

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

BIG SKY ENERGY CORPORATION

CLAIMANT

v.

REPUBLIC OF KAZAKHSTAN

RESPONDENT

REQUEST FOR ARBITRATION

19 June 2017



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I. INTRODUCTION

1. Big Sky Energy Corporation (“**Big Sky US**” or the “**Claimant**”) submits this Request for Arbitration (the “**Request**”) to the Secretary-General of the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) in accordance with Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the “**Convention**”) and the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the “**Institution Rules**”).
2. The Request concerns a legal dispute between the Claimant and the Republic of Kazakhstan (“**Kazakhstan**” or the “**Respondent**”) arising directly out of the Claimant’s investments in Kazakhstan. The dispute concerns a series of violations by the Respondent of the Treaty between the United States of America (“**USA**”) and the Republic of Kazakhstan concerning the encouragement and reciprocal protection of investment (the “**BIT**”).¹
3. The summary of the dispute contained in this Request is provided for the purposes of Institution Rule 2(1)(e) and Article 25 of the Convention. It is without prejudice to the Claimant’s right to set out its claim in full at the appropriate time during the arbitration.
4. At the heart of this dispute lie the Claimant’s investments in, and relating to, KoZhaN LLP (“**Kozhan**”), a limited-liability partnership, established and existing under the laws of Kazakhstan.²
5. Around early 2003, Kozhan acquired valuable licences to explore, develop and exploit a number of oil fields in western Kazakhstan, known as the Morskoye, Dauletaly and Karatal oil fields (the “**Oil Fields**”). The potential of the Oil Fields was yet to be assessed and the five Kazakhstani nationals who owned Kozhan at that time (the “**Original Owners**”), were not in a position to provide the expertise or

¹ BIT, **Exhibit C-1**.

² Around late 2014, Kozhan was re-registered in Kazakhstan as a joint-stock company (JSC).

resources that Kozhan required in order to: (1) meet its financial obligations towards Kazakhstan with respect to the Oil Fields; (2) assess the full potential of the Oil Fields; and (3) finance the exploration, development and exploitation of the Oil Fields. Accordingly, the Original Owners sought an investor that had, or had access to, the necessary oil industry expertise and capital to allow Kozhan to assess, explore, develop and exploit the Oil Fields. The Original Owners accordingly looked to the Claimant.

6. The Claimant is a company incorporated in the USA.³ The Claimant owns (and owned at all relevant times) Big Sky Energy Kazakhstan Ltd. (“**Big Sky Canada**”), a company incorporated in Canada. On 11 August 2003, Big Sky Canada acquired a 90% interest in Kozhan from the Original Owners. The transaction was completed through execution of a Sale and Purchase Agreement between Big Sky Canada and the Original Owners (the “**2003 SPA**”).⁴
7. On 22 November 2005, the Claimant, through Big Sky Canada, purchased from the Original Owners their remaining 10% interest in Kozhan. Upon completion of that purchase, the Claimant indirectly owned 100% of Kozhan.
8. Following these initial investments in Kozhan, the Claimant made a number of additional significant direct and indirect investments, which allowed Kozhan to assess, explore, develop and exploit the Oil Fields. These investments included a series of credit and loan agreements, pursuant to which the Claimant granted direct or indirect loans in excess of US\$60 million to Kozhan. Following these significant financial and other contributions, Kozhan was able to assess the full potential of the Oil Fields, conduct exploration, discover oil, build the necessary infrastructure and sell the oil on domestic and international markets. At this time, the Claimant’s market capitalisation on the OTC Market was, based on its interest in the Oil Fields, projected to reach up to US\$460 million.
9. From around mid-2006, however, the Claimant’s fortunes changed dramatically. The Original Owners conspired with three powerful Kazakhstani oligarchs, Mr Alexander Mashkevich, Mr Alidzhan Ibragimov and Mr Patoh Shodiyev (the

³ See, Section II.A.

⁴ 2003 SPA, **Exhibit C-2**.

“**Oligarchs**”), in order unlawfully to dispossess the Claimant of its investments in Kozhan, without compensation.

10. The Original Owners and the Oligarchs used the Respondent’s courts as the means to implement their unlawful scheme to deprive the Claimant of its investments in Kozhan. Specifically, the Original Owners caused their spouses to request the Respondent’s courts to invalidate the 2003 SPA on the grounds that the spouses purportedly had not provided their notarised consent to the 2003 SPA (which consent, they said, was required under Kazakh law).
11. The Respondent’s courts rubber-stamped the illicit scheme by declaring the 2003 SPA invalid on the basis of a supposed absence of spousal consent. These decisions, however, were deeply flawed as a matter of Kazakh law and the proceedings in the Respondent’s courts offended even the most basic rules of international due process. Their effect was unlawfully to deprive the Claimant of the 90% interest in Kozhan acquired under the 2003 SPA, without any compensation.
12. The Oligarchs and the Original Owners then manufactured additional illicit schemes and implemented them using the courts of Kazakhstan in order to: (1) take over the Claimant’s remaining 10% interest in Kozhan; (2) release Kozhan from the outstanding loans payable by it to the Claimant and Big Sky Canada; and (3) wipe out the Claimant’s indirect interest in an arbitral award that had been rendered in favour of Big Sky Canada against Kozhan. The Respondent’s courts were, again, an integral player in all of those illicit schemes, implementing each of them in order systematically to deprive the Claimant of its multiple, valuable investments in Kazakhstan.
13. As will be elaborated in this proceeding, the Respondent’s culpable conduct gifted Kozhan to the Original Owners and the Oligarchs standing behind them. Within six months of taking back Kozhan, the Original Owners transferred Kozhan to a special-purpose vehicle (“**SPV**”) owned by the Oligarchs for shares in the SPV and nominal cash consideration. The illicit plan was completed when the SPV sold Kozhan for approximately US\$340 million to an unrelated Chinese investor listed on the Shanghai Stock Exchange.

