INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID ARB. NO._____

DISCOVERY GLOBAL LLC

Claimant

v

THE SLOVAK REPUBLIC

Respondent

REQUEST FOR ARBITRATION

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30 SEPTEMBER 2021

SIGNATURE LITIGATION LLP
138 Fetter Lane
London
EC4A 1BT

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I. INTRODUCTION

1. This Request for Arbitration is submitted on behalf of Discovery Global LLC ("**Discovery**" or the "**Claimant**"), against the Slovak Republic ("**Slovakia**" or the "**Respondent**").

2. Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**" or the "**Convention**"), Discovery hereby submits its request to the Secretary-General of the International Centre for Settlement of Investment Disputes (the "**Centre**") to institute arbitration proceedings against the Slovak Republic. The claims of the Claimant in this arbitration arise under the Treaty Between The Czech And Slovak Federal Republic And The United States Of America Concerning The Reciprocal Encouragement And Protection Of Investment signed on the 22nd day of October 1991 (the "**Bilateral Investment Treaty**" or the "**BIT**").[1]

3. Through its wholly owned subsidiary, Alpine Oil & Gas s.r.o. ("**AOG**"), Discovery is and/or was the owner of oil and gas exploration rights under various licences granted by the Respondent, which are more specifically described below. This dispute arises out of an unlawful, systematic and repeated pattern of behaviour which has resulted in AOG (and consequently Discovery) being unable to exploit its rights under the licences, depriving Discovery of its investment, and which amounts to breaches of Slovakia's treaty obligations under the BIT.

4. Discovery is a U.S. company experienced in the exploration and development of oil and gas resources. AOG is a privately-owned independent oil and gas exploration company, active in north-eastern Slovakia and which has been a wholly-owned subsidiary of Discovery since March 2014. In 2006, the legal predecessor companies to AOG acquired three licences in north-eastern Slovakia, extending across some 2,442 square kilometres. AOG subsequently carried out an extensive programme of data acquisition, including a 770 kilometre 2-D seismic survey and gravity, aeromagnetic and magneto-telluric surveys, which identified numerous potential drilling targets across the licence areas.

5. Commencing in late 2015, Discovery, through AOG, attempted to initiate a 3-well drilling program on its three licences, as more particularly described below. However, AOG's ability to conduct operations at all three planned well locations was blocked by protests and obstructions organised by a small group of local activists. When Discovery sought the assistance of the police and the courts, it found that the police were not willing to assist AOG against the local activists, in breach of their legal obligations, and the courts were willing to exercise their authority in a way that discriminated against AOG. In respect of one location, AOG applied for an order for compulsory access to enable it to carry out drilling operations, but its application was refused on arbitrary and unlawful grounds, and contrary to AOG's (and Discovery's) legitimate expectations of its rights under the licence.

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[1] A copy of the BIT is at **Exhibit C-1**.

6. In 2017, having lost 18 months during which it was unable to proceed due to obstruction by the activists, and having concluded that it could not count on any support from either the police, the courts or the Ministry of Environment, AOG engaged in dialogue with the activists opposed to its operations and eventually agreed, on a purely voluntary basis, to complete a preliminary Environmental Impact Assessment ("**EIA**") screening process in respect of the three proposed wells. AOG's licences were not subject to this requirement, since they had been originally issued before preliminary EIA screenings became mandatory for any wells deeper than 600 metres in Slovakia, and consequently the authorities should not have accepted AOG's applications for preliminary EIA screening. The local district offices nonetheless processed the preliminary EIA applications but, in the two processes which were actually concluded, issued decisions ordering full-scope EIAs which were both unjustified by the environmental conditions and contained obvious defects. The full-scope EIA process could take a further 12-24 months to complete, if not longer, and involved considerably greater uncertainty, as well as expense, than the preliminary EIA screening process. Having already wasted over two years since first attempting to commence drilling operations, continuing with this process was not feasible.

7. During 2018, in order to reduce its annual licence fee costs (having still not been able to commence drilling operations), AOG relinquished three of its four licences (whilst retaining the preferential right to reapply for them in the event of successful drilling) and applied to reduce the licence area of its remaining licence, the Svidnik licence. However, when the Ministry of Environment published its decision confirming the reduction in size of the Svidnik licence in October 2018, it included an additional condition, namely that any future well to be drilled by AOG on the licence to a depth of greater than 600 metres was required to undergo the preliminary EIA process. This additional condition would make further drilling activity on the Svidnik licence open to interference by the activists and hence all but impossible. Moreover, this decision directly contradicted the previous public acknowledgement by the Minister of Environment that AOG's licences were not bound by the recent change in the law which had introduced the preliminary EIA screening procedure.

8. The result of all the circumstances described above is that Discovery, through AOG, has been unable to exercise the rights it had originally been granted under the licences due to the actions of individuals or entities which were either executive branches of the State, or were otherwise empowered to exercise State authority. These actions, which are therefore attributable to Slovakia, effectively prevented Discovery from reaping the benefits of its investment and reduced the commercial value of the licences to nothing. To date, Slovakia has refused to acknowledge its expropriation of Discovery's investment and has not paid Discovery prompt, adequate and effective compensation as required by the BIT. Slovakia also refuses to acknowledge its failure to accord Discovery's investment fair and equitable treatment or to account for its unjust enrichment.

II. THE PARTIES

A. The Claimant

9. The Claimant, Discovery Global LLC, is a U.S. company incorporated and registered under the laws of the State of Texas, United States of America, with registration number 800741189.

10. The Claimant is represented in these proceedings by Signature Litigation LLP. All required notifications should be addressed to:

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B. The Respondent

11. The Respondent in these proceedings is the Slovak Republic. Its address for the receipt of notices is:

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III. STATEMENT OF FACTS

12. Set out below is a summary of the issues in dispute between the Claimant and the Respondent, which demonstrate that there is a legal dispute arising directly out of the Claimant's investment. The Claimant will present a full statement of the facts and the law, supported by documentary and witness evidence, at the appropriate stage of the proceedings, and the Claimant further

reserves the right to add to or amend the facts as set out in this Request for Arbitration accordingly.

A. The Licences

13. In 2006, three predecessor companies to AOG were granted three licences to carry out exploration for crude oil and natural gas: the Svidník licence, the Medzilaborce licence and the Snina licence. In 2015, a fourth licence to carry out exploration for crude oil and natural gas, the Pakostov licence, was granted to AOG. These licences took the form of decisions issued by the Ministry of Environment of Slovakia designating the exploration area and stipulating the conditions which are to be met by the applicant in order for it to carry out the proposed exploration activities. For the purposes of this Request and for ease of reference the decisions issued to AOG and its three predecessor companies by the Ministry of Environment of Slovakia will be referred to individually as a "**Licence**" or collectively as the "**Licences**".

14. Summary details of the history of the Svidník, Medzilaborce, Snina and Pakostov Licences are as follows:

(a) The Svidník, Medzilaborce and Snina Licences were first awarded to three predecessor companies of AOG in July 2006, initially for terms of four years each, commencing on 1 August 2006.[2]

(b) In 2008, JKX Oil & Gas plc ("**JKX**") and SNGN Romgaz SA ("**Romgaz**") both farmed into the Svidník, Medzilaborce and Snina Licences, each acquiring a 25% interest in each of the three Licences.

(c) In 2010, the Svidník, Medzilaborce and Snina Licences were extended for further terms of four years.[3] Also in 2010, the predecessor companies of AOG were merged into a new company called Aurelian Oil & Gas Slovakia, s.r.o., later renamed Alpine Oil & Gas, s.r.o. (ie AOG).

(d) In 2014, the Svidník, Medzilaborce and Snina Licences were extended for further terms of two years each, with reduced Licence areas.[4]

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[2] Statement about determination of exploration area of 18 July 2006, NR.: 7677/2006-6.2 (Svidník) (**Exhibit C-2**); Statement of determination of the exploration area of 17 July 2006, NR.: 7673/2006-6.2 (Medzilaborce) (**Exhibit C-3**); Statement about determination of exploration area of 18 July 2006, NR.: 7674/2006-6.2 (Snina) (**Exhibit C-4**).

[3] Decision about extension of the geological survey permit of 26 July 2010, Ref. No.: 44505/2010, File No.: 998/2010-9.3 (Svidník) (**Exhibit C-5**); Decision about extension of the geological survey permit of 26 July 2010, Ref. No.: 44515/2010, File No.: 1000/2010-9.3 (Medzilaborce) (**Exhibit C-6**); Decision about extension of the geological survey permit of 26 July 2010, Ref. No.: 44509/2010, File No.: 999/2010-9.3 (Snina) (**Exhibit C-7**).

[4] Decision on exploration area term extension of 10 July 2014, Record Number: 33590/2014, File Number: 5670/2014-7.3 (Svidník) (**Exhibit C-8**); Decision on exploration area term extension of 9 July 2014, Record Number: 33409/2014, File Number: 5670/2014-7.3 (Medzilaborce) (**Exhibit C-9**); Decision on exploration area modification and extension of exploration area term of 15 July 2014, Record Number: 34186/2014, File Number: 5668/2014-7.3 (Snina) (**Exhibit C-10**).

