

GREENLAND MINERALS A/S

Claimant

- v -

**GOVERNMENT OF GREENLAND
(NAALAKKERSUISUT)**

First Respondent

GOVERNMENT OF THE KINGDOM OF DENMARK

Second Respondent

REQUEST FOR ARBITRATION

22 March 2022

1. INTRODUCTION

- 1.1 This request for arbitration ("**Request**") is issued on behalf of Greenland Minerals A/S ("**GMAS**" or the "**Claimant**"), pursuant to section 20 of the "*Standard Terms for Exploration Licences for Minerals (Excluding Hydrocarbons) in Greenland*" ("**Standard Terms**")¹, and section 21 of the *Danish Arbitration Act 2005* (Act No. 553 of 24 June 2005 on Arbitration as amended) ("**Arbitration Act**"). GMAS is a subsidiary of Greenland Minerals Ltd ("**GML**"), an Australian public company listed on the Australian Securities Exchange ("**ASX**").
- 1.2 GMAS hereby submits to arbitration the dispute that has arisen between GMAS and the Government of Greenland ("**Naalakkersuisut**" or the "**First Respondent**") regarding questions concerning the Exploration Licence held by GMAS ("**Exploration Licence**")² for the Kvanefjeld or Kuannersuit rare earths project in southern Greenland ("**Project**" or "**Kvanefjeld**"). For reasons explained further below, the dispute concerning the Exploration Licence also arises between GMAS and the Government of the Kingdom of Denmark ("**Danish Government**" or the "**Second Respondent**"), which, though a non-signatory, is bound by the

¹ "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*" dated 16 November 1998. These Standard Terms have been amended by Addendum No. 1 of 10 September 2010 and Addendum No. 2 of 25 June 2013 (consolidated into "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at (C-1)), as well as by Addendum No. 3 to Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland of 1 July 2014, at (C-2).

² The exploration licence in question was originally granted as Licence No. 2005/17 ("*Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq in West Greenland*" dated May 2005 and executed 6 July 2005, at (C-3)), which was amended by "*Addendum No. 1 to Licence No. 2005/17 for an Area of Nakkaalaaq in West Greenland*" dated September 2006 and executed 19 December 2006, at (C-4). Subsequently, Licence 2005/28 was granted as a separation of Licence No. 2005/17 ("*Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq North in West Greenland*" dated April 2007 and executed 14 June 2007, at (C-5)), which was amended by "*Addendum No. 1 to Licence No. 2005/28 for an Area at Naakkaalaaq in West Greenland*" dated June 2008 and executed 19 June 2008, at (C-6). Licence No. 2005/28 was renewed as Licence 2010/02 ("*Renewal of exploration licence with exclusive exploration rights for Greenland Minerals & Energy (Trading) A/S for an area near Kuannersuit in Southwest Greenland*" dated February 2010 and executed 21 April 2010, at (C-7)), which was amended by "*Addendum no. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland*" dated December 2011 and executed 6 January 2012, at (C-8), by "*Addendum No. 2 to Exclusive Licence No. 2010/02 for Exploration of Minerals Concerning a Temporary Adjustment of the Minimum Yearly Exploration Expenses for 2015 and 2016*" dated December 2015 and executed 9 February 2016, at (C-9), by "*Addendum No. 3 to Exclusive Licence No. 2010/02 for Exploration of Minerals Concerning a Temporary Adjustment of the Minimum Yearly Exploration Expenses for 2017*" dated May 2017 and executed 18 May 2017, at (C-10), by "*Addendum no. 4 on renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy A/S for the area Kuannersuit near in South Greenland*" dated June 2018 and executed 31 July 2018, at (C-11), by "*Addendum no. 5 for exploration licence no. 2010/02 on change of Licencee's name*" dated September 2018 and executed 19 September 2018, at (C-12), by "*Addendum No. 6 to Exclusive Licence No 2010/02 for Exploration of Minerals Concerning a Temporary Adjustment of the Minimum Yearly Exploration Expenses for 2018*" dated July 2018 and executed 13 August 2018, at (C-13), and by "*Addendum no. 7 to exploration licence 2010-02 on change of licence period temporary adjustment of the yearly exploration expenses for 2020*" dated January 2021 and executed 1 February 2021, at (C-14).

arbitration agreement contained within the Exploration Licence, and has had relevant involvement in the Project and Exploration Licence.

- 1.3 This dispute arises out of targeted steps taken by the newly elected Naalakkersuisut in seeking to block the progress of the Project, after GMAS invested in and worked on the Project with the active support of previous governments for over 14 years. In 2021, Naalakkersuisut caused the promulgation of controversial legislation, in the form of Greenland Parliament Act No. 20 of 1 December 2021 to ban uranium prospecting, exploration and exploitation, etc. ("**Act No. 20**").³ Representatives of Naalakkersuisut have explained to GMAS that it will not be possible for the Project to proceed as planned, and GMAS' current application for an exploitation licence ("**Exploitation Licence Application**") will be refused because, although the focus of the Project is the extraction and exploitation of rare earth elements, it will also involve the extraction of uranium at a level above the 100 ppm (0.01%) limit stated in the new law.
- 1.4 GMAS is commencing this arbitration because there is currently a dispute as to GMAS' entitlements under the Exploration Licence and the applicable law, and GMAS wants to understand its prevailing entitlements. Hence, GMAS seeks a formal determination of the effect, if any, of Act No. 20 on GMAS' entitlement, under section 14 of the Standard Terms of the Exploration Licence, to the grant of an exploitation licence for the Project. In this regard, GMAS notes that aspects of Act No. 20 (and its preparatory works) indicate that Act No. 20 does *not* have the effect that representatives of Naalakkersuisut have stated to GMAS. These indicia include clear wording in the statute itself, which specify that it does *not* apply to existing licences, and the preparatory works to the statute, which emphatically state that it does not apply to the extent that its application would result in an expropriation. Indeed, representatives of Naalakkersuisut have recently confirmed that Act No. 20 only applies to the extent that it does not amount to an expropriation.
- 1.5 It is clear from the statute and parliamentary records that Act No. 20 was the product of a delicate legislative process, in which legitimate questions were posed by several stakeholders regarding the effects of the proposed law, including whether it would have expropriatory effects. Indeed, allegations have recently been made in the Greenland Parliament that Naalakkersuisut concealed information in the legislative process, namely an external legal assessment regarding possible liability on the part of Naalakkersuisut if Act No. 20 were to be enacted. The product of this problematic legislative process is an incongruous

³ Greenland Parliament Act No. 20 of 1 December 2021 to ban uranium, prospecting, exploration and exploitation, etc., at (CL-1).

statute that seeks to have it both ways: on the one hand, to eviscerate GMAS' entitlement to an exploitation licence for the Project, and on the other hand, to avoid the legal consequences of that evisceration – including liability for expropriation. This outcome is manifestly impermissible under the applicable law, including international law.

- 1.6 It is self-evident from the fact that Naalakkersuisut felt the need to embark upon this fraught legislative process, in order to make good on its election promise to stop the Project, that Naalakkersuisut was fully aware that it was under a legal obligation to grant GMAS an exploitation licence. Fundamentally, GMAS brings these proceedings to vindicate its entitlement to an exploitation licence or, if GMAS has been deprived of that entitlement in violation of the Exploration Licence and the applicable law, obtain damages.
- 1.7 The background to the dispute is provided below, along with the specific questions that GMAS poses for determination by the tribunal.