14. As summarised in Section IV.B below and to be elaborated subsequently, the Respondent's conduct toward the Claimant and its investments violated multiple provisions of the BIT. As a result of that unlawful conduct, the Claimant's valuable investments in Kazakhstan have been expropriated without compensation. Accordingly, the Respondent must pay full compensation to the Claimant under the BIT and other applicable rules of international law.
15. This Request complies with the requirements of Article 36 of the Convention and the Institution Rules, notably Institution Rule 2. In particular:
 - a. The names and addresses of the Claimant and the Respondent (the "**Parties**") are set out in **Section II.A**;
 - b. The Respondent is a Contracting State to the Convention and a Party to the BIT, as stated in **Section II.B**;
 - c. The Claimant is a company of a Party to the BIT and a national of another Contracting State to the Convention, as detailed in **Section II.C**;
 - d. The date of the Parties' consent to submit this dispute to the jurisdiction of the Centre and the instruments in which the Parties' consent are recorded are indicated in **Section III**;
 - e. Information concerning the issues in dispute indicating that there is, between the Parties, a legal dispute arising directly out of an investment is contained in **Section IV**;
 - f. Confirmation that the dispute is within the jurisdiction of the Centre is contained in **Section V**; and
 - g. A statement that the Claimant has taken all necessary internal actions to authorise the Request is contained in **Section VI.A**.
16. **Section VI** also contains other information relevant to this Request and **Section VII** contains the Claimant's submission.
17. A number of documents referred to in this Request are attached as Exhibits. The Exhibits include documents evidencing: (a) the consent of the Parties (for purposes

of Institution Rule 2(1)(c));⁵ (b) the internal actions of the Claimant to authorise this Request (for purposes of Institution Rule 2(1)(f));⁶ and (c) the payment by the Claimant of the fee for lodging this Request (for purposes of Rule 5 of the Institution Rules).⁷

18. The Claimant accordingly requests the Centre to acknowledge this Request, register it in the Arbitration Register and notify the Parties of registration as soon as possible.

II. THE PARTIES

A. The names and addresses of the Parties

19. The Claimant is Big Sky US.

20. The Claimant's address is:

Big Sky Energy Corporation
1255 W. Rio Salado Parkway
Suite 215
Tempe, Arizona 85281
USA

21. The Respondent is Kazakhstan.

22. The Respondent's addresses are:

HE Nursultan Nazarbayev
President of the Republic of Kazakhstan
Akorda Residence
Astana 010000
Republic of Kazakhstan

Mr Marat Beketayev
Minister of Justice of the Republic of Kazakhstan
Left Bank, Orynbor Street, 8
House of the Ministries, Entrance 13
Astana 010000
Republic of Kazakhstan

⁵ BIT, **Exhibit C-1**.

⁶ Internal Authorisation of Big Sky US, **Exhibit C-3**; Power of Attorney by Big Sky US to Fietta, **Exhibit C-4**.

⁷ Confirmation of payment of fee for lodging the Request, **Exhibit C-5**.

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B. The Respondent is a Party to the BIT and a Contracting State to the Convention

23. The Respondent is a Party to the BIT, which was signed on 19 May 1992 and entered into force on 12 January 1994.⁸
24. The Respondent is a Contracting State to the Convention. It signed the Convention on 23 July 1992, deposited its instrument of ratification on 21 September 2000 and the Convention entered into force for the Respondent on 21 October 2000.⁹

C. The Claimant is a Company of a Party to the BIT and a National of Another Contracting State to the Convention

25. As this section explains, the Claimant is a company of a Party to the BIT and a national of another Contracting State to the Convention.
26. Article I(1)(b) of the BIT defines a “company” of a Party as:

any kind of corporation, company, association, enterprise, partnership, 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 or controlled

27. The Claimant is a corporation duly organised under the laws of the State of Nevada, USA.¹⁰ It is, therefore, a company of a Party for the purposes of the BIT.

⁸ The date of signature (19 May 1992) and entry into force (12 January 1994) of the BIT are taken from the UNCTAD Investment Policy Hub, accessed on 14 June 2017, **Exhibit C-6**.

⁹ The information is taken from the List of Contracting States and Other Signatories of the Convention (as of 12 April 2016), published on <https://icsid.worldbank.org>, **Exhibit C-7**.

¹⁰ Articles of Incorporation and Certificates of Amendments, **Exhibit C-8**. Big Sky US was incorporated in February 1993 with the name “Institute for Counseling INC”. On 14 April 2000, the company’s name was changed to “China Broadband Corp.”. On 29 December 2003, the company’s name was changed to “China Energy Ventures Corp.”. On 3 December 2004, the company’s name

28. In addition, for the purposes of the Convention, the Claimant is a “National of another Contracting State”. Article 25(2)(b) defines a “National of another Contracting State” to include:

any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration [...].

29. The USA signed the Convention on 27 August 1965, deposited its instrument of ratification on 10 June 1966 and the Convention entered into force for the United States on 14 October 1966.¹¹ Accordingly, the Claimant, being a company of the USA, is a “National of another Contracting State” as defined in Article 25(2)(b) of the Convention.

III. THE PARTIES HAVE CONSENTED TO THE JURISDICTION OF THE CENTRE

A. The Respondent’s Consent

30. The Respondent has consented in writing to submit investment disputes to the Centre in accordance with the Convention. This consent is contained in the BIT. In particular, Article VI provides:

1. For purposes of this Article, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to (a) an investment agreement between that Party and such national or company; (b) an investment authorization granted by that 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, the parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably, the

was changed to “Big Sky Energy Corporation”. The Articles of Incorporation and Certificates of Amendments, evidencing the changes to the company’s name are provided at **Exhibit C-8**.

¹¹ The information is taken from the List of Contracting States and Other Signatories of the Convention (as of 12 April 2016), published on <https://icsid.worldbank.org>, **Exhibit C-7**.

national or company concerned may choose to submit the dispute for resolution:

(a) to the courts or administrative tribunals of the Party that in a Party to the dispute; or

(b) in accordance with any applicable, previously agreed dispute-settlement procedures; or

(c) in accordance with the terms of paragraph 3.

3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b) and that six months have elapsed 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 binding arbitration:

(i) to the International Centre for the Settlement of Investment Disputes (“Centre”) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965 (“ICSID Convention”), provided that the Party is a Party to such Convention; or

[...]

(b) Once the national or company concerned has so consented, either Party to the dispute may initiate arbitration in accordance with the choice so specified in the consent.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under paragraph 3. Such consent, together with the written consent of the national or company when given under paragraph 3 shall satisfy the requirement for:

(a) written consent of the parties to the dispute for purposes of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and for purposes of the Additional Facility Rules [...].

31. The Respondent’s consent to submit investment disputes to arbitration became effective upon the entry into force of the BIT on 12 January 1994. As set out in Section II.B, the Convention entered into force for Kazakhstan on 21 October 2000. Thus, the Respondent’s consent to submit investment disputes under the BIT to the Centre became effective on 21 October 2000.