(e) In 2015, the Pakostov Licence was issued to AOG, with JKX participating for a 25% interest, over an area adjacent to the reduced Snina Licence area, for a term of four years expiring in 2019.[5]

(f) In 2016, the Svidník, Medzilaborce and Snina Licences were extended for further terms of five years each expiring in 2021, with further reduced Licence areas.[6]

(g) In 2018, AOG and JKX relinquished the Pakostov Licence. Also in 2018, JKX gave notice to withdraw from the Svidník, Medzilaborce and Snina Licences.

(h) In April 2018, AOG, JKX and Romgaz relinquished the Medzilaborce and Snina Licences, and AOG with Romgaz applied to remove JKX from the remaining Svidnik Licence and to reduce the area of the Svidník Licence, which following the withdrawal of JKX was now held as to 66.67% by AOG and as to 33.33% by Romgaz.[7]

(i) In April 2020, Romgaz gave notice to withdraw from the Svidník Licence. Following approval of the withdrawal by Romgaz by a decision of the Slovak Ministry of Environment dated 22 June 2020, AOG retained a 100% economic interest in the Svidník Licence. Furthermore, under Slovak law, AOG also retained preferential rights to apply for and obtain oil and gas exploration licences over areas adjacent to its remaining Svidník Licence.

(j) In July 2021, the Svidnik Licence expired. In view of the fact that AOG (and consequently Discovery) had found itself prevented from exercising its rights under the Licences, as further described in this Request for Arbitration, AOG did not seek to further extend the term of the Svidnik Licence.

15. The Licences granted to, and held by, AOG were for exploration and conferred on AOG the right and obligation to explore for hydrocarbon deposits under the surface of each Licence. AOG committed to spend a minimum amount on exploration activities during the term of each Licence. Exploration activities included desktop analysis and research, field work such as surface mapping and seismic surveys and, following the identification of suitable targets, the drilling of one or more exploration wells on each Licence. AOG also committed and was obliged to file at the end of each year a report for each Licence, detailing its activities during the year. Over the period from 2007 to 2014, AOG conducted an extensive programme of exploration including surface mapping, a full tensor gravity survey, a 2D seismic survey and several electromagnetic surveys. By 2015, AOG had succeeded in identifying numerous drilling targets across its Licences. It selected, for an initial drilling campaign, proposed well locations at Smilno

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5 Decision on Exploration Area Assigning of 21 April 2015, Ref. No.: 20148/2015, File No.: 3792/2015-7.3 (**Exhibit C-11**).

6 Decision modifying the size of the area of, and extending the validity term for the exploration area of 14 June 2016, Record No.: 33507/2016, Dossier No.: 5021/2016-7.3 (Svidník) (**Exhibit C-12**); Decision modifying the size of the area of, and extending the validity term for the exploration area of 7 June 2016, Record No.: 32017/2016, Dossier No.: 5020/2016-7.3 (Medzilaborce) (**Exhibit C-13**); Decision modifying the size of the area of, and extending the validity term for the exploration area of 7 June 2016, Record No.: 32020/2016, Dossier No.: 5019/2016-7.3 (Snina) (**Exhibit C-14**).

7 Decision Modifying an Exploration Area of 8 June 2018, Record No.: 31581/2018, Dossier No.: 6109/2018-5.3 (**Exhibit C-15**).

on the Svidník Licence, Krivá Oľka on the Medzilaborce Licence and Ruská Poruba on the Snina Licence.

B. The Smilno Well on the Svidnik Licence

16. Between December 2015 and November 2016, AOG made three separate attempts to drill a well at the Smilno well site in accordance with the terms of the Svidník Licence. The site, which was held by AOG under lease, is located at the end of a 1km access road (the "**Road**"). On each of the three occasions that AOG mobilised contractors to start operations, it found its access to the well site along the Road blocked by a small group of activists, thereby preventing AOG from conducting its operations. As set out further below, the Respondent failed to ensure that AOG was able to access the site pursuant to the terms of the Svidník Licence, and in fact actively prevented it from doing so.

17. The Road is partially situated on plot EKN No. 2721/780. According to a statement of the Smilno municipality dated 6 June 2016: *"…the track situated on the parcel of land registered in EKN Register, Parcel No. 2721/780 situated in the Smilno Real Estate Registration Area has been used by the general public for many decades (100 – 200 years) as an access road to access the adjacent plots of land... and is publicly accessible."*[8] Most of the Road is situated on the plot registered in the Cadastral map as plot CKN No. 945 which is designated as "*built-up areas and courtyards*"; pursuant to its registration, it is designated as a plot where engineering structures such as local roads, special purpose roads, forest roads and field roads are permitted.

18. According to Slovak law,[9] the fact that the Road is used by vehicles and pedestrians in order to access other plots and is not in an enclosed area results in the Road being classified as a "*public special purpose road*"; this classification operates automatically by operation of law and is not dependent on any decision from any authority or governing body. On 9 December 2016, the Ministry of Transport confirmed that if a field road is recorded on the Cadastral register of the Slovak Republic, it is classified as a public special purpose road;[10] the Road meets this condition. Furthermore, it was confirmed in a decision of the Regional Court in Prešov that once a road is classified as a public special purpose road, it may be used by the public as a whole and its use is not restricted only to the registered co-owners of the plot where the access road is situated.[11] The owners of any land upon which the public special purpose road is situated

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8 **Exhibit C-18**.

9 For example, section 22(1) and 22(3) of Act No. 135/1961 Coll. on surface roads as effective at the relevant time (Zákon č. 135/1961 Zb. o pozemných komunikáciách (cestný zákon) v znení účinnom v relevantnom čase), and section 22 of Decree No. 35/1984 Coll. on implementing of the Act on surface roads as effective at the relevant time (Vyhláška č. 35/1984 Zb. ktorou sa vykonáva zákon o pozemných komunikáciách (cestný zákon) v znení účinnom v relevantnom čase).

10 **Exhibit C-22**. It is noted that a road designated simply as a "special purpose road" is by default a "public special purpose road" (and automatically part of the Slovak road network) unless it is in an enclosed area or has been converted into a "private special purpose road" by the municipality with the approval of the land owner. This was not the case for the Road, and thus it was at all times a "public special purpose road".

11 **Exhibit C-16** - Resolution of the Regional Court in Prešov dated 17 October 2011, file no. 6Co/85/2011 (Uznesenie Krajského súdu v Prešove zo dňa 17. októbra 2011, sp. zn. 6Co/85/2011).

are therefore bound to respect the public nature of the road, and it is contrary to the law for the owners to attempt to prohibit public access over such a road.

19. The Slovak Police Force (the "**Police**") are under an obligation to ensure that public special purpose roads, such as the Road, remain open for use by the public, including AOG and its subsidiary Cesty Smilno s.r.o. ("**Cesty Smilno**": as to which, see paragraphs 25 et seq below).[12] If any vehicles are obstructing traffic on a public special purpose road, the Police are also authorised to remove these vehicles, in order to keep it open for use by the public. Furthermore, it was implicit under the terms of the Licences[13] that AOG (and Cesty Smilno, as a subsidiary of AOG), was entitled to be given access to the drilling sites, particularly where such access was via roads accessible to the public.

20. As set out below, on each occasion that AOG and/or Cesty Smilno attempted to access the Smilno well site by the Road, they were prevented from doing so and the Police did nothing whatsoever to ensure that AOG and/or Cesty Smilno had such access as required. Indeed, actions taken by the Police and other State personnel and authorities effectively sought to prevent AOG and/or Cesty Smilno from accessing the site, in contravention of AOG's rights under the Svidník Licence.

(i) The First Drilling Attempt

21. The first attempt to conduct drilling operations at Smilno commenced on 6 December 2015, when contractors with earth-moving equipment started levelling the site for the planned well. The first problems began on Monday 14 December, when a car was parked across the entrance to the Road, where it leaves the village of Smilno. The contractors were able to continue work on levelling the well site but it was now impossible to bring further heavy equipment along the Road for follow-up operations. Activists started to appear in the following days, objecting to AOG's activities. The Police were also called on several days, but they merely stood by without removing the activists or making any effort to remove the car blocking the entrance to the Road.

22. Following the parking of the car on the Road, AOG agreed to buy a share in the Road from one of the lessors of the drilling site, in order to try and secure additional access rights (notwithstanding that this was, of course, unnecessary as the Road was by law accessible to the public and, therefore, the Police ought to have ensured that AOG had access in any event). This purchase was completed on 28 December 2015. However, AOG was still unable to access the Road, and additional vehicles were parked across the Road over the next few weeks, blocking the access further. The Police made no effort to remove any of these vehicles.

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[12] See, for example, sections 2(1)(a), 2(1)(i), 2(1)(j) and 27(a) of Act No. 171/1993 Coll. on the Police Force as amended from time to time (Zákon č. 171/1993 Z. z. o Policajnom zbore v znení účinnom v relevantnom čase) and sections 43(4) and 43(5) of Act No. 8/2009 Coll. on road traffic and on change and amendment of other acts as amended from time to time (Zákon č. 8/2009 Z. z. o cestnej premávke a o zmene a doplnení niektorých zákonov v znení účinnom v relevantnom čase).

[13] See also section 29 of the Geology Act (referred to at paragraphs 43 and 48 below).