2. REFERRAL OF DISPUTE TO ARBITRATION

- 2.1 By this Request, GMAS refers its dispute with Naalakkersuisut and the Danish Government to arbitration under section 20 of the Standard Terms of the Exploration Licence, and the Arbitration Act.
- 2.2 The Standard Terms are incorporated by reference into the Exploration Licence, which has been held by GMAS since June 2008. Section 20 of the Standard Terms sets out the regime for the resolution of disputes concerning the Exploration Licence. Naalakkersuisut has provided its consent to the referral of disputes to arbitration, in accordance with the terms of section 20 of the Standard Terms, which, relevantly, provide that:

*"disputes arising between the Government of Greenland and the licensee regarding questions concerning the licence will be finally decided upon by a board of arbitration, appointed pursuant to sections 2003-2006."*⁴

- 2.3 At the time the Exploration Licence (including the Standard Terms) was first issued in 2005, the regulation of mining in Greenland was the joint responsibility of Naalakkersuisut and the Danish Government (this system remained in place until 2010).⁵ In this period, administrative power over mineral resources was exercised by Naalakkersuisut under joint responsibility with the Danish Government. As part of this system, rights to revenue from mineral resources were

⁴ "Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland", at (C-1), section 2002.

⁵ See Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at (CL-2).

shared between Greenland and Denmark.⁶ In accordance with the then-prevailing Danish legislation, the Exploration Licence was granted with the agreement of both Naalakkersuisut and the Danish Government.⁷ On this basis, and in view of (a) the broader political and sovereign interests of the Danish Government with respect to Greenland and its mineral resources since before 2007, and (b) the fact that the Danish Government was involved in the Exploration Licence and Project, GMAS submits that the Danish Government is bound by the arbitration agreement in section 20 of the Standard Terms of the Exploration Licence. The Danish Government is so bound by virtue of the following legal principles and doctrines under the applicable law(s): (i) implicit consent; (ii) agency; (iii) its status as a third-party beneficiary; (iv) estoppel and/or (v) attribution and State responsibility. Relevant conduct and involvement of the Danish Government in relation to the Exploration Licence and Project spans the period prior and subsequent to entry into the arbitration agreement.

- 2.4 Section 20 does not stipulate any period of negotiations between the parties before a dispute may be referred to arbitration. Therefore, the dispute is presently appropriate for referral to arbitration. GMAS notes, for the record, that it has unsuccessfully attempted to resolve this dispute through consultations with Naalakkersuisut.

3. PARTIES AND COUNSEL

(a) The Claimant

- 3.1 GMAS is a company registered in Greenland with company registration number (CVR No.) 12449550 and its address at:

Nuugaarmiunut 523B
Postbox 156
3921 Narsaq
Greenland

- 3.2 As noted above, GMAS is a subsidiary of GML, a public company incorporated in Australia. GML owns 39% of GMAS directly, and owns the remaining 61% indirectly, through Chahood Capital Limited (a company incorporated in the Isle of Man).

⁶ See Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at (CL-2), section 22.

⁷ See, for example, Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at (CL-2), sections 3 and 7.

3.3 GMAS is represented in this matter by Clifford Chance, by Bruun & Hjejle and by Plesner. GMAS requests that all communications concerning this arbitration be addressed to:

Dr Sam Luttrell

Partner
Clifford Chance
Level 7
190 St Georges Terrace
Perth WA 6000
Australia

Telephone: +61 8 9262 5555

Facsimile: +61 8 9262 5522

Email: sam.luttrell@cliffordchance.com
projectGML@cliffordchance.com

Dr Moritz Keller

Partner
Clifford Chance
Junghofstraße 14
60311 Frankfurt am Main
Germany

Telephone: +49 69 719901

Facsimile: +49 69 7199 4000

Email: moritz.keller@cliffordchance.com

Mr Audley Sheppard QC

Partner
Clifford Chance
10 Upper Bank Street
London E14 5JJ
United Kingdom

Telephone: +44 207006 1000

Facsimile: +44 207006 5555

Email: audley.sheppard@cliffordchance.com

Dr Ole Spiermann

Partner
Bruun & Hjejle Advokatpartnerselskab
Nørregade 21
1165 København K
Denmark

Telephone: +45 30 18 87 55

Email: osp@bruunhjejle.dk

Mr Lasse Mikkelsen

Partner
Bruun & Hjejle Advokatpartnerselskab
Nørregade 21
1165 København K
Denmark

Telephone: +45 21 83 53 06

Email: lmi@bruunhjejle.dk

Mr Jimmy Skjold Hansen

Partner
Plesner Advokatpartnerselskab
Amerika Plads 37
2100 Copenhagen
Denmark

Telephone: + 45 36 94 11 53

Email: jsh@plesner.com

Mr Peter Schradieck

Partner
Plesner Advokatpartnerselskab
Amerika Plads 37
2100 Copenhagen
Denmark

Telephone: + 45 36 94 13 65

Email: psc@plesner.com

(b) The First Respondent

3.4 Relevant details for the First Respondent (Naalakkersuisut) are:

The Premier's Office

Imaneq 4
P.O. Box 1015
3900 Nuuk
Greenland

Telephone: +299 34 50 00

Email: govsec@nanoq.gl

Ministry of Mineral Resources and Justice

Imaneq 1A
Box 930
3900 Nuuk
Greenland

Telephone: +299 34 68 00

Email: ASN@nanoq.gl

Ministry of Agriculture, Self-Sufficiency, Energy and Environment

Imaneq 1A, 8th floor
Postboks 1614
3900 Nuuk
Greenland

Telephone: +299 34 50 00

Email: pan@nanoq.gl

3.5 The First Respondent is represented in this matter by Poul Schmith/Kammeradvokaten. Details of the First Respondent's legal representatives are as follows:

Poul Schmith/Kammeradvokaten

Kalvebod Brygge 32
1560 København V
Denmark

Attention: Paw Fruerland, Mads Mygind Bojsen

Telephone: +45 33 15 20 10

Facsimile: +45 33 15 61 15

Email: pfj@kammeradvokaten.dk
mabo@kammeradvokaten.dk

(c) The Second Respondent

3.6 Relevant details for the Second Respondent (Danish Government) are:

The Prime Minister's Office

Christiansborg
Prins Jørgens Gård 11
1218 København K
Denmark

Telephone: +45 33 92 33 00

Email: stm@stm.dk

Ministry of Justice

Slotsholmsgade 10
1216 København
Denmark

Telephone: +45 72 26 84 00

Email: jm@jm.dk

Ministry of Climate, Energy and Utilities

Holmens Kanal 20
1060 København K
Denmark

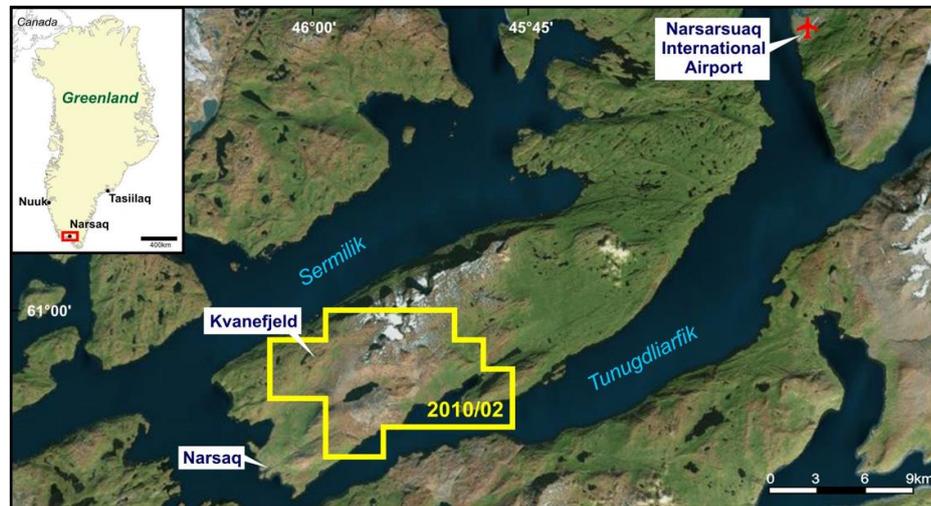
Telephone: +45 33 92 28 00

Email: kefm@kefm.dk

3.7 The Claimant does not know if the Second Respondent is legally represented in this matter.

4. BACKGROUND TO THE DISPUTE

4.1 The Project at issue in this dispute is an advanced (development-stage), multi-element project, situated in southern Greenland.