B. The Claimant's Consent

32. The Claimant hereby consents to submit the dispute to the Centre for arbitration in accordance with the Convention and the BIT.

C. The Date of Consent

33. As noted above, the Respondent's consent to submit investment disputes to the Centre became effective on 21 October 2000. The Claimant consents to submit the dispute to the Centre on the date of this Request.
34. Institution Rule 2(3) provides that the “[d]ate of consent” means the date on which the parties to the dispute consented in writing to submit it to the Centre; if both parties did not act on the same day, it means the date on which the second party acted.”
35. In light of Institution Rule 2(3), the “[d]ate of consent” for purposes of Institution Rule 2(1)(c) is the date on which the Claimant consented to submit the dispute to the Centre, *i.e.*, the date of this Request.

D. The Dispute is an “Investment Dispute” between a Party and a Company of the other Party and falls within the Scope of the Respondent's Consent under the BIT

36. Under Article VI(4) of the BIT, the Respondent agreed to the submission of an “investment dispute” to international arbitration in accordance with the provisions of Article VI of the BIT.
37. Article VI(1) defines an “investment dispute” as:
- a dispute between a Party and a national or company of the other Party arising out of or relating to (a) an investment agreement between that Party and such national or company; (b) an investment authorization granted by that 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.
38. Kazakhstan and the USA are parties to the BIT. As explained in Section II.C, the Claimant is a “company” of the USA for the purposes of the BIT.
39. As explained in Section IV.B below, the Claimant owned or controlled investments in Kazakhstan as defined in the BIT.

40. The term “dispute” is not defined in the BIT. However, it is uncontroversial that, under public international law, “[a] dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons”.¹²
41. As explained in Section IV, it is evident that there is a legal dispute between the Parties relating to the Respondent’s violations of the BIT. The Respondent’s violations of the BIT follow, in particular, from the fact that the Respondent’s culpable conduct has deprived the Claimant of its valuable investments in Kazakhstan. To date, the Respondent has not provided any compensation.
42. Accordingly, there is an “investment dispute” between a Party to the BIT and a “company” of the other Party that falls within the scope of the Respondent’s consent under Article VI of the BIT.

E. The Claimant has requested amicable settlement of its investment dispute with the Respondent to no avail

43. On 22 September 2016, the Claimant’s legal representatives at that time sent a letter to the President of Kazakhstan and the Minister of Justice of Kazakhstan notifying the Respondent of the investment dispute between the Parties arising from the Respondent’s violations of the BIT.¹³ In that letter, the Claimant reminded the Respondent of its obligations under the BIT and requested an amicable settlement of the dispute. Furthermore, the Claimant informed the Respondent that “failure to reach an agreement on settlement within six months from the date of this letter will prompt the Investor to commence international arbitration, in accordance with Article VI of the BIT.”¹⁴
44. Almost six months later, on 18 March 2017, the Claimant received a letter from the Respondent confirming that the Respondent had “received the notice of dispute” and requesting additional information from the Claimant.¹⁵ The Respondent failed to

¹² See, for example, *The Mavrommatis Palestine Concessions*, P.C.I.J., Series A No. 2, p. 11.

¹³ Letter from Jones Day to the President and the Minister of Justice of the Republic of Kazakhstan dated 22 September 2016, **Exhibit C-9**.

¹⁴ Letter from Jones Day to the President and the Minister of Justice of the Republic of Kazakhstan dated 22 September 2016, p. 9, **Exhibit C-9**.

¹⁵ Letter from the Minister of Energy of the Republic of Kazakhstan to Jones Day dated 18 March 2017, **Exhibit C-10**.

make any proposal to provide compensation to the Claimant or otherwise to resolve this dispute.

45. Accordingly, the Claimant's attempt to reach an amicable settlement with the Respondent has to date come to nothing. The Claimant is thus entitled to submit the dispute to ICSID arbitration in accordance with the BIT, which it is now doing by means of this Request.

IV. THERE IS A LEGAL DISPUTE BETWEEN THE PARTIES ARISING DIRECTLY OUT OF AN INVESTMENT

46. Institution Rule 2(1)(e) states that the Request shall "contain information concerning the issues in dispute indicating that there is, between the parties, a legal dispute arising directly out of an investment". This rule relates to Article 25(1) of the Convention, which provides that:

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

A. There is a Legal Dispute between the Parties

47. The Report of the Executive Directors on the Convention provides the following explanation in respect of Article 25:

Article 25(1) requires that the dispute must be a 'legal dispute arising directly out of an investment.' The expression 'legal dispute' has been used to make clear that while conflicts of rights are within the jurisdiction of the Centre, mere conflicts of interests are not. The dispute must concern the existence or scope of a legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation.¹⁶

¹⁶ Report of the Executive Directors on the Convention, paragraph 26.

48. The dispute in this case concerns the Respondent's violations of its obligations under the BIT and the Claimant's corresponding rights, including the Claimant's right under public international law to compensation for the substantial loss and damages that it has suffered as a result of the Respondent's acts and omissions in violation of the BIT.

49. Accordingly, there is clearly a legal dispute between the Parties.

B. The Legal Dispute arises directly out of investments by the Claimant in Kazakhstan

(i) The Claimant made valuable investments in Kazakhstan

50. The Claimant made a number of valuable direct and indirect investments in Kazakhstan. Its principal investments are identified below. The Claimant reserves the right to elaborate the description of its investments in due course.

51. The Claimant's investments in Kazakhstan all relate directly or indirectly to its acquisition and control of Kozhan. In early 2003, Kozhan acquired, and has since held, valuable licences for the exploration, development and exploitation of the Oil Fields.

52. On 11 August 2003, Big Sky Canada acquired a 90% interest in the charter capital of Kozhan from the Original Owners.¹⁷ As consideration, the Original Owners would receive cash instalments (upon the triggering of specified events connected to commercial oil production and sales by Kozhan). Big Sky Canada completed the acquisition through execution of the 2003 SPA.¹⁸

53. On 22 November 2005, Big Sky Canada acquired from the Original Owners their remaining 10% interest in the charter capital of Kozhan.¹⁹ The transaction was completed through the execution of another Sale and Purchase Agreement between Big Sky Canada and the Original Owners (the "2005 SPA").²⁰ Upon completion of

¹⁷ 2003 SPA, **Exhibit C-2**.

¹⁸ 2003 SPA, **Exhibit C-2**.

¹⁹ 2005 SPA, **Exhibit C-11**.