23. On 21 January 2016, one of the co-owners of the Road, Mrs Varjanová, brought an action in the Bardejov District Court claiming that the sale of the share in the Road to AOG was in breach of the existing owners' pre-emption rights under Slovak law.[14] The judge allocated to the case was a Mrs Hanuščaková. On 18 February 2016, Mrs Varjanová obtained an interim injunction against AOG preventing it from accessing the Road, pending a determination of the validity of AOG's purchase of a share in the Road. The planned works had to be abandoned and it was only then that the vehicles were finally removed from the entrance to the Road.

24. This interim injunction should not have been granted as the ownership interest in question was of negligible value and Mrs Varjanová had suffered no material prejudice. The relief that was granted to Mrs Varjanová was entirely disproportionate to the rights it was purporting to protect. First and foremost, as stated above, the Road was a public special purpose road, and thus was accessible to all members of the public. AOG did not need to be a co-owner to access it but had purchased the share in an effort to mitigate the losses being suffered as a result of the obstructions encountered. The claim brought by Mrs Varjanová did not concern AOG's right to access the Road as a member of the public – it concerned only an alleged breach of pre-emption rights under a share purchase agreement relating to the Road. While it may have been arguable, therefore, that AOG should not be able to exercise its rights as a co-owner in the meantime (although even this was not justified as there was no risk of harm to Mrs Varjanová's interests pending final determination of the claim), there was no reason to prevent AOG from exercising its rights to use the Road as a member of the public. Effectively, the injunction stripped AOG of its legal right, as a member of the public, to use part of the public road network of Slovakia. In early March 2016 AOG appealed against the order for an interim injunction. However, in a decision issued by the Prešov Regional Court on about 14 April 2016, this appeal was rejected.[15]

25. Following the rejection of its appeal against the interim injunction, AOG agreed with the legal owner of another share in the Road to incorporate a new company, Cesty Smilno,[16] as a subsidiary of AOG. AOG invested cash in Cesty Smilno, and the other shareholder invested his share in the Road. Therefore, through AOG's ownership, Cesty Smilno also constituted an "investment" under Article I(a)(ii) of the BIT through which Discovery, via its subsidiary AOG, had invested in Slovakia. Incorporation of Cesty Smilno in this way did not constitute a breach of other owners' pre-emption rights under Slovak law. Cesty Smilno was, therefore, lawfully entitled to use the Road both as a member of the public as described in paragraphs 18 to 20 above, and as a co-owner. Moreover, Cesty Smilno, as a separate legal entity, was not bound or affected by the interim injunction.

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14 Case Number 1C/29/2016.

15 **Exhibit C-17** - Resolution of the Regional Court in Prešov dated 14 April 2016; Case Number 22Co/66/2016.

16 Cesty Smilno s.r.o., ID No.: 50 289 608 with registered seat at Karadžičova 16, 821 08 Bratislava.

(ii) The Second Drilling Attempt

26. Having thus secured an additional legal right to use the Road, AOG, through Cesty Smilno, attempted on 16-18 June 2016 to access the Road with the aim of restarting well operations. The activists again gathered at the entrance to the Road and obstructed the passage of equipment to the well location, and the Police were called to move them aside. However, the Police did not intervene to allow Cesty Smilno to use the Road, notwithstanding the fact that the Road was a public special purpose road and the fact that Cesty Smilno was a registered co-owner.

27. On this occasion, on Saturday 18 June 2016, a public prosecutor[17] also attended at the entrance of the Road, even though there was no reason for her to be there since a protest of this nature did not fall within her area of responsibility. Mrs Varjanová was also present. The public prosecutor referred AOG's legal adviser to the interim injunction and informed him that AOG had no right to use the Road. She completely ignored the fact that it was Cesty Smilno seeking to access the Road. The public prosecutor did not accept AOG's argument, and after conferring further with the Police she departed. As a result of the public prosecutor's intervention and the Police's failure to assist, AOG was unable to continue its operations on that occasion and it again discontinued its attempt to access the well site.

28. In June 2016, the Svidník, Snina and Medzilaborce Licences were all renewed. Despite noting in the Licences that there had been protests concerning AOG's attempts to drill, the Licences were renewed without any additional reservations, objections or restrictions that would limit AOG's rights in any way under the Licences. Notwithstanding this, on 24 June 2016 (and, it should be noted, after the Licences were renewed), the Parliament of the Prešov self-governing region (one of eight self-governing regions in Slovakia which form part of the public administration (*in Slovak: verejná správa*) of the Slovak Republic), which included the areas under AOG's Licences, approved the following resolution:

> *"The Council of the Prešov Self-Governing Region hereby fully supports the citizens and councils of villages/municipalities in North-Eastern Slovakia that do not agree with exploration works in the exploration area for production of oil and natural combustible gas associated with the activities of the company Alpine Oil and Gas s.r.o.*
>
> *Exploration areas of Svidník, Medzilaborce, Snina, Pakostov and Klenová situated in the Districts of Bardejov, Svidník, Stropkov, Medzilaborce and Snina are concerned.*
>
> *The Council of the Prešov Self-Governing Region will apply their best efforts and abilities to achieve that the affected municipalities/villages be excluded from the exploration and production areas."*[18]

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17 Prosecutor JUDr. Vladislava Slosarčíková.

18 **Exhibit C-20.**

29. This resolution was approved and published at a time when AOG was in active dialogue with a range of contractors, landowners, local authorities and other parties in the region, regarding its planned operations. The resolution represented a public, official condemnation of the Claimant's proposed activities in the region, from the principal regional elected body (and thus attributable to the Respondent), and was moreover intended to impair the Claimant's ability to pursue its investment. Accordingly, regardless of whether or not the Parliament of the Prešov self-governing region had any direct legal capacity to impose obligations or restrictions on AOG, on the Licences or on any other State authorities (for example, the Police), or whether or not those State authorities, and particularly the Police, considered themselves bound to abide by resolutions of the Parliament of the Prešov self-governing region, there can be no doubt that the resolution would have had a substantial negative impact on AOG's reputation and standing in the eyes of the local population, including members of the local Police. Its intention and effect, therefore, can only have been to harm AOG's ability to do business in the region and it thus represented a serious infringement by the self-governing regional parliament of AOG's rights under the Licences. Moreover, at no stage subsequently was any effort made by any part of the central government to reverse, or in any other way mitigate the effect of, this resolution of the Parliament of the Prešov self-governing region.

(iii) The Third Drilling Attempt

30. Following the abandonment of its second drilling attempt, AOG concluded that the interim injunction now represented a serious practical, albeit legally invalid, impediment to the continuation of its activities at Smilno. Although AOG had a sound legal basis for using the Road (both on the ground that the Road was a public special purpose road and thus publicly accessible, and through Cesty Smilno's co-ownership rights), its opponents were able unlawfully to exploit the existence of the interim injunction, which had itself been awarded in the course of a lawsuit which was no longer of the same significance to AOG as it had previously been (since it had now obtained additional rights of access to the Road through Cesty Smilno). AOG understood that if it were to concede the claim brought by Mrs Varjanová, this would result in the prompt discharge of the interim injunction awarded in support of her claim, and thus remove it as an argument for preventing AOG from using the Road and accessing its well site.

31. Accordingly, on or about 15 June 2016, an application to concede Mrs Varjanová's claim in full was filed with the Bardejov District Court. However, it was only in an order dated 5 October 2016, received by AOG's legal advisers on 21 October 2016, that the Court (through judge Mrs Hanuščaková) finally issued the judgment in Mrs Varjanová's case, by mailing it to both parties. AOG understood at this point that the interim injunction was to all intents and purposes of no further effect, since the claim had been conceded in full and there were therefore no grounds for appeal (although in fact, the interim injunction would not be formally discharged until after the time period allowed for the filing of an appeal against the judgment had expired, as set out

below). Consequently, AOG proceeded to make a further attempt to conduct operations at Smilno, which it started on 15 November 2016.

32. In the meantime, the Police indicated to AOG's lawyers, in or around July 2016, that if they could arrange for the Smilno municipality to put up a road sign at the entrance to the Road, which acknowledged that the Road was a public special purpose road, then the Police would endeavour to keep the Road open. After extensive discussions with the Mayor of Smilno and the Police, a proposed signage scheme was submitted by the Mayor to the Police for approval. However, while the rest of the scheme was approved, the Police declined to approve the placing of a sign at the entrance to the Road, with the result that AOG had wasted three months attempting to agree this scheme on the basis of false representations made to AOG by the Police.

33. In advance of restarting operations following receipt of the judgment in Mrs Varjanová's case, AOG engaged in further discussions with the Police. AOG held two meetings with the Police, on 26 October 2016 and 14 November 2016, during which the Police were informed of AOG's intention to use the Road and access the site. AOG's legal advisers explained that under Slovak law the Road was a public special purpose road which the Police were obliged to keep open and accessible, but the Police refused to accept that the Road was a public special purpose road and refused to commit to keep the Road open.

34. When AOG, through Cesty Smilno, returned to the Road on 15 November 2016, activists again arrived and blocked the access along the Road. The Police were called, and again did nothing to assist, refusing to accept either that the Road was a public special purpose road, or Cesty Smilno's entitlement to access the Road in its own right as a registered co-owner. The Police also refused to accept that the interim injunction was of no further effect and referred AOG and Cesty Smilno to the Court. On 17 November 2016, the planned works were abandoned for the third time.

