes for more than a decade. The basis of these schemes is fraud. The evidence proving this fraud – much of which has only recently been uncovered – is irrefutable.
11. A Stati Parties' company has been sanctioned by the U.S. government in connection with illegal arms sales in South Sudan.<sup>1</sup> The Stati Parties are under criminal investigation in Luxembourg. The English High Court of Justice concluded prima facie that the Stati Parties obtained the Award by fraud.<sup>2</sup> Their former Chief Financial Officer, Artur Lungu, admitted key elements of the fraud under cross-examination in sworn testimony.<sup>3</sup> KPMG has withdrawn all of its audit reports for the Stati Parties' financial statements because of the fraud.<sup>4</sup> Multiple independent experts have assessed the evidence and confirmed the Stati Parties' fraud (*infra*, para. 24). In response, the Stati Parties do not have a single independent expert that contradicts these findings.
12. In 2020 and 2021, the Republic has obtained substantial legal victories against the Stati Parties and/or their co-conspirators in ongoing legal proceedings in various jurisdictions. This includes but is not limited to court decisions overturning the previous orders concerning the Stati Parties' wrongful attachments in the Netherlands and Sweden, refusing the Stati Parties' application to validate the enforcement of the Award in Luxembourg, invalidating the judgments issued in the Stati Parties' favour allowing the recognition of the Award in Luxembourg, and ordering the Stati Parties to compensate the Republic for USD millions in legal fees and expenses.
13. Given the foregoing, Kazakhstan categorically rejects your clients' assertions that Kazakhstan has "*flouted*" any obligation to satisfy the Award or engaged in any "*frivolous and abusive litigation*". The opposite is true. Starting with ECT Arbitration, the Stati Parties (represented by your law firm) have engaged in a campaign of bad faith, suppression of evidence and fraudulent litigation against the Republic.
14. The Stati Parties' unlawful conduct has caused substantial harm. To remedy this, and end this long-running dispute, the Stati Parties must (i) vacate the fraudulent Award; (ii) vacate any court decisions recognizing the Award; (iii) pay the Republic the amounts that have been ordered by various national courts; (iv) pay Kazakhstan compensation in an amount equal to the damage caused by the Stati Parties' illegal schemes and (v) set the record straight in the ongoing court proceedings.

<sup>1</sup> <https://www.bis.doc.gov/index.php/regulations/1407-15-south-sudanese-entities-added-to-the-entity-list>; <https://www.federalregister.gov/documents/2018/03/22/2018-05789/addition-of-certain-persons-to-the-entity-list-and-removal-of-certain-persons-from-the-entity-list>.

<sup>2</sup> Judgment of Mr Justice Knowles dated 6 June 2017, para. 92 [Stati et al. v. The Republic of Kazakhstan, In the High Court of Justice, Queen's Bench Division, Commercial Court, CL-2014-000070].

<sup>3</sup> The Oral Videotaped Deposition of Artur Lungu dated 3 April 2019, In Re Application of Republic of Kazakhstan for Order Directing Discovery from Artur Lungu Pursuant to 28 U.S.C. § 1782, Misc. Action No. 4:19-mc-00423 (S.D. Tex. 2019).

<sup>4</sup> Letter from KPMG Audit LLP to the Stati Parties dated 21 August 2019.



15. The Republic would welcome a new arbitration being filed by the Stati Parties and your law firm under the ECT. This would provide the Republic with the opportunity that it was denied by your clients (and your law firm) in the prior arbitration -- to have the undisputed evidence of the Stati Parties' fraud, corruption and money laundering examined on the merits by an independent arbitral tribunal.