²⁰ 2005 SPA, **Exhibit C-11**.

this transaction, the Claimant, through its wholly-owned subsidiary Big Sky Canada, owned and controlled Kozhan and its operations in Kazakhstan.

54. Over the course of the three years that followed the 2003 SPA, the Claimant made substantial investments in Kozhan. These investments funded Kozhan's assessment of the Oil Fields and its operations, allowing Kozhan to proceed with the exploration and, subsequently, development and exploitation of the Oil Fields.
55. On 12 October 2004, Kozhan signed agreements with ABT Ltd. LLP ("ABT"), a Kazakhstani company, under the terms of which ABT undertook to perform construction works and to finance certain drilling works required on the Morskoye oil field.²¹ In return, Kozhan and ABT agreed, among other things, that Kozhan would transfer to ABT a minority interest in the Morskoye field.²²
56. About a year later, ABT and Kozhan decided to terminate their earlier agreements and to enter into new agreements through which ABT would waive its rights to the minority interest in the Morskoye field and Kozhan would compensate ABT for such waiver and for the construction works and financing provided by ABT in connection with the Morskoye field. Under this new arrangement, part of the consideration payable by Kozhan to ABT would be financed by Big Sky US. This would be done through Big Sky US issuing 15 million of its own shares to ABT. Kozhan would thereby become a debtor to Big Sky US through a loan agreement for an amount equivalent in value to the 15 million shares issued by Big Sky US to ABT (US\$27,150,000 at the time).
57. This new arrangement was implemented through an agreement between Kozhan, ABT and Big Sky US (the "**2006 ABT Agreement**")²³ and an agreement between Big Sky US and Kozhan (the "**2006 Loan Agreement**").²⁴ Through these two agreements, the parties agreed *inter alia*, that: (1) ABT and Kozhan had terminated

²¹ Agreement between Kozhan and ABT re Construction Works and Financing of Subsoil Use Operations, 12 October 2004, **Exhibit C-12**. Agreement on Partial Transfer of the Subsoil Use Right, 12 October 2004, **Exhibit C-13**.

²² Agreement between Kozhan and ABT re Construction Works and Financing of Subsoil Use Operations, 12 October 2004, **Exhibit C-12**. Agreement on Partial Transfer of the Subsoil Use Right, 12 October 2004, **Exhibit C-13**.

²³ Agreement between Kozhan, Big Sky US and ABT dated 7 February 2006, **Exhibit C-14**.

²⁴ Financial Loan Agreement between Big Sky US and Kozhan dated 12 April 2006, **Exhibit C-15**.

all pre-existing agreements between Kozhan and ABT; (2) Kozhan would pay ABT cash consideration of approximately 1.52 billion Kazakhstani Tenge (equivalent to approximately US\$11.5 million at the time) and would retain ABT as the exclusive contractor for all future works and services required at the Morskoye field; (3) Big Sky US would issue to ABT 15 million shares of its own common stock, as part of the consideration payable by Kozhan to ABT; and (4) Kozhan would become indebted towards Big Sky US for the amount of US\$27,150,000 (based on the value of 15 million shares in Big Sky US),²⁵ such loan to be repaid by Kozhan in accordance with the terms of the 2006 Loan Agreement.

58. On 28 February 2007, Big Sky US entered into a pledge agreement with Kozhan to secure its rights under the 2006 Loan Agreement (the “**2007 Pledge Agreement**”).²⁶ Under the terms of the 2007 Pledge Agreement, in the event Kozhan failed to fulfil its obligations to Big Sky US under the 2006 Loan Agreement, Big Sky US would be entitled to receive monies otherwise payable to Kozhan under a number of oil sale and purchase agreements between Kozhan and its customers.²⁷
59. Separately, through Big Sky Canada, the Claimant made additional indirect investments in Kazakhstan.
60. In particular, on 14 July 2004, Big Sky Canada and Kozhan entered into an agreement to establish a credit facility for Kozhan (the “**2004 Line of Credit Agreement**”).²⁸ Under the terms of the 2004 Line of Credit Agreement, Big Sky Canada agreed to grant US-dollar loans to Kozhan, which would be used by Kozhan to finance certain of its operations on the Oil Fields in Kazakhstan.²⁹ Big Sky Canada and Kozhan entered into a number of additional loan and line of credit agreements, including agreements through which the 2004 credit facility was increased to US\$10 million and, subsequently, to US\$50 million.³⁰ Under this framework of credit

²⁵ Agreement between Kozhan, Big Sky US and ABT dated 7 February 2006, **Exhibit C-14**; Financial Loan Agreement between Big Sky US and Kozhan dated 12 April 2006, **Exhibit C-15**.

²⁶ Pledge Agreement between Kozhan and Big Sky US dated 28 February 2007, **Exhibit C-16**.

²⁷ Pledge Agreement between Kozhan and Big Sky US dated 28 February 2007, **Exhibit C-16**.

²⁸ 2004 Line of Credit Agreement dated 14 July 2004, **Exhibit C-17**.

²⁹ 2004 Line of Credit Agreement dated 14 July 2004, **Exhibit C-17**.

³⁰ Additional Agreement No. 1 dated 14 July 2005, **Exhibit C-18**; Additional Agreement No. 2 dated 1 February 2006, **Exhibit C-19**.

documents, Big Sky Canada extended loans to Kozhan in excess of US\$30 million, most of which Kozhan never repaid.

61. Later, when the Claimant was deprived of its 90% interest in Kozhan, Big Sky Canada initiated arbitration against Kozhan at the “International Arbitration Court of the Juridical Centre IUS” in Kazakhstan (the “IUS”) to recover the outstanding debt payable by Kozhan. On 7 November 2008, the IUS tribunal rendered an award in favour of Big Sky Canada, ordering Kozhan to pay Big Sky Canada compensation of US\$30,073,722 (the “IUS Award”).³¹

62. In summary, the Claimant’s valuable direct or indirect investments in Kazakhstan comprise, *inter alia*: (1) its 100% interest in the charter capital of Kozhan; (2) through Kozhan, its 100% interest in the licences to explore, develop and exploit the Oil Fields and the associated infrastructure at the Oil Fields; (3) the 2006 Loan Agreement and the 2007 Pledge Agreement; (4) the 2004 Line of Credit Agreement and other credit agreements by which loans were made to Kozhan; and (5) the IUS Award.