4.2 Kvanefjeld is host to a vast ore body of rare earth elements, estimated in accordance with Australian resource reporting standards at 108 million tonnes of ore reserves and over 1 billion tonnes of mineral resources. The Project is expected to have an initial mine life of 37 years and to produce all commercially important rare earth elements, including neodymium, praseodymium, terbium and dysprosium. These rare earth elements – which are required in ever increasing volumes for low-carbon technologies such as electric vehicles and wind turbines – are the subject of intense competition amongst major economies, including China and the United States. In this context, Kvanefjeld is regarded as a globally significant technology metals project. As discussed below, the resource at Kvanefjeld also contains a small percentage of radioactive materials: uranium (approximately 0.03%), and thorium (approximately 0.07%).

4.3 GML first invested in the Project in 2007, through a joint venture arrangement with the Project's original proponent and the original holder of the Exploration Licence. The Exploration Licence was transferred to GMAS with government approval in June 2008.⁸ Since GML acquired rights to the Project, the Exploration Licence has been renewed in accordance with the prevailing legislation multiple

⁸ See "Addendum No. 1 to Licence No. 2005/28 for an Area at Naakkaalaaq in West Greenland" dated June 2008 and executed 19 June 2008, at (C-6), and Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at (CL-2), section 27.

times, in April 2010,⁹ in April 2015,¹⁰ in July 2018,¹¹ and (most recently) in February 2021.¹²

4.4 From the time of GML's initial investment, the Exploration Licence has included section 14 of the Standard Terms, which, relevantly, states:

"1401. [...] the licensee is entitled to be granted an exploitation licence under articles 7 and 15 subsection 2 of the Mineral Resources Act. The exploitation licence will be granted as indicated in sections 1402 [to] 1408.

[...]

1404. The exploitation licence will cover the same mineral resources as covered by the exploration licence.

1405. The exploitation licence will be granted for a period of 30 years from the signing by the Government of Greenland. [...]"

4.5 This entitlement to an exploitation licence was and is enshrined in statute. At the statutory level, this entitlement was originally conferred in an exercise of power under Danish legislation.¹³ The entitlement was subsequently recognised and affirmed by Greenlandic legislation, namely through the enactment of the Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities ("**Mineral Resources Act 2010**"), which entered into force on 1 January 2010.¹⁴ The source of this entitlement is relevant to responsibility of the Danish Government in these proceedings, as is the fact that the Danish Government stood to, and continues to stand to,¹⁵ benefit financially from mining activities in Greenland, including the Claimant's Project.

⁹ "Renewal of exploration licence with exclusive exploration rights for Greenland Minerals & Energy (Trading) A/S for an area near Kuannersuit in Southwest Greenland" dated February 2010 and executed 21 April 2010, at (C-7).

¹⁰ "Renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy (Trading) A/S for an area near Kuannersuit in South Greenland" dated March 2015 and executed 8 April 2015, at (C-15).

¹¹ "Addendum no. 4 on renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy A/S for the area Kuannersuit near in South Greenland" dated June 2018 and executed 31 July 2018, at (C-11).

¹² "Addendum no. 7 to exploration licence 2010-02 on change of licence period temporary adjustment of the yearly exploration expenses for 2020" dated January 2021 and executed 1 February 2021, at (C-14).

¹³ Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at (CL-2), section 15.

¹⁴ Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at (CL-3), section 29.

¹⁵ See Chapter 3 of the Danish Parliament Act No. 473 of 12 June 2009 on Greenland Self-Government, at (CL-4).

- 4.6 The Claimant notes that, from the Exploration Licence's inception, it included the arbitration agreement contained in section 20 of the Standard Terms (discussed in Part 2 above), which has remained part of the Exploration Licence ever since, with no change to its wording.
- 4.7 At the time that GML initially invested, the policy of the Greenland Bureau of Minerals and Petroleum ("**BMP**") was to permit the exploitation of all commercially viable mineral deposits falling within the exploration area. From an early stage, as a result of exploration results and other information provided or published by GMAS and GML, it was known by Greenlandic authorities that exploitation of any mineral in the ore body at the Project would necessarily require extraction of uranium at its naturally occurring concentration level. Indeed, the presence of uranium at Kvanefjeld has been known to the Greenlandic and Danish Governments since at least the 1950s.
- 4.8 In the period since GML made its initial 2007 investment – a period in which Greenland has sought to diversify its economy by supporting mining activities and to gain greater independence from Denmark – GML has been a long-term and high-profile investor in Greenland. At the invitation of successive governments of Greenland, GML representatives have participated in, and presented at, investment conventions hosted in Greenland, as well as promoted Greenland as a mining investment destination internationally. Representatives of the Danish Government were aware of these investment promotion activities and indeed participated in certain of the events concerned. For example, at the invitation of Naalakkersuisut and the Danish Government, GML hosted the Director General of the International Atomic Energy Agency ("**IAEA**") at the Project site, accompanied by the then Premier of Greenland, Kim Kielsen, and the Danish Ambassador to Austria – as part of this initiative, the Director General also visited Copenhagen, meeting with various Danish officials,¹⁶ including the Danish Minister for Foreign Affairs to discuss cooperation between Denmark and Greenland in relation to the Project.¹⁷

¹⁶ These included members of the Danish Parliament's Foreign Affairs Committee, and officials from the Danish Emergency Management Agency and Danish Health Authority.

¹⁷ GML ASX Company Announcement dated 15 May 2017, at (C-16).



Delegation members at the base of the Narsaq valley, following a visit to the Kvanefjeld project area. From left: Jakob Rohmann Hard (Chief of Protocol, Foreign Department, Greenland), Liselotte Plesner (Danish Ambassador, Vienna), Nuka Møller (Greenland Business), Jørn Skov Nielsen (Deputy Minister, Industry Trade and Labour, Greenland), Kim Kielsen (Greenland Premier), John Mair (Managing Director, GMEL), Yukiya Amano (Director General, IAEA).

- 4.9 Naalakkersuisut has consistently treated the Project proponent and licence holder as, in substance, GML, generally addressing GML and GMAS collectively as "*Greenland Minerals*" or "**GM**". GM has had extensive direct engagement with both Naalakkersuisut and the Danish Government over the life of the Project. Amongst other things, GM has enjoyed an open dialogue with both governments and other stakeholders regarding the uranium component of the Project. GM conducted regular community consultations in relation to the Project and maintained a high level of transparency regarding its intentions for the Project and key features such as environmental and social impacts.
- 4.10 GM and its activities enjoyed the support of successive Greenlandic governments, which implemented various initiatives to create a regulatory framework to promote mining, including to permit the extraction of uranium – at least as a by-product in multi-element projects such as Kvanefjeld.¹⁸ The economic significance of GM's Project was a key consideration in Naalakkersuisut taking these enabling measures: GML has announced estimates, through realisation of the Project, of US\$235 million in taxes and royalties to Greenland's economy and the creation of 330 local jobs during the operations phase.
- 4.11 The promulgation of Act No. 20 (the first ever legislative measure taken by Greenland to prohibit uranium mining, or indeed to specifically limit exploration

¹⁸ These included initiatives by the Inuit Ataqatigiit party, which is the current lead coalition partner in Naalakkersuisut and was the lead coalition partner between June 2009 and March 2013.

or exploitation in connection with radioactive materials) therefore marked a major shift in Greenland's historic posture towards uranium mining. In a period dating back to the early days of GM's investment in Greenland, Naalakkersuisut adopted a series of measures, both with respect to uranium mining generally and Kvanefjeld specifically, that were intended to clear a path for the development of the Project. These measures were taken to attract and provide comfort to mining investors (such as GM), in the recognition that the development of a mining industry in Greenland was critical to the attainment of Greenland's goal of economic independence from Denmark. The significance of GM in this context (as the proponent of the ground-breaking Kvanefjeld Project) is clear from the fact that many of the measures in question were crafted in consultation with GM. By virtue of these measures, GM became entitled (under section 14 of the Standard Terms of the Exploration Licence) to an exploitation licence that permitted extraction of uranium as a by-product to the rare earths that were the primary mineral target of the Project. These governmental measures, taken with input from Danish authorities, included the following:

4.11.1 In December 2008, the Greenland Parliament reached an in-principle agreement in favour of granting licences to exploit radioactive elements as a by-product (where uranium oxide levels in the resource were limited to 0.1%) – in the course of reaching this agreement, specific reference was made to uranium as a by-product of mining at the Project.