### Context of the Dispute

16. Before engaging with the substance of the Notice, we believe that it is important to put the current dispute between Kazakhstan and the Stati Parties in the proper context.
17. In July 2010, the Stati Parties used the ECT to file the ECT arbitration against Kazakhstan. The gravamen of the Stati Parties claims in this arbitration – accepted by the tribunal – was that they had been treated unfairly by Kazakhstan. The Stati Parties claimed over USD 2 billion in damages but, in the December 2013 Award, were awarded circa USD 500 million by the arbitral tribunal (the "**Tribunal**").
18. The evidence of the Stati Parties' fraud was not available to Kazakhstan during the ECT Arbitration. This evidence would have been highly relevant to Kazakhstan's defences to your clients' claims.
19. Years after the completion of the ECT Arbitration in December 2013, Kazakhstan began to discover information showing that the Stati Parties had engaged in multiple false and/or fraudulent schemes during the operation of their Kazakh companies, as well as during the ECT Arbitration itself, where they were represented by your law firm. The initial discovery of evidence related to the arbitration proceedings that the Stati Parties conducted against a third party, where the identical attorneys at your law firm also acted as counsel to the Stati Parties (the "**Parallel Arbitration**").
20. In 2015, after learning of the Parallel Arbitration, Kazakhstan initiated discovery proceedings in the United States. The Stati Parties, again represented by your law firm, vigorously opposed Kazakhstan's discovery efforts. Despite the opposition, in mid-2015, the U.S. District Court for the Southern District of New York issued an order authorizing Kazakhstan to obtain evidence from the Parallel Arbitration. This evidence provided the first hints that the Stati Parties, represented by this team of attorneys from your law firm, misled the Tribunal on a number of crucial points.
21. Kazakhstan was not aware of these facts during the ECT Arbitration because the Stati Parties, again with your law firm's assistance, suppressed this evidence. Specifically, neither the Stati Parties, nor your firm disclosed any of the relevant facts, which are discussed below (*infra*, para. 31), despite the Tribunal's disclosure orders compelling that such information be produced.
22. Recently, Kazakhstan has uncovered further evidence of the Stati Parties' fraud. This evidence has further proven the one fraud scheme discovered in 2015 (the so-called "**LPG Plant Fraud**") as well as four additional schemes. None of this evidence was provided by the Stati Parties or your law firm; instead it had to be discovered piecemeal by the Republic.
23. As has been mentioned above (*supra*, para. 11), the facts of the Stati Parties' illicit deeds (*infra*, paras. 33a - 33i) are supported by irrefutable factual and expert evidence, including the testimony of your clients' former Chief Financial Officer, Mr Artur Lungu<sup>5</sup> (who was represented at his deposition by this same team of attorneys at your firm), and the bank account statements of dozens of your clients' companies. That the Stati Parties financial statements were materially falsified was confirmed in August 2019, when their statutory

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<sup>5</sup> The Oral Videotaped Deposition of Artur Lungu dated 3 April 2019, In Re Application of Republic of Kazakhstan for Order Directing Discovery from Artur Lungu Pursuant to 28 U.S.C. § 1782, Misc. Action No. 4:19-mc-00423 (S.D. Tex. 2019).



auditor KPMG withdrew all its 18 audit reports – covering 26 sets of financial statements issued over the course of three (3) years.<sup>6</sup>

24. With the evidence that is now available, the Stati Parties' fraud and other illegal and unethical conduct has been confirmed by reports issued by world-leading independent experts, including:

- a. Professor George Bermann;<sup>7</sup>
- b. Professor Bernard Hanotiau;<sup>8</sup>
- c. Professor Christoph Schreuer;<sup>9</sup>
- d. Professor Kaj Hobér;<sup>10</sup>
- e. Professor Catherine Rogers;<sup>11</sup>
- f. Dr Patrik Schöldström;<sup>12</sup>
- g. Mr Stefan Cassella;<sup>13</sup>
- h. Deloitte & Touche GmbH ("**Deloitte**");<sup>14</sup>
- i. PricewaterhouseCoopers LLP ("**PwC**");<sup>15</sup>
- j. BDO Mälardalen AB;<sup>16</sup>
- k. Transfer Pricing Associates Global B.V. ("**TPA Global**").<sup>17</sup>

25. In response, neither the Stati Parties nor your law firm have been able to obtain a single opinion from an independent expert stating that the Stati Parties did not engage in the fraud. Instead, the Stati Parties have relied on witness testimony of one of your firm's partners - Mr Egishe Dzhazoyan, who assisted your clients in the ECT Arbitration and throughout the post-ECT Arbitration proceedings.