(ii) The Claimant’s investments in Kazakhstan constitute “investments” for the purposes of the BIT

63. Article I(1)(a) of the BIT defines the term “investment” to mean:

every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes:

(i) tangible and intangible property, including movable and immovable property, as well as rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value, and associated with an investment;

(iv) intellectual property [...]; and

³¹ IUS Award dated 7 November 2008, **Exhibit C-20**.

(v) any right conferred by law or contract, and any licenses and permits pursuant to law

64. The Claimant's investments in Kazakhstan are "investments" within the ordinary meaning of the term and satisfy the definition contained in Article I(1)(a) of the BIT ("every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party").
65. In particular, the Claimant's indirect interest (through Big Sky Canada) in the charter capital of Kozhan corresponds to one of the examples of investments provided in Article I(1)(a) ("equity") and is one of the types of investments defined in Article I(1)(a)(ii) ("a company or shares of stock or other interests in a company or interests in the assets thereof").
66. Similarly, the Claimant's indirect interests (through Big Sky Canada and Kozhan) in the Oil Fields, including infrastructure created in connection with those Oil Fields, constitute investments under Article I(1)(a)(v) ("any right conferred by law or contract and any licenses and permits pursuant to law") and Article I(1)(a)(i) ("tangible and intangible property, including movable and immovable property, as well as rights").
67. In addition, the loan that the Claimant extended to Kozhan under the 2006 Loan Agreement, and the 2007 Pledge Agreement which secured that loan, qualify as investments under Article I(1)(a) ("debt"), Article I(1)(a)(i) ("tangible and intangible property, [...] as well as rights, such as mortgages, liens and pledges"), Article I(1)(a)(iii) ("a claim to money or a claim to performance having economic value, and associated with an investment") and Article I(1)(a)(v) ("any right conferred by law or contract").
68. The loans extended from Big Sky Canada to Kozhan pursuant to the 2004 Line of Credit Agreement and other credit agreements qualify as investments under Article I(1)(a) ("debt"), Article I(1)(a)(iii) ("a claim to money or a claim to performance having economic value, and associated with an investment") and Article I(1)(a)(v) ("any right conferred by law or contract [...]"). The Claimant's indirect interest in the IUS Award is also a protected investment under Article I(1)(a)(iii) ("a claim to

money or a claim to performance having economic value, and associated with an investment”) and Article I(1)(v) (“any right conferred by law or contract”).

(iii) The Claimant’s investments in Kazakhstan constitute “investments” for the purposes of the Convention

69. The term “investment” is not defined in the Convention. This omission has given rise to considerable discussion by international arbitral tribunals, and in the publications of academic commentators.³²
70. Many consider that the term “investment” as used in the Convention does not bear any separate meaning to any definition given in the applicable BIT (or other expression of consent to ICSID arbitration).³³ To this effect, the Report of the Executive Directors on the Convention makes clear that:

No attempt was made to define the term ‘investment’ given the essential requirement of consent by the parties, and the mechanism through which Contracting States can make known in advance, if they so desire, the classes of disputes which they would or would not consider submitting to the Centre (Article 25(4)).³⁴

71. Here, the Contracting States have made known in advance the classes of disputes which they consent to submit to the Centre by virtue of the BIT. Therefore, under this interpretation of the Convention, the definition of “investment” in Article I(1)(a) of the BIT is applicable. As explained above, the Claimant’s investments in Kazakhstan constitute “investments” for the purposes of the BIT. Accordingly, the Claimant’s investments in Kazakhstan also constitute “investments” for the purposes of the Convention.

³² See, for example, Christoph Schreuer and others, *The ICSID Convention: A Commentary*, (Cambridge University Press, Second edition, 2009), pp. 114-17; 128-34.

³³ See, for example, *Abaclat and others v. The Argentine Republic* (ICSID Case No. ARB/07/5), Decision on Jurisdiction and Admissibility, 4 August 2011, paragraphs 364 to 365; *Malaysian Historical Salvors v. Malaysia* (ICSID Case No. ARB/05/10), Decision on Annulment, 16 April 2009, paragraphs 72 to 73; *Generation Ukraine v. Ukraine* (ICSID Case No. ARB/00/9), Award, 16 September 2003, paragraph 8.2; *Fraport AG Frankfurt Airport Services Worldwide v. Philippines* (ICSID Case No. ARB/03/25), Award, 16 August 2007, paragraph 305; *Lanco v. Argentina* ICSID Case No. ARB/97/6), Decision on Jurisdiction, 8 December 1998, paragraph 48; and *MCI v. Ecuador* (ICSID Case No. ARB/03/6), Award, 31 July 2007, paragraphs 157-160.

³⁴ Report of the Executive Directors on the Convention, paragraph 27.

72. Even if the term “investment” has a different meaning for the purposes of the Convention to that defined in the BIT, the Claimant’s investments in or related to Kozhan and the Oil Fields manifestly constitute “investments” in Kazakhstan for the purposes of the Convention.

(iv) The Respondent deprived the Claimant of its investments in Kazakhstan

73. The Respondent took a series of measures against the Claimant’s investments in Kazakhstan in violation of the BIT which caused the Claimant to suffer considerable loss and damage.

74. The following summary of the dispute is provided for purposes of Institution Rule 2(1)(e) and Article 25 of the Convention. This summary is without prejudice to the Claimant’s right to set out its claim in full with supporting documentation during the arbitration.

75. The unlawful measures taken by the Respondent against the Claimant’s investments include, but are not limited to, the following:

a. The Respondent’s courts deprived the Claimant of its 90% interest in the charter capital of Kozhan;

b. The Respondent’s courts and enforcement authorities deprived the Claimant of its remaining 10% interest in the charter capital of Kozhan and wiped out the Claimant’s rights under the 2006 Loan Agreement and the 2007 Pledge Agreement; and

c. The Respondent’s courts and enforcement authorities deprived the Claimant of its interests in the 2004 Line of Credit Agreement and the IUS Award.

(a) *The Respondent’s courts deprived the Claimant of its 90% interest in the charter capital of Kozhan*

76. By mid-2006, Kozhan had discovered (and had started to produce and sell) oil. Around this time, the Original Owners conspired with the Oligarchs to steal Kozhan from the Claimant. They hatched a scheme, to be implemented by and through the courts of Kazakhstan, to invalidate the 2003 SPA. The scheme used the spouses of the Original Owners to concoct a sham claim against Big Sky Canada. In August

2006, the spouses of the Original Owners initiated proceedings in the Bostandyk District Court No. 2 in Almaty (the “**District Court**”), alleging that the 2003 SPA had been executed without their notarised consent. Contrary to the spouses’ allegations, Kazakh law manifestly had not required spousal consent for the execution of the 2003 SPA.