4.11.2 On 10 September 2010,¹⁹ the Standard Terms were amended to allow for the approval (by the BMP) of exploration of minerals containing radioactive elements above background levels, for use in feasibility studies. Such approval was granted for the Project in December 2010. This amendment was based, at least in part, on discussions between GM and Naalakkersuisut and was made with a view to providing a pathway and framework for the Project, including its uranium component, to proceed to development, including by performing necessary feasibility assessments. In these discussions, Naalakkersuisut represented to GM that an exploitation licence could be issued to develop a Project operation that would produce rare earth elements, uranium and zinc.²⁰

4.11.3 In 2012,²¹ following an agreement reached in late 2011, the terms of the Exploration Licence were extended by addendum to also cover exploration of radioactive elements, including uranium (**2012**

¹⁹ See sections 709 to 711 of the "Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland", at (C-1), which were inserted by this amendment.

²⁰ This was subject to satisfaction of relevant requirements in the Mineral Resources Act 2010.

²¹ "Addendum no. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland" dated December 2011 and executed 6 January 2012, at (C-8).

Addendum"). The 2012 Addendum recorded GM's right to apply for an exploitation licence to carry out uranium exploitation for commercial purposes. This reflected GM's entitlement (including under statute) to the grant of such an exploitation licence. Certainly, the 2012 Addendum did nothing to disturb or condition GM's existing entitlement to an exploitation licence that, at least, permitted the exploitation of non-radioactive elements and any incidental extraction of uranium for treatment as a by-product for non-commercial purposes. The 2012 Addendum to the Exploration Licence was intended to provide greater clarity before GM embarked upon reporting needed for an exploitation licence for the Project. It was on this basis that GM proceeded, including in subsequently acquiring 100% of the rights to the Project.

- 4.11.4 In early 2013, Greenland assumed additional obligations regarding the safeguarding of activities relating to nuclear material under an agreement with the IAEA. The Danish Government was responsible for Greenland assuming these obligations, which were to be discharged, on the international plane, through the Kingdom of Denmark.²² This represented a further positive step towards the increasing accommodation of radioactive materials in Greenland, consistent with future export avenues.
- 4.11.5 In October 2013, the Greenland Parliament passed an in-principle agreement to the effect that no limit would exist on the content of radioactive elements in connection with exploration and exploitation, including other than as a by-product. In recent consultations with GM, representatives of Naalakkersuisut described the period prior to this legislation as a period of a "*zero-tolerance policy*" on uranium, although the source and content of any such policy remain to be articulated by Naalakkersuisut.²³
- 4.11.6 In January 2016, the Greenlandic and Danish governments entered into a suite of agreements regarding Denmark and Greenland's cooperation in relation to the extraction and export of uranium from Greenland. This framework ensured the future export of uranium from Greenland and, therefore, was significant for GM and the Project.

²² See Protocol Additional to the Agreement between the Government of the Kingdom of Denmark and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/176/Add.1).

²³ Indeed, some observers have questioned whether this was a "*policy that never really existed*". See, for example, Danish Institute for International Studies "*Governing Uranium in the Danish Realm*" (DIIS Report 2015:17), at (C-17), pp. 14-17.

- 4.12 Encouraged by these developments, and indeed enabled by them, GM's work on the Project continued, in conjunction with Naalakkersuisut. That GM had acquired an entitlement to an exploitation licence, which included permission to extract uranium at least as a by-product, is axiomatic from the fact that the parties – aware of the uranium content of Kvanefjeld – openly collaborated to bring the Project into fruition for over a decade.
- 4.13 From 29 August to 6 October 2014, 35 days of public pre-consultation were held on terms of reference for the content of the Social Impact Assessment ("SIA") and Environmental Impact Assessment ("EIA") reports for the Project. A feasibility study for the Project was completed in 2015 (this followed a pre-feasibility study that had been completed in 2012), which identified uranium as a component of the Project (as did the pre-feasibility study of 2012).
- 4.14 By December 2020, both the EIA and SIA had been accepted by Naalakkersuisut as meeting the standards and requirements to commence the statutory public consultation process in relation to them:
- 4.14.1 By this point, every section of the EIA (prepared in close consultation with Naalakkersuisut), and all of the expert reports prepared to support the conclusions contained in the EIA, had been reviewed by the Greenland Environmental Agency for the Mineral Resources Area, the Danish Centre for Environment ("DCE") and the Greenland Institute of Natural Resources ("GINR"), often multiple times.
- 4.14.2 Having reviewed the EIA and all of the independent scientific studies that were prepared to support the evidence and analysis presented in the EIA, the DCE and GINR concluded that the Project *"with a high probability can be completed without further significant adverse effects than the ones described in the EIA report."*²⁴
- 4.14.3 Detailed radiological studies had been conducted on the Project as part of the EIA, led by independent specialist consultancy, Arcadis. The Arcadis report, reviewed in detail by the DCE, concluded that "[o]verall, the Kvanefjeld Project is expected to release only small amounts of additional radioactivity to the environment and is not expected to result in an adverse effect, or significant harm, to wildlife or people that live [in] or visit the area. **It is expected that the radiation exposure will not be significantly different than current conditions (background)**"²⁵ (emphasis added).

²⁴ GML September 2021 Quarterly Report, 29 October 2021, at (C-18), pp. 3-4.

²⁵ GML September 2021 Quarterly Report, 29 October 2021, at (C-18), p. 4.

- 4.15 From 18 December 2020, public consultation on the SIA and EIA reports for the Project began. Ultimately, the consultation period mandated for the Project by Naalakkersuisut constituted the longest public consultation period ever conducted for a mining project in Greenland. It eventually spanned some nine months, despite the required statutory minimum period being a mere eight weeks.²⁶
- 4.16 During the consultation process, a snap election took place in Greenland on 6 April 2021. Regrettably, this political development compromised the integrity of the community consultation process that was underway for the Project.
- 4.17 The election was won by the Inuit Ataqatigitt party, having campaigned to ban uranium mining and, specifically, to halt the Project on environmental and ideological grounds. The Inuit Ataqatigitt party formed a government with the Naleraq party via a coalition agreement that stated that "[t]he coalition agrees that uranium should not be mined in Greenland. The mineral project at Kuannersuit [the Project] must be stopped. During this election period, work will be done to legislate on a ban on mineral extraction that contains radioactive material".²⁷ This new Naalakkersuisut was sworn in on 23 April 2021.
- 4.18 Following this:
- 4.18.1 The new Minister for Mineral Resources, Naaja Nathanielsen, issued a statement foreshadowing the proposal of legislation to impose a ban on mining of radioactive materials and providing that:

"In relation to the Greenland Minerals' project at Kuannersuit [Kvanefjeld], it will be processed in accordance with the Mineral Resources Act and the special terms issued to the company. The government operates in accordance with the Mineral Resources Act and complies with the terms set out in the exploration licence. A public consultation is already planned in connection with Greenland Minerals' application for an exploitation licence, and I will of course help to complete it. But I make no secret of the fact that I am simultaneously assessing the possibilities within the framework of the Mineral Resources Act and the exploration licence to avoid

²⁶ Originally, the consultation period was scheduled for 12 weeks (until March 2021) and included an initial round of public meetings in the period of 5 to 9 February 2021. However, on 5 February 2021, Naalakkersuisut extended the public consultation period to 1 June 2021. The public consultation period was ultimately extended to as late as 13 September 2021 while further events unfolded.