26. As a result of the Stati Parties' conduct in the ECT Arbitration and post-ECT Arbitration proceedings in national courts, the evidence of fraud has not been properly addressed by the various tribunals and courts on the merits. This is confirmed by the courts that have issued decisions in relation to your clients,<sup>18</sup> as well as by various independent legal experts.<sup>19</sup>

27. The Stati Parties (with the assistance of your firm) have taken all steps to suppress the crucial evidence of fraud. Notwithstanding this, one court has seen through the misrepresentations and false statements. On 6 June 2017, the High Court of Justice of England and Wales (Mr Justice Knowles), issued a judgment finding that "*there is a sufficient prima facie case that the Award was obtained by fraud*" (the "**Knowles**

<sup>6</sup> Letter from KPMG Audit LLP to the Stati Parties dated 21 August 2019.

<sup>7</sup> Expert Opinion of Professor George Bermann dated 17 January 2021.

<sup>8</sup> Expert Opinion of Professor Bernard Hanotiau dated 29 April 2021.

<sup>9</sup> Expert Opinion of Professor Christoph Schreuer dated 21 January 2020.

<sup>10</sup> Expert Opinion of Professor Kaj Hobér dated 30 June 2021.

<sup>11</sup> Expert Opinion of Professor Catherine Rogers dated 17 January 2021.

<sup>12</sup> Expert Opinion of Patrik Schöldström dated 23 August 2020.

<sup>13</sup> Expert Opinion of Stefan Cassella dated 30 July 2020.

<sup>14</sup> Expert Report of Thomas Gruhn of Deloitte dated 12 January 2017.

<sup>15</sup> Expert Report of PwC: Review of Transactions by the Stati Parties for Characteristics of Money Laundering Risks dated 29 July 2020; Expert Report of PwC: Review of the Application of TNG and KPM Funds by the Stati Parties dated 29 July 2020.

<sup>16</sup> Expert Opinion of BDO dated 25 November 2019.

<sup>17</sup> Expert Opinion of TPA Global dated 6 February 2019.

<sup>18</sup> See, e.g., Order of the United States District Court of the District of Columbia dated 19 March 2021, p. 4 [Civil Action No. 14-1638 (ABJ)].

<sup>19</sup> See, e.g., Expert Opinion of Professor George Bermann dated 17 January 2021; Expert Opinion of Professor Kaj Hobér dated 30 June 2021; Expert Opinion of Professor Bernard Hanotiau dated 29 April 2021; Expert Opinion of Patrik Schöldström dated 23 August 2020.



**Judgment"**). However, just a few months before the High Court was to conduct a full trial on the LPG Plant Fraud, the Stati Parties (with the assistance of your firm) discontinued their own case. The Stati Parties did this to avoid the trial. The English courts only allowed this extraordinary event to take place on three harsh conditions: (1) that an ex parte order declaring the Award enforceable be vacated; (2) that the Stati Parties never again initiate enforcement proceedings against Kazakhstan in England; and (3) that the Stati Parties pay Kazakhstan millions of US dollars in legal fees and expenses.

28. The Stati Parties would not have agreed to these harsh conditions if they had a good faith defense to the LPG Plant Fraud case. Conspicuously, the Notice does not even mention the English legal proceedings.
29. After the English High Court made its fraud ruling against the Stati Parties, they (with the assistance of your firm) themselves initiated court proceedings against the Republic in at least 5 other jurisdictions.
30. In this regard and in light of the irrefutable evidence of money laundering and use of proceeds of crime, we expect that all the parties and service providers that are assisting and/or supporting the Stati Parties in their current illicit campaign against Kazakhstan are aware of the above mentioned facts and evidence, and are considering consequential implications on their respective legal obligations.