77. On 27 November 2006, the District Court dismissed the case. The District Court correctly decided that notarised spousal consent “is not required because the transaction in question [i.e., the 2003 SPA] is not subject to notarization.”³⁵ In the words of the District Court, the case brought by the spouses was “inconsistent with the law and unjustified”.³⁶
78. The Original Owners caused their spouses to appeal the District Court’s decision to the Civil Collegium of the Almaty City Court. That court allowed the appeal and remitted the case back to the District Court for a new trial.³⁷ Big Sky Canada appealed the decision of the Civil Collegium to the Supervisory Collegium of the Almaty City Court, to no avail.³⁸
79. A few weeks later, back at the District Court, the case was heard (a second time) by a different judge who, on 26 April 2007, decided in favour of the spouses and invalidated the 2003 SPA.³⁹ In doing so, at the stroke of a pen, the court eviscerated the Claimant’s 90% interest in Kozhan without compensation. The District Court’s reasoning (the second time around) was grievously flawed and incorrect as a matter of Kazakh law. Additionally, the District Court ignored a statute of limitations under Kazakh law which meant that the spouses were time-barred from bringing the claim against Big Sky Canada.

³⁵ Judgment of the Bostandyk District Court No. 2 of the City of Almaty dated 22 November 2006, p. 8, **Exhibit C-21**.

³⁶ Judgment of the Bostandyk District Court No. 2 of the City of Almaty dated 22 November 2006, p. 8, **Exhibit C-21**.

³⁷ Ruling of the Civil Collegium of the Almaty City Court dated 6 February 2007, **Exhibit C-22**.

³⁸ Ruling of the Supervisory Collegium of the Almaty City Court dated 7 March 2007, **Exhibit C-23**.

³⁹ Judgment of the Bostandyk District Court No. 2 of the City of Almaty dated 26 April 2007, **Exhibit C-24**.

80. Big Sky Canada appealed the District Court’s invalidation of the 2003 SPA to the Civil Collegium of the Almaty City Court. This appeal was dismissed on 6 July 2007.⁴⁰ The Almaty City Prosecutor appealed the decision of the Civil Collegium to the Supervisory Collegium of the Almaty City Court. That appeal was also dismissed.⁴¹
81. The Claimant brought the matter to the attention of the Respondent’s General Prosecutor of Kazakhstan (the “**General Prosecutor**”). The General Prosecutor’s investigations confirmed that an “organized group of persons” had committed fraud against the Claimant.⁴² In December 2007, the General Prosecutor submitted a “protest” to the Respondent’s Supreme Court and requested that the Supreme Court “set aside the court decisions that had invalidated the [2003 SPA]”.⁴³ The General Prosecutor also commenced a criminal case and directed the Respondent’s Committee for National Security to investigate the crimes that had been committed against Big Sky Canada.
82. Then, in January 2008, the spouses of two of the Original Owners admitted that they had no legitimate claim against Big Sky Canada. They said to the Respondent’s Supreme Court that they had been aware of the sale of the 90% interest in Kozhan under the 2003 SPA and that they had no objections to it. They therefore withdrew their claims against Big Sky Canada.
83. All of this was to no avail. On 30 January 2008, the Supreme Court dismissed the General Prosecutor’s protest and upheld the decisions of the Respondent’s courts invalidating the 2003 SPA.⁴⁴ The Supreme Court failed even to mention that, by this time, two of the five spouses had explicitly confirmed their consent to the 2003 SPA and had withdrawn their claims against Big Sky Canada.

⁴⁰ Ruling of the Civil Collegium of the Almaty City Court dated 6 July 2007, **Exhibit C-25**.

⁴¹ Ruling of the Supervisory Collegium of the Almaty City Court dated 30 October 2007, **Exhibit C-26**.

⁴² Letter from A. Kravchenko of the General Prosecutor Office to Big Sky Energy Corporation dated 17 January 2008, **Exhibit C-27**.

⁴³ Letter from A. Kravchenko of the General Prosecutor Office to Big Sky Energy Corporation dated 17 January 2008, **Exhibit C-27**.

⁴⁴ Ruling of the Supervisory Collegium of the Supreme Court of the Republic of Kazakhstan dated 30 January 2008, **Exhibit C-28**.

84. Soon after the decision of the Supreme Court, the Respondent's Committee for National Security closed the fraud investigations.
85. In summary, the Respondent's courts and authorities frustrated every attempt by the Claimant to safeguard its 90% interest in Kozhan against the vexatious and bad faith claims orchestrated by the Original Owners and Oligarchs. As described above, and as will be elaborated in the arbitration, this culpable conduct of the Respondent's courts and other organs, *in toto*, which violated multiple provisions of the BIT and resulted in a taking for the purposes of international law, amounts to an unlawful expropriation of 90% of the Claimant's valuable indirect shareholding in Kozhan.
- (b) *The Respondent's courts and enforcement authorities deprived the Claimant of its remaining 10% interest in the charter capital of Kozhan and wiped out the Claimant's rights under the 2006 Loan Agreement and the 2007 Pledge Agreement*
86. Following the Supreme Court's invalidation of the 2003 SPA, the Oligarchs and the Original Owners formulated a new illicit scheme to deprive Big Sky Canada of its remaining 10% interest in Kozhan. This new scheme targeted the transactions involving Kozhan, ABT and Big Sky US in relation to the Morskoye field.
87. As explained above, in 2004, Kozhan and ABT had agreed that Kozhan would transfer to ABT a minority interest in the Morskoye field as consideration for the services and finances provided by ABT in connection with the Morskoye field. That transfer was never completed. Instead, in 2006, ABT and Kozhan terminated their pre-existing (2004) agreements and replaced them with new agreements, including the 2006 ABT Agreement and the 2006 Loan Agreement. As explained above, Big Sky US subsequently entered into the 2007 Pledge Agreement with Kozhan to secure its rights under the 2006 Loan Agreement.
88. In mid-2008, two of the Original Owners brought a case in the Bostandyk District Court against Big Sky US, Big Sky Canada, ABT and Kozhan, seeking to invalidate the (already terminated) 2004 agreements between ABT and Kozhan, as well as the subsequent (2006) agreements, relating to the Morskoye field. These two Original Owners alleged that ABT and Kozhan had failed to obtain the permissions required to transfer a minority of Kozhan's interest in the Morskoye field, and therefore that certain provisions of the 2004 agreements were invalid under Kazakh law. The two

Original Owners argued that the subsequent (2006) agreements were also invalid for the same reason.