35. As noted above, the interim injunction that had been obtained by Mrs Varjanová would not be formally discharged until the time for appeal had expired. In the copy of the judgment sent to Mrs Varjanová, it was explained that a notice of appeal could be filed, for specific reasons of a procedural nature, at any time up until midnight on 24 November 2016.

36. On 23 November 2016, Mrs Varjanová did indeed file an appeal[19] in the Prešov Regional Court, even though her claim had already been conceded in full and none of the specific reasons allowing an appeal were applicable to her case or were relied upon in her appeal. There was thus no decision or issue against which she could, as a matter of law, appeal, and her appeal was clearly inadmissible under sections 358 and 359 of the Civil Procedure Act. However, as

[19] Case Number 7Co/6/2017.

the effect of the appeal was to keep the interim injunction alive for the duration of the appeal, this was evidently the reason why Mrs Varjanová had filed the appeal.

37. On 8 December 2016, AOG filed an application to have Mrs Varjanová's appeal struck out. However, it was not until 27 February 2017 that AOG's application was determined, and the notice of appeal was indeed struck out. It then took until 4 April 2017 for the Prešov Regional Court to deliver the decision to the Bardejov District Court, which in turn sent it to both parties on 2 May 2017, but only stamped the decision on 14 June 2017. It was only at that point that the decision came into effect, the proceeding was terminated and the interim injunction was finally discharged. The result was that Mrs Varjanová's interim injunction had been kept in force for almost exactly a year after the date when AOG had first applied to concede the claim in respect of which the interim injunction had been issued.

38. In the meantime, AOG and Cesty Smilno attempted themselves to enforce their rights under the law by bringing actions for injunctions against the activists who had prevented access to the Road on 15-17 November 2016. Between 12 December 2016 and 13 January 2017, AOG and Cesty Smilno each commenced two separate actions against a number of the activists, seeking injunctions preventing them from infringing AOG's and Cesty Smilno's legitimate right to access the Road.[20] In contrast to Mrs Varjanová's case, in all four actions injunctions were refused, even though the claims were based on similar arguments, and supported by similar evidence, as those used successfully by Mrs Varjanová to obtain her interim injunction. Appeals were made in all four of the actions,[21] but these were all dismissed. It was clear that, in two very similar cases, AOG was being treated by the Courts in a wholly different manner from the way in which Mrs Varjanová was.

39. On 22 November 2016, AOG submitted a freedom of information request to the Ministry of Transport and to the Police Praesidium as to whether a field track, if registered on the Cadastral Register, constitutes a public special purpose road. In a response from the Ministry of Transport dated 29 November 2016,[22] the Ministry of Transport confirmed that such field tracks are special purpose roads. In a subsequent clarification issued on 9 December 2016, the Ministry of Transport confirmed that such field tracks, for which no building permit or decision approving its use has been issued and which are registered in the Land Register, are indeed public special purpose roads.[23]

40. Notwithstanding this clarification, on 23 November 2016, the Police sought directions from the Ministry of the Interior on how the Road should be classified (ie whether it was a public special purpose road or some other category of road). The Ministry of the Interior issued an instruction dated 19 December 2016,[24] that the Road was <u>not</u> a public special purpose road. This is a direct

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20 Case Numbers 6C/130/2016, 7C/159/2016, 1C/3/2017 and 3C/3/2017.
21 Case Numbers 20Co/14/2017, 6Co/40/2017, 6Co/52/2017 and 19Co/53/2017.
22 **Exhibit C-21**.
23 **Exhibit C-22**.
24 **Exhibit C-23**.

contradiction of the Ministry of Transport's statement and contravened AOG's rights under the Svidník Licence to access the site.

41. Subsequently, in a statement dated 30 December 2016,[25] the Ministry of the Interior declared that, with regard to the question of field roads and special purpose roads, the national competent authority was not itself but the Ministry of Transport. Thus the Ministry of the Interior, by its own admission, had no competence to issue its instruction to the Police which accordingly had no binding or legal force. Yet, when prompted by the Police, the Ministry of the Interior was prepared to issue an invalid instruction in order to protect the position of the Police and undermine AOG's lawful right to use the Road.

42. In any event, the Ministry of the Interior's classification should not have affected the rights of Cesty Smilno which, as a private co-owner of the Road, had the right to access it even if it were not a public special purpose road. Yet still the Police refused to assist or allow Cesty Smilno to access the Road.

(iv) No compulsory access order under section 29 of the Geology Act required in relation to the Smilno Well

43. As will be set out in more detail below, it is possible for entities to apply under section 29 of the Act No. 569/2007 Coll. on Geological Works (Geology Act) as amended from time to time (the "**Geology Act**") for a compulsory access order over land in the event there is a dispute between the entity and the owners of that land. The Claimant did not seek to utilise this legal mechanism in relation to the Smilno well because, as already outlined above, the Road was classified as a public special purpose road and so the Claimant was in any case entitled to access the Road as a member of the public. Furthermore, once Cesty Smilno became a registered co-owner of the Road, AOG had an additional right under Slovak law, under the authority of Cesty Smilno, to use the Road and access the well location, and the Claimant should have been able to rely on the Police to uphold that right as well.

(v) The decision not to continue the works after the injunction relating to the Road was discharged

44. As noted above, the Claimant had attempted to commence works on the Smilno well location on three separate occasions, all of which failed due to the Police: (i) failing and/or refusing to accept that the Road is a public special purpose road; (ii) failing to disperse the activists and allow AOG and/or Cesty Smilno to access the Road as they were entitled to do as members of the public; (iii) refusing to recognise Cesty Smilno as a registered co-owner of the Road thereby entitled to access and use it; (iv) reneging on their proposal to keep the Road open if proper signage could be put up acknowledging that it was a public special purpose road; and (v)

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25 **Exhibit C-24**.

refusing to accept that, by the third drilling attempt, the injunction had been discharged and/or did not apply in any event to Cesty Smilno. These failings by the Police were exacerbated by: (i) the unlawful intervention of the public prosecutor; (ii) the inappropriate and discriminatory resolution of the Parliament of the Prešov self-governing region; (iii) the delays experienced in the local Slovak courts in discharging the interim injunction; and (iv) the difference in treatment experienced by AOG and Cesty Smilno in the applications they made to the local Slovak Courts when compared to those made by one of the activists.

45. On each abortive attempt, the Claimant had to arrange, at considerable cost, for heavy machinery to be mobilised to the location. As a result of these failed attempts and given the Respondent's multiple wrongful and hostile actions towards the Claimant's proposed drilling activities, the Claimant had no confidence that any further attempt to access the site, following the final discharge of the injunction, would not encounter further unlawful obstructions by the Respondent. Furthermore, as set out below, the Claimant was also at the same time being prevented from exercising its rights under the other Licences, as a result of the wrongful and illegal actions of the Respondent (including in the section 29 process and the preliminary EIA process), which only served to reinforce its concerns that the Respondent did not intend to allow the Claimant to undertake any drilling activities under any of its Licences and, therefore, that any further attempt to access the site would not be successful. The Claimant subsequently began to investigate other possible well locations, where it might be able to conduct drilling activities with less threat of interference. It came close to finalising a lease at one of these locations but discontinued this initiative after the Ministry of Environment inserted the additional condition relating to preliminary EIAs in the Svidnik Licence in October 2018, discussed further below.

C. The Krivá Oľka Well on the Medzilaborce Licence

46. The proposed Krivá Oľka well location was situated on land outside the village of Krivá Oľka belonging to LESY Slovenskej republiky (the "**State Forestry**"), a state enterprise under the control of the Ministry of Agriculture. On 4 May 2015 the State Forestry signed a lease agreement with regard to the land to be leased to AOG, initially until January 2016. Because the area of the leased land exceeded a certain threshold, the State Forestry was required to have the lease pre-approved by the Ministry of Agriculture, in order for the agreement to be valid. That approval was obtained on 19 October 2015.

47. In January 2016 the State Forestry confirmed the extension of the lease for a minimum period of one year. In anticipation of receiving a new Ministry of Agriculture approval of the lease, the State Forestry authorised AOG to arrange for the felling of the standing timber on the location, and this was duly carried out. However, protests occurred at AOG's well locations in December 2015 and January 2016. Subsequently, despite the lease being provisionally extended by the State Forestry, no new lease approval was granted by the Ministry of Agriculture. No

justification was given at the time for the Ministry of Agriculture's refusal to issue its approval to the State Forestry.

48. In June 2016, AOG wrote to the Minister of Agriculture explaining that it was unable to proceed with preparations at Krivá Oľka without the lease first being approved, and requesting a meeting with the Minister. In her response,[26] the Minister did not respond to AOG's request for a meeting, arguing that the lease term had expired and the time limit for applying for a renewal had not been complied with. The Minister of Agriculture did, however, suggest that if AOG wished to take matters further, it could apply to the Ministry of Environment for an order against the Ministry of Agriculture for compulsory access under section 29 of the Geology Act.[27] This provision allows for the compulsory purchase or leasing of land for the carrying out of natural resources exploration, where this is in the public interest.