²⁷ Government of Greenland Coalition Agreement, 16 April 2021, at (C-19).

exploitation of uranium - also for the Kuannersuit project."²⁸
(emphasis added)

- 4.18.2 Naalakkersuisut responded to a letter mandated by the United Nations Office of the High Commissioner of Human Rights, emphasising that Naalakkersuisut "*ha[d] resolved to ban any exploitation of radioactive elements in Greenland, including for the Kuannersuit [Kvanefjeld] project*", and foreshadowing that it intended to introduce new legislation to that effect, which would eventually affect the Project. Naalakkersuisut's response also stated that "*the Kuannersuit project w[ould] be handled still according to the process stipulated by the Mineral Resources Act as well as the license terms issued*" and "*uranium [w]as a minor byproduct [sic]*" of the Project.²⁹
- 4.19 On 2 July 2021, Naalakkersuisut released a draft bill (including explanatory notes) to ban prospecting, exploration and exploitation of a resource unless its total content of uranium is below 100 ppm (0.01%) and the mining is not for the purposes of uranium prospecting, exploration or exploitation ("**Consultation Bill**").³⁰ In addition, the Consultation Bill sought to empower Naalakkersuisut to issue further provisions to the effect that the ban applied to other radioactive elements (the explanatory notes made clear that this would include thorium). This precursor bill to Act No. 20 was released for public consultation, open to responses until 2 August 2021.
- 4.20 The final form of the bill for Act No. 20 bore few substantive amendments (to the Consultation Bill). This is despite the explanatory notes³¹ to the final bill demonstrating that various concerns were raised with Naalakkersuisut through the public consultation process in relation to the bill, including:
- 4.20.1 as to the 100 ppm (or 0.01%) threshold for uranium being inappropriate – to which Naalakkersuisut's repeated response was to the effect that this threshold was a political "*decision*"/ "*wish*"/ "*choice*"³² (a response that raises serious questions about the legislative process, including whether

²⁸ Government of Greenland Public Announcement "*Government of Greenland supports mining activities, despite no to uranium*" (Minister Naaja Nathanielsen), 7 May 2021, at (C-20).

²⁹ Response to letter dated 19 April 2021 from Office of the High Commissioner for Human Rights mandate holders, ref. AL DNK 2/2021, dated 1 July 2021, at (C-21).

³⁰ "*Bill: Greenland Parliament Act no. [X] of [dd mm 2021] to ban uranium prospecting, exploration and exploitation*", at (CL-5).

³¹ "*Explanatory notes to the Bill*", at (CL-6).

³² See "*Explanatory notes to the Bill*", at (CL-6), pp. 17-19.

the threshold meets requirements of non-arbitrariness and proportionality);

- 4.20.2 as to (a) the bill having retrospective effect on existing licences because an exploitation licence cannot be granted in extension of an exploration licence, (b) further consideration needing to be given to the effect of the legislation on existing licences, and (c) the legislation having retroactive effect – to which Naalakkersuisut responded:

"The Bill neither has nor will have any retroactive effect. The Bill will only apply to licences granted after its effective date. This means that licences already granted, standard terms, etc. will not be affected by the Bill. An exploration licence comprising uranium will thus survive the adoption of this Bill. Conversely, no new licences comprising uranium can be granted after the effective date of the Bill. This also applies to the grant of exploitation licences in continuation of an existing exploration licence."³³ (emphasis added)

- 4.20.3 as to the bill being in the nature of a compulsory acquisition in depriving licensees of rights under section 29(2) of the Mineral Resources Act 2010 (i.e., expropriation), such that the insertion of compensation provisions should be considered – to which Naalakkersuisut responded:

"The Bill is not a compulsory acquisition act and therefore does not provide for the compulsory acquisition of protected property rights. The Bill therefore does not include any provisions on compensation for expropriation. The Government of Greenland also sees no reason to introduce a compensation scheme on any other basis."³⁴ (emphasis added)

- 4.21 It is also noteworthy that the explanatory notes to the *final* bill for Act No. 20:

- 4.21.1 described the bill as, in effect, intended to be an implementation of the will of Naalakkersuisut;³⁵

- 4.21.2 contained an acknowledgement by Naalakkersuisut that the ban would render certain mining projects impossible;³⁶

³³ See "Explanatory notes to the Bill", at (CL-6), p. 23.

³⁴ See "Explanatory notes to the Bill", at (CL-6), p. 23.

³⁵ See "Explanatory notes to the Bill", at (CL-6), pp. 1, 17.

³⁶ See "Explanatory notes to the Bill", at (CL-6), p. 17.

4.21.3 described an exploitation licence as being granted in "*continuation*"/
"*extension*" of an existing exploration licence;³⁷

4.21.4 acknowledged that, but for Act No. 20, licensees, such as GM, would
otherwise have a right to obtain an exploitation licence for uranium
mining, stating:

*"After the effective date of the Bill, no uranium exploitation licence
can be granted to licensees who, prior to the effective date of the
Bill, held an exploration licence comprising uranium. This applies
regardless that **the licensees will usually have a conditional right
to obtain an exploitation licence for uranium deposits discovered
under section 29(2) of the current Mineral Resources Act.**"*³⁸
(emphasis added)

4.21.5 disclaimed, on no fewer than four occasions, having any expropriatory
effect³⁹ – for example, that the prohibitory regime set up by the bill "**does
not apply to the extent that the ban may be considered an intrusion on
property protected by section 73 of the Danish Constitution**" (emphasis
added).

4.21.6 whereas the explanatory notes to the Consultation Bill provided that it was
not expected to have any immediate significant economic or
administrative consequences for the public sector, the final bill stated that:

*"The Bill does not provide for the payment of damages or other
compensation to licensees whose projects may be affected by the
prohibitory regime. However, **it cannot be ruled out that such
affected licensees may bring an action against the
Self-Government to obtain damages or other compensation on
other grounds.**"*⁴⁰ (emphasis added)

4.22 Many aspects of the preparatory works, including the explanatory notes, to the
final bill sit in clear tension with each other. Chief among these are contradictory
statements (a) that existing exploration licences remain unaffected but that their
"*continuation*" into an exploitation licence is affected; and (b) that acknowledge
an effect on existing rights but disclaim any expropriatory character. This tension

³⁷ See "*Explanatory notes to the Bill*", at (CL-6), pp. 13, 23.

³⁸ See "*Explanatory notes to the Bill*", at (CL-6), p. 15. A substantially similar statement is recorded in the description
of one of Naalakkersuisut's consultation responses in the explanatory notes to the final Bill: see "*Explanatory notes
to the Bill*", at (CL-6), pp. 23-24.

³⁹ See "*Explanatory notes to the Bill*", at (CL-6), pp. 7, 10, 14, 23.

⁴⁰ See "*Explanatory notes to the Bill*", at (CL-6), p. 8.

– which has been present in subsequent communications by Naalakkersuisut with GM – suggests that Naalakkersuisut is trying to make good on its campaign promise to stop GM's Project whilst trying to hedge its expropriation risk. Naalakkersuisut appears to be attempting to use Act No. 20 to stop the Project *in so far as doing so does not amount to an expropriation requiring compensation*. In taking this approach, Naalakkersuisut has also sought (and managed) to avoid confronting, in the legislative process, the task of successfully passing legislation that accepts and takes account of the legal consequences of expropriatory effects, including damages being payable by Naalakkersuisut. Recently, concerns have emerged as to Naalakkersuisut's transparency throughout the legislative process by which Act. No. 20 was enacted – with one member of Parliament accusing Naalakkersuisut of concealing information essential to the Greenland Parliament's assessment of the bill for Act No. 20.⁴¹ Naalakkersuisut has confirmed that it sought an external legal assessment as to its liability if Act No. 20 were to be enacted, and that it received that assessment after the release of the Consultation Bill but before the first reading of the bill in the Greenland Parliament.⁴² It has also confirmed that this legal assessment included an analysis of whether an expropriation would occur if Naalakkersuisut denied exploitation licences to two specific licence holders, and that the external legal assessment was sought following an internal preliminary assessment in relation to GM's Exploration Licence.⁴³

- 4.23 Notwithstanding any irregularity in the legislative process, on 1 December 2021, Act No. 20 was promulgated and signed by the Premier of Greenland, taking effect the next day, on 2 December 2021. According to its terms, relevantly:

"1.-(1) Uranium prospecting, exploration and exploitation is not permitted.