89. On 15 September 2008, the District Court allowed the two Original Owners' claim and declared invalid the pertinent parts of the 2004 agreements between Kozhan and ABT, as well as the later agreements, including the 2006 ABT Agreement and the 2006 Loan Agreement.⁴⁵ The District Court ordered, among other things, that: (1) ABT return to Big Sky US the 15 million shares in Big Sky US owned by ABT; (2) Big Sky US "refund" to ABT the value of the 15 million shares, in the amount of US\$27,150,000; and (3) Big Sky US "refund" to Kozhan US\$2,476,053 paid by Kozhan to Big Sky US under the 2006 Loan Agreement.⁴⁶
90. The District Court's ruling was manifestly unfair, illogical and wrong. In the dispositive part of its decision, the District Court purported to "revert the parties to their initial positions", but it did no such thing.⁴⁷ Prior to the decision, Kozhan had owed a debt to Big Sky US in the amount of US\$27,150,000. The District Court not only extinguished that debt; remarkably, it ordered Big Sky US to pay US\$27,150,000 to ABT and US\$2,476,053 to Kozhan (the "**Court-ordered Debt**"). The District Court's decision is, *inter alia*, tantamount to an expropriation of the Claimant's investments under the 2006 Loan Agreement and the 2007 Pledge Agreement.⁴⁸
91. Less than a month after the District Court's decision, ABT assigned to Kozhan its claim for US\$27,150,00 from Big Sky US. This meant that Big Sky US now owed US\$29,626,053 to Kozhan (whereas, until the District Court's decision, Kozhan had owed Big Sky US that money).

⁴⁵ Ruling of the Bostandyk District Court of the City of Almaty dated 15 September 2008, Case No. 2-3167/08, **Exhibit C-29**.

⁴⁶ Ruling of the Bostandyk District Court of the City of Almaty dated 15 September 2008, Case No. 2-3167/08, **Exhibit C-29**.

⁴⁷ Ruling of the Bostandyk District Court of the City of Almaty dated 15 September 2008, Case No. 2-3167/08, **Exhibit C-29**.

⁴⁸ The 2007 Pledge Agreement became ineffective by operation of law upon invalidation of the 2006 Loan Agreement.

92. The District Court's decision presented the Oligarchs and the Original Owners with the cudgel they required to wipe out the Claimant's remaining investments in Kazakhstan. This is because, around mid-2009, Kozhan (now controlled by the Original Owners, with the Oligarchs standing behind them) applied to the Respondent's enforcement authority to "offset" the Court-ordered Debt (payable by Big Sky US to Kozhan) against Big Sky Canada's remaining 10% interest in Kozhan.⁴⁹ The enforcement authority, in turn, applied to the District Court for an order that would allow the enforcement authority to make such an "offset".
93. On 1 July 2009, the District Court granted the enforcement authority's request and ordered that Big Sky Canada's 10% remaining interest in Kozhan be used to "offset" the Court-ordered Debt payable to Kozhan by Big Sky US.⁵⁰ In doing so, the District Court acted manifestly without jurisdiction and failed to give proper notice of the hearing to the Claimant or Big Sky Canada. The court ignored fundamental rules of corporate separateness as between Big Sky Canada and Big Sky US. To make things worse, the Respondent's higher court failed to hear Big Sky Canada's appeal against the District Court's order.
94. The District Court's order of 1 July 2009 constitutes another brazen taking for the purposes of international law, amounting to an unlawful expropriation of the remaining 10% of the Claimant's valuable indirect shareholding in Kozhan.
95. Within six months of acquiring the last 10% of Kozhan, the Original Owners transferred Kozhan to International Mineral Resources II B.V. ("**IMR**") (the SPV owned and controlled by the Oligarchs) for shares in IMR and nominal cash consideration. To complete the Original Owners' and the Oligarchs' scheme, IMR subsequently sold Kozhan for US\$340.5 million to Geo-Jade Petroleum Corporation, a Chinese company listed on the Shanghai Stock Exchange.⁵¹
96. In short, the Original Owners and the Oligarchs, assisted by the Respondent's courts and enforcement authorities, reaped the benefit of the Claimant's investments in

⁴⁹ Ruling of the Bostandyk District Court of the City of Almaty dated 1 July 2009, Case No. 2-4468/08, **Exhibit C-30**.

⁵⁰ Ruling of the Bostandyk District Court of the City of Almaty dated 1 July 2009, Case No. 2-4468/08, **Exhibit C-30**.

⁵¹ Geo-Jade Petroleum Public Announcement No. 2015-093 dated 13 August 2015, **Exhibit C-31**.

Kozhan and ended up enjoying a windfall worth hundreds of millions of dollars while the Claimant ended up losing everything.

(c) *The Respondent's courts and enforcement authorities deprived the Claimant of its interests in the 2004 Line of Credit Agreement and the IUS Award*

97. Stripped of its equity interest in Kozhan and the benefit of the 2006 Loan Agreement and 2007 Pledge Agreement, the Claimant tried to recover some of its losses by collecting the debt under the 2004 Line of Credit Agreement. Big Sky Canada applied to enforce the debt via IUS arbitration, as provided under the 2004 Line of Credit Agreement with its various amendments. As elaborated above, on 7 November 2008, the IUS tribunal awarded Big Sky Canada compensation of US\$30,073,722 for the unpaid loans extended to Kozhan. For over three years, Kozhan refused to honour the IUS Award.
98. In late 2011, Big Sky Canada applied to the Respondent's courts for enforcement of the IUS Award. The courts granted enforcement and Big Sky Canada engaged an enforcement officer to execute the IUS Award against Kozhan's assets. However, the Oligarchs (who now owned Kozhan through IMR) hatched a further scheme to release Kozhan from any liability to Big Sky Canada.
99. Around April 2012, Kozhan petitioned the Respondent's enforcement authority to use the Court-ordered Debt (payable by Big Sky US to Kozhan) to offset the compensation payable by Kozhan to Big Sky Canada under the IUS Award. The Respondent's enforcement authority dutifully applied to the Bostandyk District Court to do just as Kozhan had requested.
100. Three years earlier, the Bostandyk District Court had already ordered that the Court-ordered Debt be used to "offset" Big Sky Canada's remaining 10% interest in Kozhan. Notwithstanding that, on 10 April 2012, the District Court rendered a decision again allowing Kozhan to offset the Court-ordered Debt against the compensation payable by Kozhan to Big Sky Canada under the IUS Award.⁵² Once again, the District Court acted manifestly without jurisdiction and did not give proper notice to the Claimant or Big Sky Canada before rendering its decision. Once again, it ignored, *inter alia*, corporate separateness between Big Sky US and Big Sky

⁵² Ruling of the Bostandyk District Court of the City of Almaty dated 10 April 2012, **Exhibit C-32**.