49. AOG duly applied to the Ministry of Environment for such an order in August 2016. The Ministry of Environment's legal department was initially very positive about AOG's application, confirming that this was a clear case where the public interest requirement was met and that it was quite clear that the Ministry of Agriculture had refused to approve the lease. However, delays started to occur and the process became increasingly protracted. On 7 February 2017 a meeting was held between lawyers for each of the Ministry of Environment, the Ministry of Agriculture and AOG, in which the lawyers on behalf of the Ministry of Agriculture refused outright to answer numerous questions put to them by the Ministry of Environment. Eventually, a decision was issued by the Ministry of Environment on 6 March 2017 (ie after the six month deadline specified under section 29(10) of the Geology Act) refusing the order, on the alleged basis that the Ministry of Environment had no power to issue an order under section 29 against the Ministry of Agriculture.[28] The Ministry of Environment officials had never previously raised any issue of this nature, and indeed following the meeting in February 2017 had informally discussed the terms of the proposed order for compulsory access with AOG's legal advisers.

50. There was no legal basis for this decision, and consequently AOG filed an appeal against the decision to the Minister of Environment. The Minister agreed with the arguments stated in the appeal, cancelled the first decision and returned the case for a fresh adjudication. In July 2017, the officials at the Ministry of Environment handling the case for the second time began seeking further documentation, including proof that the Ministry of Agriculture had refused to approve the lease, even though the Ministry of Agriculture's refusal to approve the lease was acknowledged in the decision of 6 March. It was at this stage perfectly clear to AOG that the Ministry of Environment was not prepared to process its application in good faith but was engaged in a concerted effort with the Ministry of Agriculture to prevent AOG from exploiting its rights under the Medzilaborce Licence.

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26 **Exhibit C-19.**

27 Zákona č. 569/2007 Z. z. o geologických prácach (geologický zákon) v znení účinnom v relevantnom čase.

28 **Exhibit C-25.**

51. AOG's experience of applying for an order under section 29 of the Geology Act is in marked contrast to that of the state-controlled oil company NAFTA, a.s. ("**NAFTA**"), which filed an application for an order under section 29 of the Geology Act against a private landowner near Malacky in western Slovakia, originally in May 2010. The application was contested vigorously but a decision was issued in favour of NAFTA in April 2012. The landowner then appealed against the decision, but his appeal was rejected in March 2013.

52. AOG's justification for an order for compulsory access was essentially the same as that offered by NAFTA in its case. In the NAFTA case, it was a private landowner who disputed the grant of an order, and asserted its property rights in a vigorous and sustained manner, but was still overruled, both at first instance and on appeal. In AOG's case, the Ministry of Agriculture, as respondent, barely engaged with the adjudication process at all. It never suggested that AOG was not entitled to an order for compulsory access against the Ministry of Agriculture, and indeed it actually indicated that it would abide by whatever decision was issued by the Ministry of Environment.

53. The Ministry of Environment, as the adjudicating authority, had been helpful and encouraging towards AOG all the way through the process, but at the last minute changed its attitude and refused to issue a decision in favour of AOG, notwithstanding the lack of any justification put forward by the Ministry of Agriculture. It was clear, once AOG initiated an appeal, that the Ministry of Environment would continue to proceed in a manner that was prejudiced against AOG. AOG was thus being treated in an obviously discriminatory fashion when compared to the way in which NAFTA's case had been handled by the Ministry of Environment.

54. Further evidence of systematic discrimination can be seen from the fact that of the 17 decisions issued by the Ministry of Environment under section 29 of the Geology Act between 2008 and 2020, only one other application was rejected. That case involved very specific circumstances and competing third party interests. In the case of AOG's application, there were no comparable circumstances which might have justified the Ministry of Environment's decision to reject it.

D. The Preliminary EIA Process in relation to the Smilno, Ruská Poruba and Krivá Oľka wells

55. By early 2017, in view of the patently obstructive stance of Ministries and of the local Police and judicial authorities towards AOG's attempts to conduct its operations in accordance with the rights granted to it under the Licences, AOG had reached the conclusion that it was effectively impossible to proceed with its operations without establishing a dialogue with the activists who were opposed to its operations. Several meetings were therefore held with the activists, who were invariably accompanied by representatives of a local environmental NGO called Forest Protection Aggregation VLK.[29] The activists initially demanded that no well should be drilled without a full-form EIA being conducted first. AOG explained that not only was this not required

[29] Lesoochranárske zoskupenie VLK, občianske združenie, sídlo: Tulčík č. 310, IČO: 31 303 862;

under the Licences, but that it also was not customary or feasible in the case of exploration wells.

56. To reach a compromise AOG offered, as a goodwill gesture and without legal obligation on its part, to complete a preliminary EIA screening process (a "**preliminary EIA**") in respect of each of the three planned wells (as opposed to a full-form EIA (a "**full EIA**")). The activists confirmed that if the results of each preliminary EIA process did not result in an order for a full EIA, then they would not seek to prevent the drilling of the well in question.

57. The preliminary EIA process had recently been adopted in Slovakia for all new exploration wells drilled to a depth greater than 600 metres but did not apply to exploration wells drilled under AOG's Licences, as these had been issued long before the change in the law came into effect on 1 January 2017. This position in relation to AOG's Licences had been expressly and publicly acknowledged by both the Minister of Environment and the Director-General of the Directorate for Geology and Natural Resources. Accordingly, notwithstanding AOG's offer to complete a preliminary EIA process, it was under no legal obligation to do so and the relevant State authorities should, therefore, have complied with the law and informed AOG that no application for preliminary EIA clearance was required in respect of its Licences, nor would any be accepted. Instead, as set out in the following paragraphs, they allowed AOG to pursue the preliminary EIA process unnecessarily, and then unfairly and wrongfully refused to grant clearance and ordered full EIAs despite there being no legal requirement for this in relation to the Licences.

58. AOG submitted an application for preliminary EIA clearance in respect of the planned Smilno well (on the Svidník Licence) to the Bardejov district office in June 2017; the application was then published for comments from the public, a number of which were subsequently filed. A large proportion of the comments simply made generic objections to oil and gas exploration as a whole. Others made unfounded criticisms of AOG's preliminary EIA application, or of AOG's planned operations. Many of the comments also appeared to have been coordinated between different authors. On 2 August 2017, the Bardejov district office issued a decision ordering a full EIA in relation to the planned Smilno well. This would have added at least a further 12-24 months to the well permitting process and was not required under the Licence. Moreover, the decision gave no grounds for its conclusion.

59. AOG submitted an application for preliminary EIA clearance in respect of the planned Ruská Poruba well (on the Snina Licence) to the Humenné district office in July 2017. The application was then published for comments from the public. Again, a number of comments were filed, similar in nature to those filed in relation to the Smilno well application.

60. On 7 September 2017, the Humenné district office issued a decision ordering a full EIA in relation to the planned Ruská Poruba well, which again would have added at least a further 12-24 months to the well permitting process and was not required under the terms of the Licence.

The decision gave no grounds for its conclusion and it was clear from the wording that the Humenné district office had not carried out any meaningful evaluation of the application; rather, the Humenné district office's decision was simply a word-for-word copy of the decision of the Bardejov district office in relation to the Smilno well, even to the point of including references to geographical features which were specific to the Smilno location and had no relevance to the Ruská Poruba location. AOG filed an appeal against this decision, and in January 2018 the Prešov district office, which was the authority deciding the appeal, ordered the Humenné district office to recommence its process from the beginning. However, by this time, in light of the ongoing obstructions faced by AOG in pursuing any drilling activities under any of its Licences, the Claimant took the decision to relinquish the Snina Licence (which it did in April 2018) in order to mitigate its losses and focus its attention on the Svidnik Licence.

61. AOG submitted an application for preliminary EIA clearance in respect of the planned Krivá Oľka well (on the Medzilaborce Licence) to the Medzilaborce district office on about 7 August 2017. The application was then published for comments from the public and a number of comments were filed, again similar in nature to those filed in relation to the Smilno well application. On 18 October 2017, the Medzilaborce district office issued a decision to suspend the Krivá Oľka preliminary EIA process and asked AOG to deliver responses to the comments filed. Responses were prepared but not finally filed. AOG had by this time concluded that it was unable to make progress in securing an order for compulsory access to the Krivá Oľka well location under section 29 of the Geology Act (as set out above), thus preventing any further progress in carrying out exploration activities at this well location.

62. In ordering full EIAs in relation to AOG's planned wells at Smilno and Ruská Poruba, the authorities were clearly yielding to pressure from the activists filing comments against the applications, rather than applying the criteria prescribed under the EIA Act, which refer exclusively to the expected environmental impact of the activity in question. This can be seen from the fact that, in two applications for preliminary EIA clearance from the state-controlled oil company NAFTA in 2016 and 2018, summarised below, no order for a full EIA was made even though both applications involved sites which were more environmentally sensitive than Smilno and Ruská Poruba, and activities which were comparable to the drilling of an exploration well:

(a) The application for preliminary EIA clearance for the change of production technology in Ptrukša, second stage, submitted by NAFTA in 2016, involved the installation of a gas compressor, odorization unit and injection pump for injecting water into the reservoir. The application related to an area with the second (higher) level of environmental protection, as well as being in the bird protection area "Medzibodrožie", which is itself in a NATURA 2000[30] area.

[30] 'NATURA 2000' is a network of nature protection areas within the European Union. Projects which fall within, or which are comprised of, NATURA 2000 areas would require a higher degree of consideration in terms of the impact on the surrounding environment before anything is approved.

(b) The application for preliminary EIA clearance for the abandonment of the CHLU Borsky Jur III exploration well, which also included well testing, was submitted by NAFTA in 2018. The application related to an area in the first level of environmental protection, close to the Záhorské pomoravie bird protection area and to five areas of European significance.