(2) The provision in subsection (1) does not apply to prospecting, exploration and exploitation directed at non-uranium mineral resources if the average uranium content of the total resource is less than 100 ppm by weight.

[...]

5.-(1) This Greenland Parliament Act comes into force on the day after its promulgation.

⁴¹ Follow-up Questions to Naalakkersuisut under s 37 of the Rules of Procedure of the Inatsisartut, 2 March 2022, at (C-28).

⁴² Naalakkersuisut Answers to Questions under s 37 of the Rules of Procedure of the Inatsisartut on Possible Claims for Damages as a Violation of the Uranium Act, 1 March 2022, at (C-27).

⁴³ Further Naalakkersuisut Answers to Questions under s 37 relating to possible claims for damages arising from the Uranium Act, 21 March 2022, at (C-29).

(2) *This Greenland Parliament Act applies to licences issued after its effective date.*"⁴⁴

- 4.24 The Minister of Mineral Resources stated to media that she would first and foremost seek dialogue with GM.⁴⁵ Following the enactment of Act No. 20 and GM's request for information on whether the new law would affect the processing of its Exploitation Licence Application, Naalakkersuisut (specifically representatives of the Ministry of Mineral Resources) proposed a meeting with GM representatives – in its invitation, Naalakkersuisut stated that Act No. 20 "*applies to the processing of Greenland Minerals' application for an exploitation licence for the Kuannersuit-project*".⁴⁶
- 4.25 The meeting between GM and Naalakkersuisut took place (on an open basis)⁴⁷ by videoconference on 15 December 2021, during which Naalakkersuisut conveyed its position on Act No. 20 and on the impact that the Act has on GM's Exploitation Licence Application, namely that:
- 4.25.1 for the purposes of Act No. 20, an exploitation licence is considered a separate licence even though it is a "*continuation*" of an exploration licence existing at the time of the Act's entry into force;
- 4.25.2 licences are covered by Act No. 20 if "*transitioning*" from exploration to exploitation; and
- 4.25.3 categorically, it is not possible to grant the Exploitation Licence Application under the new Act No. 20 – GM cannot expect to be granted an exploitation licence on the basis of the Exploitation Licence Application, which (if pursued) will be refused by Naalakkersuisut.⁴⁸
- 4.26 In making these statements to GM (and further statements described below), Naalakkersuisut openly declared an intention not to honour GM's entitlement under section 14 of the Standard Terms of the Exploration Licence to receive an exploitation licence for the Project and, therefore, committed an anticipatory breach of that provision.

⁴⁴ Greenland Parliament Act No. 20 of 1 December 2021 to ban uranium, prospecting, exploration and exploitation, etc., at (CL-1)

⁴⁵ T Munk Viruses, "*Note on uranium replacement remains secret*", Sermitsiaq, 2 December 2021, at (C-22).

⁴⁶ Email chain between Greenland Ministry of Mineral Resources to Greenland Minerals dated 4 November 2021 to 13 December 2021, at (C-23), p. 4.

⁴⁷ Without any stipulation of confidentiality or 'without prejudice' status by Naalakkersuisut or GM.

⁴⁸ The Claimant was provided with a copy of the minutes of this meeting prepared by the Ministry of Mineral Resources ("*Minutes from meeting regarding the Kuannersuit-project*", at (C-24)). The Claimant prepared its own minutes of this meeting, which do not fully correspond with the minutes prepared by the Ministry. As such, the Claimant's reference to the Ministry's minutes should not be taken as acceptance of their broader accuracy.

- 4.27 As a public company subject to the mandatory disclosure rules of the ASX, GML was required to issue an announcement regarding the meeting with Naalakkersuisut on 15 December 2021.⁴⁹ In that announcement, GML outlined Naalakkersuisut's interpretation of Act No. 20 and said that, based on the Government's interpretation, *"the Company's exploitation licence application would not be granted, based on its current development proposal for Kvanefjeld"*. GML advised that *"[w]hilst the Company acknowledges the Greenland Parliament has the sovereign prerogative to enact legislation, the Act, as explained by the Ministry, appears to deprive the Company of its acquired rights (including under the Company's exploration licence) and effect an expropriation without compensation"*.
- 4.28 On or around 14 January 2022 (following GML's ASX announcement), the Minister for Mineral Resources publicly stated to media that she does not agree with an interpretation that Act No. 20 expresses an expropriation without compensation. The Minister also stated that *"[a]s Greenland Minerals' current application for an exploitation permit cannot comply with the [new] law, this will result in a rejection"*, and that *"Greenland Minerals' project is inevitably affected by the new law"*.⁵⁰
- 4.29 In the most recent consultations between GM and Naalakkersuisut,⁵¹ which took place on 8 and 9 February 2021, the existence of both a legal and factual dispute was confirmed. In those consultations, representatives of Naalakkersuisut conveyed the position that the Act does *not* apply if its application would amount to an expropriation, but that the Act *does* apply in relation to GM. According to the Naalakkersuisut representatives, this is because, by virtue of the 2012 Addendum, GM had no entitlement under the Exploration Licence to an exploitation licence for Kvanefjeld and there is, therefore, nothing capable of being expropriated. In articulating this position, Naalakkersuisut advanced the extraordinary suggestion that all of GM's investment in the Project post-dating the 2012 Addendum was made in the full knowledge that GM did not have an entitlement to be granted an exploitation licence for the Project.
- 4.30 Naalakkersuisut's most recently expressed position ignores the fact that, for almost a decade after the 2012 Addendum, GM relied in good faith on the terms of the Exploration Licence and the conduct of successive Greenlandic governments in advancing the Project and continuing to invest and incur substantial costs, including by making detailed plans regarding the treatment of

⁴⁹ GML ASX Company Announcement dated 20 December 2021, at (C-25).

⁵⁰ T Juncher Jørgensen, *"Naaja Nathanielsen: Not agreeing with Greenland Minerals' interpretation"*, Sermitsiaq, 14 January 2022, at (C-26).

⁵¹ These consultations were again conducted on an open basis without any stipulation of confidentiality or 'without prejudice' status by Naalakkersuisut or GM.

uranium, employing a Greenlandic workforce to assist on the Project, and paying licence fees to Greenland. Of the several statutory requirements that precondition the grant of GM's Exploitation Licence Application,⁵² only two remain to be completed: the finalisation of the already submitted 'White Paper'⁵³ for the Project (on which GM awaits completion of Naalakkersuisut's remaining steps), and the conclusion of an 'Impact and Benefit Agreement'⁵⁴ (a draft of which will shortly be presented by GM to Naalakkersuisut).

- 4.31 In progressing the Project to its current state, GM has spent approximately AUD\$130 million (AUD\$90 million of which has been explicitly acknowledged by the BMP/ Greenland Mineral Licence and Safety Authority) on exploration programmes, feasibility studies, development work and other items necessary for the progress of the Project (including comprehensive environmental and social impact assessments). GM's investment has resulted in a development-stage Project that has been conservatively valued at approximately US\$3 billion (based upon rare earths prices as they were in 2021).

5. ISSUES FOR DETERMINATION BY ARBITRATION

- 5.1 The events outlined above give rise to the following questions and claims by GMAS:
- 5.1.1 **Question 1:** Whether Act No. 20 operates to deprive GMAS of an entitlement to an exploitation licence for the Project under section 14 of the Standard Terms of the Exploration Licence;
- 5.1.2 **Question 2:** If the answer to Question 1 is *yes* (or the acts or omissions of Naalakkersuisut and/or the Danish Government have otherwise caused such a deprivation), whether this deprivation of GMAS' entitlement to an exploitation licence constitutes a violation of GMAS' rights under the Exploration Licence and the applicable law(s);
- 5.1.3 **Question 3:** If the answer to Question 2 is *yes* (or unlawful acts or omissions of Naalakkersuisut and/or the Danish Government have otherwise caused GMAS to suffer loss), what measure and quantum of damages is due to GMAS; and
- 5.1.4 **Question 4:** If the answer to Question 1 is *no*, whether GMAS is entitled to relief in the form of a declaration regarding the effect of Act No. 20 on

⁵² Pursuant to the Mineral Resources Act 2010.