### **Kazakhstan's Position**

31. To remedy the wrongs inflicted by the Stati Parties on the Republic, and end this long-running dispute, the Stati Parties must agree to (i) vacate the fraudulent Award; (ii) vacate any court decisions recognizing the Award; (iii) pay Kazakhstan all amounts that have been ordered by the courts; and (iv) pay Kazakhstan compensation in an amount equal to the damage caused by their unlawful conduct.
32. Kazakhstan is committed to protecting and advancing the rule of law. To the extent that the Notice suggests that the Republic should enter into negotiations under which it would make a payment to the Stati Parties, any such negotiations and/or payment would make the Republic a party to your clients' fraudulent schemes and therefore are a non-starter.
33. The evidence of the Stati Parties' criminal schemes is extensive, and includes but is not limited to the following:
  - a. The Stati Parties **fabricated invoices and commercial contracts** so as to create appearance of a legitimate business operation. A vivid example of such modus operandi is the English company called Perkwood Investment Ltd ("**Perkwood**") and the Russian company Azalia Ltd ("**Azalia**"). Perkwood and Azalia were presented by the Stati Parties to the outside world as legitimate independent companies, while in reality they were sham companies fully controlled by the Stati Parties. As was confirmed by Deloitte in 2015 and 2017 (years after the completion of the ECT Arbitration) and unrebutted by the Stati Parties, your clients have diverted "*up to US\$ 130 million*" to their pockets with the help of Perkwood and Azalia.<sup>20</sup>
  - b. The Stati Parties **falsified the Financial Statements**. They did this by intentionally inflated costs in the Financial Statements and failing to disclose related party transactions for hundreds of millions of US dollars. These facts have been confirmed by Deloitte,<sup>21</sup> PwC<sup>22</sup>, BDO,<sup>23</sup> and TPA Global<sup>24</sup> in evidence provided between 2016 and 2020 (years after the ECT Arbitration).

<sup>20</sup> Expert Report of Thomas Gruhn of Deloitte dated 12 January 2017, para. 28(e).

<sup>21</sup> *Ibid.*



- c. The Stati Parties **lied to their statutory auditor** by submitting the falsified Financial Statements to KPMG and by providing KPMG with falsified schedules of related parties and related party transactions. After being informed of the pertinent facts, including Mr Lungu's testimony, on 21 August 2019 (6 years after the ECT Arbitration) KPMG invalidated all of its audit reports for the Stati Parties' Financial Statements – 18 reports over the period of three consecutive years covering 26 sets of Financial Statements.<sup>25</sup> Moreover, KPMG instructed the Stati Parties to inform all parties that relied on the audit reports of its decision. In violation of this instruction, the Stati Parties have not informed any parties of KPMG's invalidation of the audit reports.
- d. The Stati Parties **unlawfully diverted hundreds of millions of US dollars to offshore jurisdictions** from Kazakh subsoil use operations. This is confirmed by the expert evidence from PwC dated 29 July 2020<sup>26</sup> (i.e. 7 years after the completion of the ECT Arbitration).
- e. The Stati Parties **bribed the former Deputy Minister of Energy of Kazakhstan**. This fact is evident from the bank account statements of the Stati Parties' companies provided to Kazakhstan by the Latvian law enforcement authorities in 2019 (6 years after the ECT Arbitration). These bank account statements have been analysed by PwC in July 2020, who confirmed the existence of the relevant transactions.<sup>27</sup> The Kazakh law enforcement authorities have initiated the relevant criminal investigation against the recipient of the bribes. The Stati Parties have never denied the payment of money to the relevant person.
- f. As a consequence of the facts in sub-paragraphs "a" – "e" above, the Stati Parties **misled the Tribunal on Kazakhstan's alleged liability** under the ECT. The centrepiece of the Stati Parties' liability case was the assertion that the Republic was responsible for the negative financial situation of KPM and TNG. The newly discovered evidence proves that the Stati Parties themselves were liable for the financial situation of KPM and TNG.
- g. As a consequence of the facts in sub-paragraphs "a" – "e" above, the Stati Parties also **misled the Tribunal on the quantum** of their investments in Kazakhstan. As has now been confirmed by PwC,<sup>28</sup> Deloitte,<sup>29</sup> BDO,<sup>30</sup> and TPA Global<sup>31</sup> (and unrebutted by your clients), the Stati Parties knowingly submitted intentionally inflated financial information to the Tribunal, which the Tribunal then used for the valuation of the Stati Parties' compensation under the Award.
- h. In light of all the above, the Award is **a product of fraud**.
- i. The Stati Parties have also **intentionally misled the courts** in the post-ECT Arbitration proceedings in Sweden, the United States, the Netherlands, Belgium, Italy and Luxembourg by inter alia systematically suppressing evidence and/or providing false statements. The pattern of the Stati Parties' illicit conduct in the

<sup>22</sup> Expert Report of PwC dated 21 January 2020; Expert Report of PwC: Review of the Application of TNG and KPM Funds by the Stati Parties dated 29 July 2020; Expert Report of PwC: Review of Transactions by the Stati Parties for Characteristics of Money Laundering Risks dated 29 July 2020.