This compares with AOG's locations of which two, Smilno and Ruská Poruba, were in the first (i.e. lowest) level of environmental protection, but not in any bird protection or NATURA 2000 areas, while the third location, Krivá Oľka, was in an area also with only the first level of environmental protection, near the "Laborecká vrchovina" bird protection area but without NATURA 2000 designation. (The first level of environmental protection is the lowest level of environmental protection and applies across the whole of Slovakia except where a higher level of protection is in force).

63. Similarly, in relation to preliminary EIA screening for exploration wells, it can be seen that NAFTA enjoyed an easier treatment than that experienced by AOG. NAFTA filed three applications for preliminary EIA clearance in respect of three planned wells at Trakovice, Madunice and Malzenice in south-western Slovakia, on 13 December 2018, 27 January 2019 and 28 February 2019 respectively. Despite objections being filed, all three applications resulted in decisions granting clearance (ie without the need to proceed to a full EIA), which were issued on 30 January 2019, 1 April 2019 and 22 May 2019 respectively.

E. The retrospective imposition of new conditions on the Svidník Licence

64. In early 2018 JKX, one of AOG's two partners in the Licences, gave notice to withdraw from the Licences, as it could no longer justify the extended delays and uncertainty surrounding AOG's activities, resulting from the actions and decisions of agents of the Slovak State. At the same time, AOG applied to relinquish three of the four Licences, namely the Medzilaborce, Snina and Pakostov Licences, and also applied to reduce significantly the area of the remaining Svidník Licence. AOG nevertheless retained a preferential right to reapply for fresh licences over the relinquished areas, as it planned to do following a successful drilling operation on its remaining Svidník Licence area.[31] Thus, the proposed relinquishment was not in any sense a judgment by AOG that the areas relinquished were not prospective for oil and gas. Rather, they were a consequence of the actions of agents of the Slovak State, which had prevented AOG from conducting its operations pursuant to, and enjoying the rights granted to it under, the Licences. By temporarily reducing the area held under licence, AOG was able to reduce the amount of annual licence fee payable, pending a successful well result, in circumstances where it was in any case being wrongfully prevented from drilling.

65. In April 2018, in addition to applications to relinquish the Medzilaborce, Snina and Pakostov Licences, AOG submitted an application to remove JKX as a participant in the Svidník Licence and also to reduce the Svidník Licence area. Normally the Ministry of Environment would be

[31] Section 24(7) of the Geology Act.

required to complete this process within two months, ie by the end of June 2018. However, the process was not in fact completed until the end of October 2018, when the annual licence fee fell due for payment. On 29 October 2018, the Ministry issued a decision (dated 8 June 2018) which, while confirming the reduction in the Svidník Licence area, also wrongfully incorporated an additional condition in the Licence: namely, that AOG was now required to complete the preliminary EIA procedure before drilling any well whatsoever deeper than 600 metres on the Licence. Both the Minister of Environment and the Director-General of the Directorate for Geology and Natural Resources had previously publicly acknowledged that this new condition only applied to new licences issued after 1 January 2017 and not to AOG's Licences. In direct contravention of this prior public acknowledgment, the condition was now being wrongfully applied retrospectively to a licence issued long before 2017.

66. As a matter of Slovak law,[32] any decision on the amendment of the exploration area should only consist of the delimitation of the exploration area itself and should not seek to impose additional conditions which were not relevant nor requested as part of the application. Indeed, in the decision modifying the exploration area of the Svidník Licence dated 8 June 2018,[33] the terms and conditions dictate that the geological works were to be carried out in agreement with the terms and conditions as set out in the initial decision on the Svidník Licence as granted in 2006. The retrospective imposition of the preliminary EIA condition on the Svidník Licence was inconsistent with those terms and conditions, was unlawful, and was a clear case of arbitrary discrimination against AOG. The Claimant is, moreover, aware of at least 64 applications to the Ministry of Environment concerning the renewal of exploration licences and/or modifications of licence areas. (There are, of course, many other applications made to the Ministry of Environment concerning such licences; but these 64 applications relate specifically to applications concerning the renewal and/or modification of the licence area.) Out of these 64 decisions, it is only in AOG's case that the Ministry of Environment has imposed additional EIA conditions on the Licence when the application has merely been to reduce the Licence area. Furthermore, given that the local district offices had shown themselves inclined to discriminate against AOG in processing preliminary EIA applications, by ordering a full EIA in all circumstances, the effect of the inclusion of the additional condition in the Svidnik Licence was that any further attempt by AOG to drill an exploration well under the Licence was at risk of being delayed indefinitely, thus rendering the Licence worthless.

F. The attribution of actions to the State

67. The measures described above, which prevented the Claimant from exercising its rights under the Licences, are attributable to the Respondent under international law. Each of the opposing protagonists in the incidents described above are either executive branches of the State (for example, the Ministry of Agriculture and the Ministry of Environment) and so their actions are

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[32] Section 23(14) of the Geology Act.

[33] **Exhibit C-15** - Decision Modifying an Exploration Area of 8 June 2018, Record No.: 31581/2018, Dossier No.: 6109/2018-5.3.

directly attributable to the State, or they are empowered by the internal law of the State to exercise elements of State authority (for example, the Police, the public prosecutor JUDr. Vladislava Slosarčíková and the national judicial system). Furthermore, the acts in question were all performed by the relevant individuals or entities whilst acting in the exercise of their delegated State authority.

G. Consequences of the Respondent's measures

68. The measures described above, implemented by the various executive branches of the Respondent State and/or their personnel acting in their official capacity and in the exercise of their delegated State authority, have caused substantial damage to the Claimant's interests, including the depreciation and loss of economic value of its investment. The amount of the damage suffered will be documented in detail by competent financial and expert evidence in these proceedings but, apart from losing the value of its initial investment of approximately EUR 20.5 million, the Claimant has also lost the entirety of the profits it would have made had it been allowed to exercise its rights under the Licences and pursue its drilling activities in accordance with its legitimate expectations. The Respondent has disclaimed all responsibility for its conduct and has not paid or offered any compensation for the damage caused to the Claimant's interests.

IV. CLAIMS

69. Article III(1) of the BIT prohibits direct or indirect expropriation of investments, including through measures tantamount to expropriation, unless the measures are taken in the public interest, in accordance with due process of law, in a non-discriminatory manner, and effective and adequate compensation is provided promptly. The BIT also requires, among other things, that the Slovak Republic: (i) accord at all times fair and equitable treatment to investments of investors of the United States of America; (ii) ensure full protection and security for such investments in its territory and shall in no case accord treatment less than that which conforms to principles of international law; (iii) not impair by unreasonable or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion or disposal of such investments; and (iv) observe any obligation it may have entered into with regard to those investments. The Claimant's substantive claims and the legal bases for them will be explained in detail at the appropriate stage of this proceeding. The purpose of the following statement of claims is to show, for the purposes of ICSID Institution Rule 2(1)(e), that the dispute hereby submitted to ICSID arbitration is a legal dispute arising directly out of the Claimant's investments in Slovakia.

A. Expropriation

70. Article III(1) of the BIT expressly provides as follows:

> 1. *Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in accordance with due process of law; in a nondiscriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with the general principles of treatment provided for in Article II(2).*
>
> *Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known; be paid without delay; include interest at a reasonable market rate from the date of expropriation; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.*[34]

71. The Respondent's actions summarised in the preceding paragraphs amount to an expropriation of the Claimant's investment within the meaning of Article III(1) as they had the effect, whether individually or cumulatively, of depriving the Claimant of all, or substantially all, of the economic value of its investment.

72. By way of example, but without limitation, by preventing the Claimant from accessing the Road over the period from December 2015 to November 2016, the Respondent also prevented the Claimant from exercising its rights under the Licences to drill exploratory wells into its designated targets, which had a very high likelihood of success. The artificially protracted nature of the court proceedings relating to the interim injunction, and the Courts' willingness to receive Mrs Varjanová's appeal even though it was a flagrant abuse of process, further exacerbated the denial of the Claimant's rights to access the Road. In addition, the manner in which the different State authorities and ministries failed to approve the lease on State Forestry land despite previous positive assurances, refused to grant a compulsory access order even though all legal requirements has been met, accepted preliminary EIA applications which should not have been accepted and then processed them unlawfully, and retrospectively and wrongfully imposed an additional condition on the Svidnik Licence which would have the effect of rendering further drilling on the Licence all but impossible, amongst other matters, together rendered the Claimant's Licences of no practical use and hence its investment worthless. Accordingly, Slovakia's actions were tantamount to a *de facto* expropriation of the Claimant's investment.