⁵³ A paper responding to comments raised in public consultation for environmental and social impact assessments for the Project.

⁵⁴ An agreement aimed at regulating social impact that is executed by GM with Naalakkersuisut and the relevant municipality government.

GMAS' rights under the Exploration Licence and a corresponding order against the First Respondent.

5.2 These questions reflect the unenviable position in which GMAS has been placed by Naalakkersuisut. GMAS needs to know what its entitlements are under the Exploration Licence. GMAS is either still entitled to an exploitation licence in accordance with section 14 of the Standard Terms of the Exploration Licence, and that entitlement must be honoured by Naalakkersuisut, or GMAS no longer has this entitlement and instead now has an entitlement to damages. It is one or the other, but not, as Naalakkersuisut would have it, *neither*.

5.3 With respect to Question 1, GMAS refers to Naalakkersuisut's stated position on the operation and effect of Act No. 20 in relation to the Project (as described above). However, GMAS' primary position in these proceedings is that Act No. 20 has no application in respect of the Exploration Licence or of the Exploitation Licence Application. GMAS seeks declaratory relief to this effect (see Question 4). GMAS' primary position is put on two bases:

5.3.1 including in accordance with its terms (in particular, section 5(2)), Act No. 20 applies only to licences issued after 2 December 2021 and does not have any retroactive effect in relation to rights under licences issued before this date – this includes GMAS' entitlement to an exploitation licence for the Project under section 14 of the Standard Terms of the Exploration Licence; and

5.3.2 consistently with the repeated statements to this effect in the preparatory works to Act No. 20, Act No. 20 has no application to the extent that it would effect an expropriation of property rights protected by section 73 of the Constitution of the Kingdom of Denmark (No. 16 of 1953) ("**Danish Constitution**"), such as GMAS' entitlement to an exploitation licence under section 14 of the Standard Terms of the Exploration Licence.

5.4 With respect to Question 2, if:

5.4.1 Act No. 20 *does* have the operation contended for by Naalakkersuisut; or

5.4.2 Act No. 20 does *not* have such operation but the acts or omissions of Naalakkersuisut (and/or the Danish Government) otherwise deprive GMAS of its entitlement to an exploitation licence for the Project under section 14 of the Standard Terms of the Exploration Licence,

GMAS submits that the deprivation of GMAS' rights in relation to the Project, including its entitlement to an exploitation licence under section 14, violates the Exploration Licence and applicable law(s). GMAS submits that relevant breaches include:

- 5.4.3 anticipatory breach of section 14 of the Standard Terms of the Exploration Licence;
 - 5.4.4 breach of section 73 of the Danish Constitution;
 - 5.4.5 breach of Article 1 of Protocol 1 to the European Convention on Human Rights ("**ECHR**");
 - 5.4.6 breach of duty of loyalty in respect of the Exploration Licence and the legal entitlements it conveys;
 - 5.4.7 negligent acts and omissions in relation to the Exploration Licence and/or the Exploitation Licence Application;
 - 5.4.8 breach of general principles of Danish law, including *pacta sunt servanda*, the doctrine of acquired rights and/or the doctrine of legitimate expectations; and/or
 - 5.4.9 breach of principles of international law, including good faith, *pacta sunt servanda*, the prohibition against unlawful expropriation, the doctrine of acquired rights and/or the doctrine of legitimate expectations.
- 5.5 With respect to Question 3, GMAS submits that any violation of the applicable law(s), whether in the nature of a deprivation of an entitlement of GMAS under section 14 of the Exploration Licence or not, must result in an award of damages to GMAS. GMAS submits that damages must be in an amount equal to the fair market value of the Project prior to the date upon which Naalakkersuisut made public its intention to take measures to prevent the progress of the Project.

6. ORDERS AND RELIEF SOUGHT

- 6.1 The Claimant seeks the following relief from the tribunal:
- 6.1.1 a **DECISION** that the Second Respondent is bound by the arbitration agreement in section 20 of the Standard Terms of the Exploration Licence;
 - 6.1.2 a **DECLARATION** that Act No. 20 does not apply to the Claimant's Exploration Licence generally and does not deprive the Claimant of its entitlement to an exploitation licence under section 14 of the Standard Terms of the Exploration Licence specifically, and an **ORDER** that the First Respondent shall grant to the Claimant an exploitation licence under section 14 of the Standard Terms of the Exploration Licence, provided that the Claimant has complied with the terms of the Exploration Licence;
 - 6.1.3 further or alternatively to 6.1.2:

- (a) a **DECLARATION** that:
- (i) the First and/or Second Respondent has committed an anticipatory breach of section 14 of the Standard Terms of the Exploration Licence;
 - (ii) the First and/or Second Respondent has breached section 73(1) of the Danish Constitution;
 - (iii) the First and/or Second Respondent has breached article 1 of Protocol 1 to the ECHR;
 - (iv) the First and/or Second Respondent has breached the duty of loyalty in respect of the Exploration Licence and the legal entitlements it conveys;
 - (v) the First and/or Second Respondent has acted negligently in relation to the Exploration Licence and/or the Exploitation Licence Application, thereby incurring liability towards the Claimant under Danish law for losses suffered;
 - (vi) the First and/or Second Respondent has breached relevant principles of Danish law; and/or
 - (vii) the First and/or Second Respondent has breached relevant principles of international law; and
- (b) an **ORDER** that the First and Second Respondent shall pay damages – in an amount to be quantified during this arbitration – to the Claimant for all loss and damage caused to the Claimant; principally *in solidum*, subsidiarily on a *pro rata* basis;
- 6.1.4 an **ORDER** that the First and/or Second Respondent shall pay the Claimant's costs of these proceedings, including but not limited to the Claimant's legal fees and expenses, the costs of the Claimant's experts, the fees and expenses of the tribunal, the costs of any administering authority, and the costs of the Claimant's employees and officers;
- 6.1.5 an **ORDER** that the First and/or Second Respondent shall pay an award of interest on any damages and costs ordered, up to the date of payment;
- 6.1.6 an **ORDER** that each Respondent shall bear its own costs of these proceedings; and

6.1.7 any other such relief as the tribunal determines appropriate in order to support the relief sought by the Claimant.

6.2 The Claimant reserves its right to amend and/or supplement the relief sought in this Request. Specifically, and without limitation, the Claimant reserves its right to seek relief as necessary to preserve the *status quo*, including appropriate measures to ensure that the Exploration Licence is renewed pending determination of the issues in dispute or determination of the Exploitation Licence Application (whichever happens last).

7. THE TRIBUNAL AND THE CONDUCT OF THE ARBITRATION

(a) Place of arbitration

7.1 Section 2003 of the Standard Terms of the Exploration Licence stipulates that the arbitration will be seated in Copenhagen. The *lex arbitri* therefore comprises the Arbitration Act of Denmark, a statute based upon the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on International Commercial Arbitration 1985, and its attendant jurisprudence.

(b) Constitution of the tribunal

7.2 Section 20 of the Standard Terms of the Exploration Licence deals with the procedure for constituting the tribunal. References to the "*Government of Greenland*" in section 20 should be read as references to both Naalakkersuisut and the Danish Government, for reasons outlined above. Accordingly, the Claimant invites Naalakkersuisut and the Danish Government to act jointly in the exercise of all rights pertaining to the constitution of the tribunal under section 20.