<sup>23</sup> Expert Opinion of BDO dated 25 November 2019.

<sup>24</sup> Expert Opinion of TPA Global dated 6 February 2019.

<sup>25</sup> Letter from KPMG to the Stati Parties dated 21 August 2019.

<sup>26</sup> Expert Report of PwC: Review of the Application of TNG and KPM Funds by the Stati Parties dated 29 July 2020, p. 13.

<sup>27</sup> Expert Report of PwC: Review of Transactions by the Stati Parties for Characteristics of Money Laundering Risks dated 29 July 2020, para. 3.71.

<sup>28</sup> Expert Report of PwC dated 21 January 2020, para. 31.

<sup>29</sup> Expert Report of Thomas Gruhn of Deloitte dated 12 January 2017, para. 28(e).

<sup>30</sup> Expert Opinion of BDO dated 25 November 2019.

<sup>31</sup> Expert Opinion of TPA Global dated 6 February 2019.



post-ECT Arbitration proceedings has been exposed by the independent expert opinion of Professor George Bermann of 17 January 2021.<sup>32</sup> Their unethical behaviour has been exposed by the above-referenced expert opinion of Professor Catherine Rogers dated 17 January 2021. Your clients have offered no substantive response to either of these opinions.

- j. At present, **law enforcement agencies** of the Grand Duchy of Luxembourg are investigating these criminal offences.

#### **False and/or Misleading Statements in the Notice**

34. There are numerous false and/or misleading statements in the Notice. For example:

- a. The Notice calls Kazakhstan "*an international outlaw that flouts its legal obligations designed to protect foreign investors*" without providing any support to this statement other than your clients' purported claims against the Republic. This statement is fundamentally false. Kazakhstan is fully committed to its international obligations towards foreign investors. This is confirmed by the increasing number and value of foreign direct investments in Kazakhstan and the decreasing number of investor-state disputes. As was stated in the statistics presented by the Secretary General of the International Centre for Settlement of Investment Disputes ("ICSID"), at the event organized by the World Bank on 27 May 2021, Kazakhstan has a positive record in investment disputes. Specifically, according to the ICSID presentation, of the 19 concluded investment arbitrations that have been brought against Kazakhstan since it obtained independence in 1991, Kazakhstan has in all cases but the Stati case either prevailed (10 cases), settled pre-award (2 cases) or promptly settled all awards post-annulment proceedings (6 cases). The Stati case is the one exception because of the above-referenced evidence of your client's criminal conduct before, during and after the ECT Arbitration.
- b. The Notice states that the court proceedings that the Republic has initiated against your clients and their associates are "*frivolous*" and "*groundless*". This is false. First, it is the Stati Parties, with the assistance of your law firm, that have initiated almost all of the legal proceedings concerning this matter, not the Republic. This includes legal proceedings filed in England, the United States, Sweden, Italy, Belgium, the Netherlands and Luxembourg – in addition to the underlying ECT Arbitration itself. In all of these proceedings, the Republic has asserted the limited defences to recognition and enforcement of an international arbitral award that are available under the New York Convention and/or other applicable law. An assertion of an available legal defence (which has been found to be valid *prima facie* by the English court) does not constitute an "abuse of law". Confirming this, the Notice cites no legal authority in support of this erroneous assertion.
- c. Moreover, certain of the Republic's asserted defences have been successful, despite the ongoing actions of the Stati Parties (represented by your law firm) to falsify the evidentiary record. The court proceedings that have indeed been initiated by Kazakhstan are the result of the lawful use of procedural and/or material rights that Kazakhstan enjoys in the respective jurisdictions in light of the unrebutted evidence of the Stati Parties' and their associates' fraud, corruption and money laundering. At the same time, however, the proceedings that have been initiated by the Stati Parties are indeed "*frivolous*" and "*groundless*". This has *inter alia* been confirmed by the following:
  - i. In February 2018 the Stati Parties discontinued the enforcement proceedings in London at the cost of being obliged to pay Kazakhstan its legal costs, after on 6 June 2017 the High Court of Justice of England and

<sup>32</sup> Expert Opinion of Professor George Bermann dated 17 January 2021.