73. Article III(1) of the BIT further obliged the Respondent to respect numerous conditions in the event it chose to effect an expropriation of the Claimant's investment, including (i) that the expropriation be effected for a public purpose, (ii) in accordance with due process of law, (iii) in a non-discriminatory manner, (iv) in return for payment of prompt, adequate and effective compensation, and (v) in accordance with the general principles of treatment provided for in Article II(2) of the BIT (the fair and equitable treatment standard). Additionally, Article III(2) further obliged the Respondent to pay compensation equivalent to the fair market value of the expropriated investment immediately before the expropriation was effected or became known,

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[34] **Exhibit C-1** - Treaty between the Czech and Slovak Federal Republic and the United States of America Concerning the Reciprocal Encouragement and Protection of Investment dated 22 October 1991 – Article III(1) at Pages 6-7.

which compensation was to include interest at a reasonable market rate from the date of expropriation, be fully realisable and be freely transferable. The Respondent has not complied with any of these requirements. Slovakia's actions discriminated against the Claimant as a foreign investor and, as indicated above, have rendered the Claimant's Licences of no practical use and hence its investment worthless. Despite engaging in correspondence over the issues, Slovakia has never acknowledged that its actions amounted to an expropriation of the Claimant's investment, nor has it offered the Claimant any form of compensation. The Respondent is, therefore, in breach of its Article III obligations.

B. Breach of fair and equitable treatment, full protection and security, non-discrimination and other related standards

74. Articles II(2)(a) and (b) of the BIT expressly provide as follows:

> *(a) Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that which conforms to principles of international law.*
>
> *(b) Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For the purposes of dispute resolution under Articles VI and VII, a measure may be arbitrary and discriminatory notwithstanding the fact that a party has had or has exercised the opportunity to review such measure in the courts or administrative tribunals of a Party.* [35]

75. Slovakia's actions as summarised above have breached its obligation to accord fair and equitable treatment to the Claimant's investment, to afford it full protection and security and to not impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion or disposal of its investment. As described above, the Claimant had a right under the Licences to drill exploratory wells in the defined exploration areas freely and without any hindrances.

76. The Claimant had a legitimate expectation that it would be able to freely exercise the exploration rights it had been granted under the Licences and, following successful exploratory wells, convert the Licences into production licences. This legitimate expectation was enshrined in the Licences themselves, which make specific reference to the exploratory activity to be conducted in the exploration areas under each Licence. The facts show that the Claimant was not treated fairly and in accordance with its legitimate expectations, and that it was instead subjected to discriminatory and arbitrary treatment at various junctures throughout the course of its investment by the Police, the Slovak court system and various ministerial departments, among others, which served only to frustrate the Claimant's efforts to exercise its rights under the Licences and prevent it from making any progress.

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[35] **Exhibit C-1** at Page 4.

77. Furthermore, Slovakia's actions also denied the Claimant's investments fair and equitable treatment as they unjustly enriched Slovakia at the Claimant's expense. Having induced the Claimant into investing substantial sums in the payment of the Licence fees, in conducting seismic surveys and other exploration activities, and in the payment of the associated overhead costs, Slovakia thereafter prevented the Claimant from realising the fruits of its investment. This conduct amounts to a separate and further breach of Articles II(2)(a) and (b) of the BIT.

C. Breach of requirement to observe obligations it had entered into

78. Article II(2)(c) of the BIT expressly provides as follows:

> *(c) Each Party shall observe any obligation it may have entered into with regard to investments.*[36]

79. By preventing the Claimant from being able to exercise its rights under the Licences which the Respondent had granted, the Respondent is in further breach of Article II(2)(c) of the BIT by failing to observe the obligations in those Licences. The Claimant paid a substantial amount of licence fees over the duration of its investment, in consideration for the right to drill its exploratory wells at any time during the terms of the Licences. The breaches outlined above and the indirect expropriation of the Claimant's investment in those Licences is a breach of Article II(2)(c).

D. Breach of obligation to provide effective means of asserting claims

80. Article II(6) of the BIT expressly provides:

> *6. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investments and authorizations relating thereto and investment agreements.*[37]

81. The repeated and illegal refusal by the Police to prevent activists from blocking (including with a number of illegally parked vehicles) the Road, being a public special purpose road, infringed the Claimant's rights under the Licences and meant that it had no effective means of asserting or enforcing its rights thereunder. The Claimant's experience of the Slovak court system when it attempted but failed to obtain interim injunctions contrasts dramatically with that of the local activist, who was able to keep an interim injunction alive for an extended period when both cases were similar in nature, and evidences a further failure to provide the Claimant with an effective means of asserting its claims and enforcing rights.

82. In addition, following the Claimant's preliminary EIA applications, when ordering the full EIAs the failure by the Bardejov and Humenné district offices to provide any reasons for reaching

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[36] **Exhibit C-1** at Page 4.
[37] **Exhibit C-1** at Page 5.

their conclusions is a further violation of Article II(6). The failure to provide any reasons as to why or how these decisions were reached (in addition to being evidence of discrimination as noted above) meant that the Claimant was unable to consider, amend or review its behaviour or conduct, nor was it able to pursue any appeal processes, if any were available to it.

E. Claimant's Claim for Damages

83. The above stated breaches of the BIT have caused serious financial loss to the Claimant. Such loss includes, without limitation, (i) the loss of all acquisition, exploration and development costs which the Claimant spent on the Licences, (ii) the loss of the fair market value of the Claimant's ownership interest in the Licences which it could have realised through the potential sale of all or part of that interest to a third party, and (iii) the loss of the net present value of the future cash flows which the Claimant would have realised through its commercial development of the Licences but for the actions of Slovakia in breach of the BIT. Based upon its own internal assessment of its losses, the Claimant estimates these to be in the region of USD 2.11 billion in relation to just the shallow zones under its Licences. Significant value is also attributable to the deeper zones under the Licences. The Claimant has commissioned an independent assessment of its losses and will provide a more detailed quantification and substantiation at the appropriate stage of these proceedings.

V. ARBITRATION UNDER THE BIT

84. The Claimant has satisfied the consultation and negotiation requirement under Article VI(2) of the BIT and the six month 'cooling-off' period as specified in Article VI(3)(a) of the BIT has elapsed. Article VI reads as follows:

> 1. *For the purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; (b) the interpretation or application of any investment authorization granted by a Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.*
>
> 2. *In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation, which may include the use of non-binding, third party procedures. Subject to paragraph 3 of this Article, if the dispute cannot be resolved through consultation and negotiation, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute-settlement procedures; any dispute-settlement procedures, including those relating to expropriation, specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws and applicable international agreements regarding enforcement of arbitral awards.*
>
> 3. *(a) At any time after six months from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by conciliation or binding*

arbitration to the International Centre for the Settlement of Investment Disputes ("Centre") or to the Additional Facility of the Centre or pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL") or pursuant to the arbitration rules of any arbitral institution mutually agreed between the parties to the dispute. Once the national or company concerned has so consented, either party to the dispute may institute such proceeding provided:

(i) the dispute has not been submitted by the national or company for resolution in accordance with any applicable previously agreed dispute-settlement procedures; and

(ii) the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a party to the dispute.

If the parties disagree over whether conciliation or binding arbitration is the more appropriate procedure to be employed, the opinion of the national or company concerned shall prevail.

(b) Each Party hereby consents to the submission of an investment dispute for settlement by conciliation or binding arbitration:

(i) to the Centre, in the event that the Government of the Czech and Slovak Federal Republic becomes a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States done at Washington, March 18, 1965 ("Convention") and the Regulations and Rules of the Centre, and to the Additional Facility of the Centre, and

(ii) to an arbitral tribunal established under the UNCITRAL Rules, as those Rules may be modified by mutual agreement of the parties to the dispute (the Appointing Authority referenced therein to be the Secretary-General of the Centre).

(c) Conciliation or arbitration of disputes under (b)(i) shall be done applying the provisions of the Convention and the Regulations and Rules of the Centre, or of the Additional Facility as the case may be.[38]

...

85. As detailed below, all the conditions for submission of the current dispute to binding arbitration are met.

A. Existence of an "Investment Dispute"

86. The first condition for the submission of a dispute to arbitration under the BIT is the existence of an "investment dispute". Article VI(1)(c) expressly defines an investment dispute as including *"an alleged breach of any right conferred or created by this Treaty with respect to an investment."* As set out below, Discovery clearly has an "investment dispute" with the Respondent as defined.

87. Discovery is a company incorporated and registered under the laws of the State of Texas, in the United States of America. The BIT affords protection to the investments made by nationals

[38] **Exhibit C-1** at Pages 8-9.

and companies of each Party (ie Slovakia and the USA) in the other, and an investment is defined as *"every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party…"*.[39]

88. A company of a Party is defined as *"any kind of corporation, company, association, state or other enterprise, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned"*.[40] Texas is a political subdivision of the United States of America as per the second paragraph of the Protocol of the BIT and so Discovery falls within the definition of "a company of a Party" under Article I(1)(b) of the BIT. Discovery thus satisfies the nationality requirements of, and is a protected investor under, the BIT.

89. The purpose of the BIT, as set out in the preamble, is to protect the investments made by nationals and companies of one Party in the other Party's territory. Amongst the types of investments that are protected, the following are explicitly referenced:

(a) tangible and intangible property;[41]

(b) a company or shares of stock or other interests in a company or interests in the assets thereof;[42] and

(c) any right conferred by law or contract, and any licenses and permits pursuant to law, including concessions to search for, cultivate, extract, or exploit natural resources.[43]

90. As discussed at paragraphs 13 to 15 above, Discovery held an economic interest in each of the Licences. Article I(1)(a) of the BIT expressly recognises interests (whether owned or controlled directly or indirectly by the relevant investor) in companies and licences as constituting "investments". Discovery directly owns and controls AOG as its 100% shareholder, and indirectly owns and controls AOG's assets and in particular its economic interest in the Licences. Accordingly, through the Licences and AOG itself, Discovery has invested in the territory of Slovakia and its investments are protected under the terms of the BIT.

