

**Niko Resources (Bangladesh) Ltd.**

**v.**

**Bangladesh Petroleum Exploration & Production Company Limited (“Bapex”), and  
Bangladesh Oil Gas and Mineral Corporation (“Petrobangla”)  
(ICSID Case Nos. ARB/10/11 and ARB/10/18)**

In paragraph 292(5) of the Decision on the Payment Claim, the Tribunals invited the Parties “to seek an amicable settlement with respect to the modalities for implementing the present decision and to report by no later than 30 September 2014.” Paragraph 292(6) further indicated that “[f]ailing amicable settlement, any Party may seize the Tribunal for recommendations on provisional measures or a final decision concerning the outstanding amounts.”

Further to the Tribunals’ invitation, the Parties subsequently submitted reports and informed the Tribunals on the status of their discussions on several occasions, including at the Procedural Consultation of 12 November 2014.

On 25 November 2014, the Claimant filed a Request for Provisional Measures concerning the Decision on the Payment Claim (the “Request”), the Parties having failed to reach an amicable settlement with respect to the modalities for implementing the Decision on the Payment Claim. In its Request, the Claimant requested that “the Tribunals order provisional measures that provisionally give effect to the Decision on the Payment Claim pending the Tribunals’ decision in the Compensation Declaration” (Request, ¶ 2). Specifically, the Claimant requested that “the Tribunals adopt provisional measures ordering Petrobangla to pay the outstanding amounts stated in paragraph 292(1) and (2) of the Decision on the Payment Claim (amounts in principal and pre-award interest) along the lines suggested in Alternatives A to D of Niko’s Revised Submissions of 29 April 2014, and as the Tribunals deem fit.” (Request, ¶ 8)

Upon a preliminary review, the Tribunals note that the relief sought by the Claimant concerns, *inter alia*, the manner in which Petrobangla will have to comply with its payment obligation as confirmed in the Decision on the Payment Claim. As such it may have to be characterised as a decision on the substance of the claim, rather than a provisional measure. In addition, the Request also requires that the amount due on account of pre-award interest be determined. For these reasons, the nature of the Request may have to be reconsidered.

In light of the above, the Tribunals now make the following

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1. The Claimant is invited by Friday 5 December 2014
  - (a) to clarify the nature of the relief that is being sought before the Tribunals, namely whether the relief sought is an aspect of the Tribunals’ decision on the merits of

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- the dispute (determining the modalities in which the outstanding payments have to be made) or whether it is a provisional measure, as initially submitted in the Request;
- (b) to specify its request for post award compound interest, justifying the principle of compound interest, indicating the period of compounding and the applicable rates;
2. Petrobangla is invited to respond to the Request, including the clarification according to paragraph 1, by Thursday 18 December 2014, and in so doing to address
- (a) the question whether the Request should be granted as a matter of principle;
- (b) the specific measures requested by the Claimant; and, if Petrobangla does not agree with the measures requested by the Claimant,
- (c) identify any other measures which Petrobangla would find appropriate, reserving, if it wishes to do so, any objections in principle;
- (d) the interest calculation attached to the Request; if it sees the need for any corrections, Petrobangla must provide a corrected calculation by the same date; and
- (e) present its position on the Claimant’s request for post-award compound interest.
3. The Tribunals noted that important aspects of the substance of the issues on which they now invite further submissions have already been argued in previous submissions and at the Hearing on the Payment Claim. They conclude that these issues can be decided once the submissions now invited have been received. Should the Parties disagree, they are invited to inform the Tribunals accordingly in their submissions, specifying the further procedural steps that should be taken.

[signed]

On behalf of the two Arbitral Tribunals

Michael E. Schneider

President

1 December 2014