Wales decided that there existed "a sufficient prima facie case that the Award was obtained by fraud" (i.e. the Knowles Judgment).<sup>33</sup> According to the High Court, the reason behind the discontinuance of their own proceedings at such a cost was "that the Statis do not wish to take the risk that the trial may lead to findings against them and in favour of the State."<sup>34</sup> We note that in attempting to escape the examination of the fraud on the merits by the English High Court, the Stati Parties acted ostensibly in persona, as your law firm formally came of the record, while still acting as counsel for the Stati Parties in all other proceedings and appearing at hearings before the High Court on a "pro bono" basis and "as courtesy" to your clients. We also note that the Stati Parties' escape was generously funded by the entities affiliated with Argentem Creek Partners and its CEO, Mr Daniel Chapman, against whom the Republic filed a lawsuit in the United States.

- ii. Immediately after the Knowles Judgment the Stati Parties, with the help of your firm, initiated court proceedings against the Republic in at least 5 other jurisdictions, and subsequently discontinued the English proceedings, as explained above. In these new proceedings, the Stati Parties continued their pattern of systematic suppression of evidence and provision of misleading information, which is confirmed by the expert evidence of Professor George Bermann,<sup>35</sup> as well as by the judgment of the Amsterdam District Court of 3 January 2018, finding that the Stati Parties had breached their duty to be truthful to the court.<sup>36</sup> Notably, this judgment is not referred to in your publicised Notice.
- d. The Notice states that the "Swedish courts rejected Kazakhstan's set-aside efforts on four separate occasions" and that the Award was upheld four times by the courts at the seat of arbitration in Sweden. The Stati Parties and their lawyers are fully aware that they withheld crucial evidence from the Swedish courts which decided on the basis of an untruthful and materially incomplete record. Moreover, the Stati Parties and their lawyers are fully aware that they systematically misrepresent the Swedish court decisions as decisions that include full assessment of the evidence of the fraud, when in fact they do not.
- i. In March 2014 Kazakhstan submitted a request to set aside the Award based on certain procedural irregularities. In October 2015, after discovering the first evidence of one of the Stati Parties' schemes -- the LPG Plant Fraud, Kazakhstan submitted an additional statement of claim invoking new grounds to invalidate the Award. In the new claim Kazakhstan submitted that the Stati Parties had misled the Tribunal during the ECT Arbitration. The Stati Parties denied the fraud. They did so by providing contradictory and false statements and by suppressing the evidence of their misdeeds. A vivid example of this is the correspondence between KPMG and the Stati Parties of 2016, in which KPMG questioned the legitimacy of certain costs recorded in the Financial Statements. Kazakhstan only learned about this correspondence in October 2019 (3 years after the completion of the Swedish set-aside proceedings). The Stati Parties did not make this correspondence available to the court or to Kazakhstan. Instead, the Stati Parties knowingly made false statements to the Swedish court, alleging that KPMG raised no doubts about the

<sup>33</sup> Judgment of Mr Justice Knowles dated 6 June 2017, para. 92 [Stati et al. v. The Republic of Kazakhstan, In the High Court of Justice, Queen's Bench Division, Commercial Court, CL-2014-000070].

<sup>34</sup> Judgment of Mr Justice Knowles dated 11 May 2018, para. 25 [Stati et al. v. The Republic of Kazakhstan, In the High Court of Justice, Queen's Bench Division, Commercial Court, CL-2014-000070].

<sup>35</sup> Expert Opinion of Professor George Bermann dated 17 January 2021.

<sup>36</sup> Judgment of the Amsterdam District Court dated 3 January 2018, para. 5.4 [Case No: C/13/639737 / KG ZA 17-1303 FB/MV].



accuracy of the Financial Statements. In other words, the Stati Parties misled the Svea Court of Appeal, just as they had misled the Tribunal. This is confirmed by an independent expert Dr Patrik Schöldström (now a judge on this same Svea Court of Appeal) who opined that the Stati Parties violated their duty of candor to the court.<sup>37</sup> In any event, the Svea Court of Appeal did not make a ruling on the merits of Kazakhstan's fraud case. This is evident from the judgment itself. Moreover, it has been confirmed by the decision of the High Court of Justice of England and Wales of 27 June 2017 finding that "*with limited exceptions the Swedish Court did not in the event form a view on the evidence and material before it.*"<sup>38</sup> Similarly, a world leading international investment arbitration expert and a Swedish law professor, Professor Kaj Hobér also found that the Svea Court of Appeal "*has not analysed, tried or ruled on the existence of the fraud alleged by [Kazakhstan]*".<sup>39</sup> It is not a coincidence that the Stati Parties failed to present any evidence or even statement to the contrary by a Swedish expert or even their own lawyers.