7.3 Section 2003 of the Standard Terms stipulates that the arbitral tribunal is to consist of three members. By section 2004 of the Standard Terms, the Claimant is entitled to appoint one member of the tribunal. The Claimant nominates Dr Veijo Heiskanen as its appointed arbitrator:

Dr Veijo Heiskanen

Rue de la Mairie 35
P.O. Box 6569
1211 Geneva 6
Switzerland

Telephone: +41 58 105 2000

Facsimile: +41 58 105 2060

Email: vheiskanen@lalive.law

- 7.4 In accordance with section 2004, the Claimant invites the First and Second Respondents to jointly appoint a single arbitrator within 30 days, failing which that arbitrator is to be appointed by the Chief Justice of the Danish Supreme Court.
- 7.5 Section 2004 of the Standard Terms stipulates that the chairman of the tribunal must be a Danish national. Including given that GM is an Australian business and the Danish Government is a party to these proceedings, in the interests of fairness and of justice not only being done but being seen to be done, the Claimant invites the First and Second Respondents to agree to waive this Danish nationality requirement and instead to agree that the chairman of the tribunal may be a person of any citizenship, other than Australian or Danish. The selection of a chairman of a neutral country also aligns with customary practice under the Arbitration Act and applied by the Danish Institute of Arbitration ("**DIA**") – this principle has been codified directly in article 19(7) of the DIA's Rules of Arbitration Procedure.
- 7.6 Section 2004 stipulates that the parties may seek to agree the appointment of the chairman of the tribunal. Section 2004 stipulates that, failing appointment by such party agreement within 60 days, the chairman shall be appointed by the Chief Justice of the Danish Supreme Court. The Claimant invites Naalakkersuisut and the Danish Government to agree to a list procedure for the purpose of appointing the chairman of the tribunal, to be attempted by the parties for 60 days. Again, in the interests of fairness, the Claimant invites the First and Second Respondent to agree that, failing appointment by the list procedure proposed above (or otherwise), the chairman be appointed by the Permanent Court of Arbitration in The Hague, the Netherlands ("**PCA**"), rather than the Chief Justice of the Danish Supreme Court.

(c) Applicable laws

- 7.7 Section 1901 of the Standard Terms of the Exploration Licence expressly provides for the laws of Greenland and Denmark to apply to the Exploration Licence, and, by section 2003, the arbitral tribunal is to apply Danish law. For reasons to be articulated in due course, the Claimant submits that the applicable laws also include principles of international law.

(d) Rules of arbitration

- 7.8 The parties have not agreed any procedural rules or rules of evidence for the arbitral proceedings. In the interests of an efficient procedure, GMAS proposes that the UNCITRAL Arbitration Rules 2013 ("**UNCITRAL Rules**") apply to the arbitration,⁵⁵ and invites the First and Second Respondents to agree.

⁵⁵ This proposal that the UNCITRAL Rules apply does not extend to Article 28(3) of the UNCITRAL Rules insofar as that Article would mandate that hearings be held *in camera*.

(e) Administering authority

7.9 In the absence of party agreement as to an administering authority, the Claimant proposes that the PCA be appointed as the administering authority for the arbitration, and invites the First and Second Respondents to agree.

(f) Transparency

7.10 The Claimant notes that there are no confidentiality obligations in respect of these proceedings. The Claimant welcomes openness and transparency in the arbitration process. The Claimant wishes for the arbitration to be conducted in "*full openness*", continuing the transparency that has so far characterised the relations and communications between the Claimant and Naalakkersuisut (as described by Naalakkersuisut)⁵⁶. The Claimant invites the First and Second Respondents to agree, including that any hearings be held in a manner open to the public (rather than *in camera*).

8. SERVICE

8.1 A copy of this Request (and exhibits referred to herein) has been hand delivered to each of the First and Second Respondent, and to the First Respondent's legal representatives, at the respective addresses outlined above. A copy of this Request (and exhibits referred to herein) has also been served by email to the addresses of the First and Second Respondent (including legal representatives) listed above.

9. RESERVATION

9.1 The Claimant reserves its right to supplement or modify this Request in response to any arguments or assertions made by the First and Second Respondents.

9.2 The Claimant reserves the right to apply to a court of competent jurisdiction and/or the tribunal for further interim and/or interlocutory relief should the Claimant consider it appropriate.

**Clifford Chance, Bruun & Hjejle and Plesner
For and on behalf of the Claimant**

22 March 2022

⁵⁶ Follow-up Questions to Naalakkersuisut under s 37 of the Rules of Procedure of the Inatsisartut, 2 March 2022, at (C-28).

INDEX – FACTUAL EXHIBITS

Exhibit	Description	Date
C-1	Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland (including Addendum No. 1 of 10 September 2010 and Addendum No. 2 of 25 June 2013)	16 November 1998
C-2	Addendum No. 3 to Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland	1 July 2014
C-3	Licence No. 2005/17 (" <i>Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq in West Greenland</i> ")	6 July 2005
C-4	Addendum No. 1 to Licence No. 2005/17	19 December 2006
C-5	Licence No. 2005/28 (" <i>Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq North in West Greenland</i> ")	14 June 2007
C-6	Addendum No. 1 to Licence No. 2005/28	19 June 2008
C-7	Licence No. 2010/02 (" <i>Renewal of exploration licence with exclusive exploration rights for Greenland Minerals & Energy (Trading) A/S for an area near Kuannersuit in Southwest Greenland</i> ")	21 April 2010
C-8	Addendum No. 1 to Licence No. 2010/02	6 January 2012
C-9	Addendum No. 2 to Licence No. 2010/02	9 February 2016
C-10	Addendum No. 3 to Licence No. 2010/02	18 May 2017
C-11	Addendum No. 4 to Licence No. 2010/02	31 July 2018
C-12	Addendum No. 5 to Licence No. 2010/02	19 September 2018
C-13	Addendum No. 6 to Licence No. 2010/02	13 August 2018
C-14	Addendum No. 7 to Licence No. 2010/02	1 February 2021
C-15	Renewal of Licence No. 2010/02	8 April 2015
C-16	GML ASX Company Announcement	15 May 2017
C-17	Danish Institute for International Studies " <i>Governing Uranium in the Danish Realm</i> " (DIIS Report 2015-17)	2015
C-18	GML September 2021 Quarterly Report	29 October 2021
C-19	Government of Greenland Coalition Agreement	16 April 2021

Exhibit	Description	Date
C-20	Government of Greenland Public Announcement " <i>Government of Greenland supports mining activities, despite no to uranium</i> " (Minister Naaja Nathanielsen)	7 May 2021
C-21	Response to letter dated 19 April 2021 from Office of the High Commissioner for Human Rights mandate holders, ref. AL DNK 2/2021	1 July 2021
C-22	T Munk Viruses, " <i>Note on uranium replacement remains secret</i> ", Sermitsiaq Newspaper Article	2 December 2021
C-23	Email chain between Greenland Ministry of Mineral Resources and Greenland Minerals dated 4 November 2021 to 13 December 2021	4 November 2021 - 13 December 2021
C-24	Greenland Ministry of Mineral Resources Minutes from meeting regarding the Kuannersuit-project	15 December 2021
C-25	GML ASX Company Announcement	20 December 2021
C-26	T Juncher Jørgensen, " <i>Naaja Nathanielsen: Not agreeing with Greenland Minerals' interpretation</i> ", Sermitsiaq Newspaper Article	14 January 2022
C-27	Naalakkersuisut Answers to Questions under s 37 of the Rules of Procedure of the Inatsisartut on Possible Claims for Damages as a Violation of the Uranium Act	1 March 2022
C-28	Follow-up Questions to Naalakkersuisut under s 37 of the Rules of Procedure of the Inatsisartut	2 March 2022
C-29	Further Naalakkersuisut Answers to Questions under s 37 relating to Possible Claims for Damages Arising from the Uranium Act	21 March 2022

INDEX – LEGAL EXHIBITS

Exhibit	Description	Date
CL-1	Greenland Parliament Act No. 20 of 1 December 2021 to ban uranium, prospecting, exploration and exploitation, etc.	1 December 2021
CL-2	Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998)	6 June 1991
CL-3	Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities	7 December 2009
CL-4	Danish Parliament Act No. 473 of 12 June 2009 on Greenland Self-Government	12 June 2009
CL-5	Bill: Greenland Parliament Act no. [X] of [dd mm 2021] to ban uranium prospecting, exploration and exploitation	2021
CL-6	Explanatory notes to the final Bill for Greenland Parliament Act No. 20 of 1 December 2021 to ban uranium, prospecting, exploration and exploitation, etc	2021