91. Furthermore, since 2006, AOG (and consequently Discovery) has invested a total sum of approximately EUR 20.5 million in the Licences, comprising expenditure *inter alia* on annual licence fees payable to the Respondent, on geological and geophysical surveys on the Licences, and on related contractors and consultants.

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39 **Exhibit C-1** at Page 2.
40 **Exhibit C-1** at Page 2.
41 **Exhibit C-1** at Page 2.
42 **Exhibit C-1** at Page 2.
43 **Exhibit C-1** at Page 2.

B. Slovakia is a Party to the BIT and the ICSID Convention

92. Article VI(3)(b)(i) of the BIT provides that, in the event the Respondent were to become a party to the ICSID Convention, it consents to the submission of an investment dispute to the Centre by virtue of being a party to the BIT. The BIT was executed in Washington, in the United States of America, on 22 October 1991 and entered into force on 19 December 1992. Article XIV provides for the BIT to remain in force for a period of ten years and to continue in force thereafter unless terminated in accordance with the provisions of the BIT. The BIT has never been terminated by either Party and therefore continues to remain in force and binding upon Slovakia.

93. Further, the Slovak Republic became a party to the ICSID Convention, having signed the Convention on 27 September 1993 and ratifying it on 27 May 1994 with an effective date of 26 June 1994.

C. Claimant is a "Company of the other Party" to the BIT

94. As set out in paragraphs 87 and 88 above, the Claimant is a company of the other Party (ie the USA). The Claimant is a company incorporated under the laws of the State of Texas, which qualifies as a political subdivision of the United States of America, which is the other party to the BIT.

D. The Parties have consented to the Arbitration of this Dispute

95. Both the Claimant and the Respondent have expressed their consent in writing to submit this dispute to arbitration. As set out in paragraphs 92 and 93 above, and Article VI(3)(b)(i) of the BIT, the Respondent has expressed its consent to arbitration and to ICSID jurisdiction by entering into the BIT itself and becoming a party to the ICSID Convention.

96. The Claimant has expressed its consent to ICSID jurisdiction through the filing of this Request and its choice of ICSID arbitration pursuant to Article VI(3) of the BIT. In filing this Request for Arbitration, the Claimant hereby consents to the jurisdiction of the Centre over all aspects of the dispute described in this Request for Arbitration. The Claimant has not submitted this dispute for resolution to any of the courts or administrative tribunals of the Respondent, nor has the Claimant previously agreed with the Respondent to submit the dispute to any other dispute-settlement procedures.

E. Six Months have elapsed since the Dispute arose

97. The Claimant sent a formal Notice of Dispute to the Respondent on 5 October 2020 describing in detail the disputes which form the basis of this Request for Arbitration and requesting

consultations to avoid the need for arbitration.[44] The Respondent replied by way of letter on 27 January 2021 and consultations have ensued since then in correspondence between the Claimant's legal representatives and the Respondent. Despite these efforts no resolution has been achieved. As six months have elapsed since the Claimant served the Respondent with its Notice of Dispute, the Claimant is entitled to submit the dispute for final resolution by an ICSID arbitral tribunal.

VI. ICSID JURISDICTION

98. In addition to establishing jurisdiction under the BIT, the conditions are also met for the Claimant to submit its claims to the Centre pursuant to Article VI(3)(a) of the BIT. Under Article 25 of the ICSID Convention, the Centre has jurisdiction over *"any legal dispute arising directly out of an investment"* between a State party to the ICSID Convention and a national of another State party to the Convention, if both parties to the dispute have consented in writing to submit the dispute to the Centre. As set out below, there are five elements which need to be met, all of which have been satisfied in this case.

A. Claimant and Slovakia have a Legal Dispute

99. The matters at issue are "legal disputes" within the meaning of Article 25(1) of the ICSID Convention, as they concern Slovakia's violations of the Claimant's rights under the BIT and international law.

B. The dispute arises directly out of Claimant's Investment

100. The Claimant held, directly or indirectly, an investment in the territory of the Slovak Republic within the meaning of the ICSID Convention as well as within the meaning of the BIT. While the term "investment" is not defined in the Convention, the development of ICSID caselaw indicates that there are three main criteria used to determine the existence of an investment under the ICSID Convention: (1) contribution, (2) risk and (3) duration.[45] The Claimant's investment clearly satisfied these criteria, being an investment concerning the exploration and development of natural resources in the Respondent's territory over the course of at least a decade and in which the Claimant invested significant sums (but has seen no return).

C. Slovakia is a Contracting State to the ICSID Convention

101. As stated in paragraph 93 above, Slovakia became a party to the Convention on 27 September 1993 with an effective date of 26 June 1994. Therefore Slovakia is, and remains, a Contracting State to the Convention.

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[44] **Exhibit C-26 -** Formal notification of claim (notice of dispute) under the Treaty between the Czech and Slovak Republic and the United States of America dated 2 October 2020.

[45] *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, para. 295.

D. Claimant is a National of another Contracting State

102. The Claimant is a *"national of another Contracting State"* as defined by Article 25(2)(b) of the Convention, as detailed in paragraphs 87 and 88 above.

E. Claimant and Slovakia have both consented to ICSID Jurisdiction

103. Finally, both the Claimant and Slovakia have expressed their consent in writing to ICSID jurisdiction, as stated in paragraphs 95 to 96 above.

VII. AUTHORISATION OF THE REQUEST

104. Pursuant to Rule 2(1)(f) of the Institution Rules, which requires the requesting party, if a juridical person, to take all necessary internal actions to authorise the Request, the Claimant affirms that it has taken all necessary actions to authorise this Request. The Claimant has also duly authorised Signature Litigation LLP to submit this Request on its behalf.

VIII. NUMBER OF ARBITRATORS AND METHOD OF APPOINTMENT

105. Article VII(2) of the BIT provides as follows:

> *Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State…*

106. The Claimant proposes that this method is followed: that the Tribunal consist of three arbitrators, with one appointed by the Claimant, one appointed by the Respondent, both within two months of receiving the Request, and the presiding arbitrator to be appointed by agreement of the two party-appointed arbitrators, failing which the presiding arbitrator shall be appointed by the Chairman of the Administrative Council of ICSID, pursuant to Article 38 of the ICSID Convention, as soon as possible and in any event no later than 90 days from the date of notice of registration of the Request. The Respondent is hereby invited to respond to this proposal within 20 days from the date of this Request in accordance with Rule 2(1)(b) of the ICSID Arbitration Rules.

107. For the purposes of ensuring the impartiality and independence of the members of the Tribunal, the Claimant confirms that its costs in pursuing this arbitration are being funded by 24LF Capital LLC, an entity affiliated with Delta Capital Partners Management LLC.

IX. LANGUAGE

108. Pursuant to Rule 22(1) of the ICSID Arbitration Rules, the Claimant proposes that English be used as the procedural language for the arbitration.

X. REQUEST FOR RELIEF

109. For the foregoing reasons, the Claimant respectfully requests that a tribunal be constituted in accordance with the Convention and the Rules as proposed above to resolve the claims set forth in this Request for Arbitration (as may be amended in due course),[46] and that the tribunal render an award in favour of the Claimants containing the following relief:

109.1 A declaration that the dispute is within the jurisdiction and competence of the Centre and the Tribunal;

109.2 A declaration that the Respondent has breached the BIT:

109.2.1 by expropriating the Claimant's investments without complying with the requirements of the BIT, including payment of prompt, adequate and effective compensation;

109.2.2 by failing to accord fair and equitable treatment and/or full protection and security to the Claimant's investments;

109.2.3 by taking unreasonable and/or discriminatory measures that impaired the management, operation, maintenance, use, enjoyment, acquisition, expansion or disposal of the Claimant's investments;

109.2.4 by discriminating against the Claimant as a foreign investor; and

109.2.5 by failing to observe obligations entered into with respect to the Claimant’s investments;

109.3 A declaration that the Respondent has breached customary international law:

109.3.1 by violating the minimum standard of treatment of foreign investors; and

109.3.2 by expropriating the Claimant's investments without observance of due process and payment of prompt, adequate and effective compensation;

109.4 An order directing the Respondent to pay to the Claimant full reparation in accordance with the BIT and customary international law, including compensation for damages sustained as a result of the aforesaid expropriation, in an amount to be established in the proceedings but which is presently estimated to be in the region of USD 2.11 billion and which amount may be further developed and quantified in the course of this

[46] The Claimant hereby reserves their right to amend or supplement this Request for Arbitration.

proceeding, plus compound interest thereon in accordance with applicable law and grossed up for any taxes that may be imposed by the Respondent on or affecting such compensation;

109.5 An order directing the Respondent to pay all costs and expenses reasonably incurred by the Claimant in the course of this arbitration proceeding, including but not limited to the fees and expenses of the Centre and the arbitral tribunal and the costs and expenses of legal representation, plus interest thereon in accordance with applicable law;

109.6 An order granting pre-award compound interest on all compensatory damages from the date of each breach to the date of issuance of the award and post-award compound interest on all amounts awarded from the date of the award to the date of payment; and

109.7 Such other or additional relief as may be appropriate under the applicable law or may otherwise be just and proper.

Respectfully submitted,

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