- ii. Under Swedish arbitration law, a Court of Appeal determining a challenge of the award also decides whether its judgment may be appealed to the Swedish Supreme Court. In this case, the Svea Court of Appeal held that its judgment could not be appealed. Kazakhstan, nevertheless, submitted an application directly to the Supreme Court on the basis of a grave procedural error by the Svea Court of Appeal. In October 2017, the Swedish Supreme Court issued a one page decision, denying the Kazakhstan's request. As also is confirmed by Professor Kaj Hobér, "*[g]iven the formal nature of this type of proceedings the Swedish Supreme Court did not rule on the merits of the Kazakhstan's fraud allegations.*"<sup>40</sup>
- iii. The further decisions of March 2020 of the Svea Court of Appeal and May 2020 of the Swedish Supreme Court were issued in relation to Kazakhstan's attempt to introduce new evidence of the Stati Parties' fraud to the Swedish judiciary. The Svea Court of Appeal and the Swedish Supreme Court refused Kazakhstan's application on pure procedural grounds. Neither of these decisions analysed the evidence on the merits. This is confirmed by the independent expert evidence of Professor Kaj Hobér<sup>41</sup> and Dr Patrik Schöldström.<sup>42</sup>
- e. The Notice references various statements made by the U.S. District Court for the District of Columbia, while at the same time you omit to mention that the same court has confirmed that "*the Court's decision in the racketeering case was based on the sufficiency of the federal claims in the complaint filed against the Stati Parties on their face, and it expressly did not address the validity of any state law claims.*"<sup>43</sup> In other words, the U.S. courts have confirmed that it did not examine the merits of the evidence of the Stati Parties' illicit conduct. The Notice omits this critical fact, which is highly misleading.
- f. The Notice asserts that the courts in Luxembourg have "*successfully recognized*" the Award. This is false. As your law firm and the Stati Parties are aware, on 11

<sup>37</sup> Expert Opinion of Patrik Schöldström dated 23 August 2020, para. 10.

<sup>38</sup> Order of Justice Knowles dated 27 June 2017, [Stati et al. v. The Republic of Kazakhstan, In the High Court of Justice, Queen's Bench Division, Commercial Court, CL-2014-000070].

<sup>39</sup> Expert Opinion of Professor Kaj Hobér dated 30 June 2021, para. 48.

<sup>40</sup> *Ibid.*, para. 41.

<sup>41</sup> Expert Opinion of Professor Kaj Hobér dated 30 June 2021.

<sup>42</sup> Expert Opinion of Patrik Schöldström dated 23 August 2020.

<sup>43</sup> Order of the United States District Court of the District of Columbia dated 19 March 2021, p. 4 [Civil Action No. 14-1638 (ABJ)] (emphasis added).



February 2021, the highest court in Luxembourg (the Court of Cassation) quashed and invalidated the judgment that was rendered in the Stati Parties' favour, recognizing the Award.

- g. The Notice states that the courts in Belgium have "*successfully recognized*" the Award. However, it fails to mention that on 17 November 2020, over the Stati Parties' objections, the Brussels Court of Appeal granted the Republic's application for a full appeal on the merits, including on the new evidence of the fraud. In this respect, the Notice is misleading.
  - h. The Notice states that the courts in Italy have "*successfully recognized*" the Award. However, it fails to mention that the cassation proceedings are still ongoing. In this respect, the Notice is misleading.
  - i. The Notice states that the courts in the Netherlands have "*successfully recognized*" the Award. However, it fails to mention that the cassation proceedings are still ongoing and that on 4 June 2021, the Dutch Advocate General issued an opinion that the Republic's cassation application should be granted. In this respect, the Notice is misleading.
  - j. The Notice also fails to mention that in issuing its decision to recognize the Award, the Amsterdam Court of Appeal was denied access to the complete and truthful record of evidence by the Stati Parties and their Dutch counsel. In October 2019 (2 months after the final hearing before the Amsterdam Court of Appeal), Kazakhstan obtained new evidence of the Stati Parties' fraud in the form of correspondence between the Stati Parties and their former statutory auditor, KPMG that took place *inter alia* in February – March 2016. Accordingly, on 13 November 2019, the Dutch counsel to Kazakhstan wrote to Nauta Dutilh, the Dutch counsel to the Stati Parties, stating that this new evidence showed that they had deceived KPMG, the Svea Court of Appeal in Sweden, the English High Court and the Amsterdam Court of Appeal. Kazakhstan's letter also advised the Stati Parties that Dutch procedural law obligated them to submit the correspondence exchanged between KPMG and the Stati Parties to the Amsterdam Court of Appeal, notwithstanding the fact that the procedural debate was closed and the judgment was pending. Kazakhstan itself was prevented from submitting such evidence without the Stati Parties' consent because of applicable Dutch Rules of Procedure and Professional Conduct. In their written reply dated 22 November 2019, Nauta Dutilh made no comment on the new evidence, reiterating that the procedural debate was over and judgment was pending.
35. Because your law firm and your clients have chosen to make this communication public, we demand that the above incorrect and misleading statements are rectified immediately.

#### **Alleged Claim**

36. For the foregoing reasons, and without prejudice to any additional reasons that Kazakhstan reserves the right to raise, there is no merit whatsoever to the assertions in the Notice that Kazakhstan has violated any of its obligations under the ECT.
37. In all instances, Kazakhstan has made and continue to make use of lawfully existing procedural and/or judicial mechanisms of the relevant jurisdictions where the Stati Parties themselves have decided to initiate litigation against Kazakhstan.
38. The Notice also alleges that the Stati Parties are forced by Kazakhstan to pursue enforcement of the Award "*in numerous jurisdictions.*" This is false. As explained above, it is only 4-5 years after the ECT Arbitration and soon after the Knowles Judgment, finding the *prima facie* evidence of the Stati Parties' fraud, that the Stati Parties themselves decided to initiate proceedings against Kazakhstan "*in numerous jurisdictions.*" This action



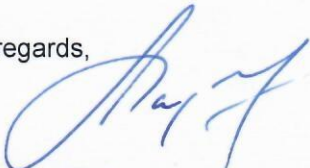
was taken voluntarily by the Stati Parties because (with your law firm's assistance) they were desperate to escape *at all costs* the examination of their fraud by the English court.

39. Furthermore, the Stati Parties have, in fact, lost a number of court proceedings, as a result of which they owe the Republic and the National Bank of Kazakhstan several million US dollars, which they have not yet paid. Apart from the English proceedings that are mentioned above, the Stati Parties also abruptly discontinued one other litigation that they themselves had initiated in New York. In the District of Columbia the Stati Parties have recently (with the assistance of your firm) filed a new motion based on an objective lie that certain diplomatic property is used for commercial purposes.
40. Finally, the lack of proper particularisation and substance of the Stati Parties' alleged claim against Kazakhstan are indicative of the Stati Parties' (and your) real intentions behind the Notice.

#### **New Arbitration**

41. We note the statement in the Notice that the Stati Parties wish to make recourse to the cooling-off-period under the ECT. This directly contradicts their position in the ECT Arbitration. There, the Stati Parties (represented by your law firm) insisted that they did not have to respect the cooling-off-period and that the cooling-off-period may be satisfied also after the commencement of arbitration. Your clients submitted expert evidence to support this position.
42. The Republic suggests that the Stati Parties immediately submit the dispute to the resolution of an international arbitral tribunal, as *inter alia* provided under Article 26(2) of the ECT. In light of the unusual circumstances of the current Notice, where the Republic and the Stati Parties have been in a legal dispute for over a decade, Kazakhstan confirms that it will not object to such approach by the Stati Parties.
43. The Republic suggests that the dispute is submitted to ICSID, as it institutionalizes the settlement of investor-state disputes and is one of the most transparent international dispute settlement institutions.
44. The Republic reserves its rights to submit counterclaims against the Stati Parties.

Kind regards,



Almat Madaliyev

Vice-Minister of Justice of Kazakhstan