Canada. This resulted in yet another indirect expropriation, this time comprised of a taking of the benefit of the 2004 Line of Credit Agreement and the Claimant's indirect rights under the IUS Award.

101. In summary, between 2007 and 2012, the Respondent's courts and enforcement authorities facilitated and implemented the illicit scheme of the Original Owners and the Oligarchs to: (1) deprive the Claimant of its 90% interest in Kozhan; (2) cancel a debt payable *to* the Claimant in the amount of US\$27,150,000; (3) fabricate new debts payable *by* the Claimant in the amount of US\$29,626,053; (4) use that fabricated debt to wipe out the Claimant's remaining 10% interest in Kozhan; and (5) use that fabricated debt (a second time) to wipe out the Claimant's indirect interest in the IUS Award, valued at US\$30,073,722. As a result of this scheme, the Claimant was deprived by the Respondent's courts of its ownership of and investments in, Kozhan and the Oligarchs pocketed more than US\$340 million when they subsequently sold Kozhan to a third party.

(v) The measures taken by the Respondent against the Claimant's investments in Kazakhstan violate the BIT

102. The measures taken by the Respondent against the Claimant's investments, including but not limited to the measures summarised in Section IV.B(iv) above, constitute multiple violations of the BIT.
103. The following summary of violations of the BIT is provided for the purposes of Institution Rule 2(1)(e) and Article 25 of the Convention. This summary is without prejudice to the Claimant's right to set out its claim in full with supporting documentation during the arbitration.

(a) *Kazakhstan unlawfully expropriated the Claimant's investments*

104. Article III(1) of the BIT states:

Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except: for public purpose; in a nondiscriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and 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, whichever is earlier; be calculated in a freely usable currency on the basis of the prevailing market rate of exchange at that time; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable.

105. The Claimant's investments in Kazakhstan were indirectly expropriated by the Respondent, for the benefit of the Original Owners and the Oligarchs. In particular:
- a. The acts and omissions of the Respondent's courts (including the Respondent's courts' decisions of 26 April 2007, 6 July 2007, 30 October 2007 and 30 January 2008) deprived the Claimant of its 90% indirect investment in Kozhan and the Oil Fields;
 - b. The acts and omissions of the Respondent's courts and enforcement authorities (including, the Respondent's courts' decisions of 15 September 2008 and 1 July 2009) deprived the Claimant of its remaining 10% indirect investment in Kozhan and the Oil Fields;
 - c. The acts and omissions of the Respondent's courts (including the Respondent's court's decision of 15 September 2008) deprived the Claimant of: (1) the loan given by the Claimant to Kozhan in the amount of \$27,150,000 under the 2006 Loan Agreement; and (2) the Claimant's rights under the 2007 Pledge Agreement; and
 - d. The acts and omissions of the Respondent's courts and enforcement authorities (including, the Respondent's court's decision of 10 April 2012) deprived the Claimant of its indirect interest in valuable rights under the 2004 Line of Credit Agreement, as subsequently crystallised in the IUS Award.
106. The Respondent's expropriations of the Claimant's investments do not satisfy the requirements for a lawful expropriation under Article III(1) of the BIT. For example, the Respondent's acts and omissions violated the "principles of treatment provided for in Article II(2)" of the BIT. The conduct of the Respondent's courts and enforcement authorities was contrary to Kazakh law and denied the Claimant due process of the law. Furthermore, the Respondent's expropriatory measures have not

been accompanied by the payment of any compensation, let alone “prompt, adequate and effective compensation”.

(b) *Kazakhstan failed to provide the Claimant’s investments fair and equitable treatment and full protection and security*

107. Article II(2)(a) of the BIT states:

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 required by international law.⁵³

108. Kazakhstan failed to provide the Claimant’s investments fair and equitable treatment. The “fair and equitable treatment” standard comprises a number of core elements, including: (a) the host State’s duty to act in a manner that is not arbitrary or inconsistent with its legal framework; (b) the requirement that the host State provide a stable legal and business environment; (c) the host State’s duty act in a transparent manner in its relations with the foreign investor; (d) the requirement that the host State afford procedural fairness to the investor; (e) the host State’s obligation to protect the investor’s legitimate expectations relating to their investment; (f) a prohibition against “denials of justice”; and (g) the host State’s duty to act in good faith. The Respondent violated these core elements of the fair and equitable treatment standards with respect to the Claimant’s investments in Kazakhstan. In particular, the decisions of the Respondent’s courts were arbitrary, manifestly contrary to Kazakh law, denied the Claimant procedural fairness and undermined the Claimant’s legitimate expectations in relation to its investments. Kazakhstan also failed to provide a stable legal and business environment for the Claimant’s investments.

109. The Respondent also violated its obligation to provide the Claimant’s investments full protection and security against the nefarious scheme hatched by the Original

⁵³ It is the Claimant’s position that the “fair and equitable treatment” and “full protection and security” standards contained in Article II(2)(a) of the BIT are autonomous treaty-based standards that provide protection beyond the remit of the minimum treatment standard under customary international law. However, by virtue of the most-favoured-national provision in Article II(1) of the BIT, the Claimant reserves the right to import, *inter alia*, the “fair and equitable treatment” and “full protection and security” standards in Article 2(2) of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kazakhstan for the Promotion and Protection of Investments, signed and entered into force on 23 November 1995, **Exhibit C-33**.

Owners and the Oligarchs, and implemented through the Respondent's courts. In addition, although the Respondent was informed of a serious fraud committed against the Claimant, the Respondent abjectly failed to protect the Claimant's investments, in breach of Article II(2)(a) and other provisions of the BIT.

(c) *Kazakhstan did not provide the Claimant effective means of asserting claims and enforcing rights with respect to its investments*

110. Article II(6) of the BIT states:

Each Party shall provide effective means of asserting claims and enforcing rights with respect to investment, investment agreements, and investment authorizations.

111. Kazakhstan failed to provide the Claimant effective means of asserting claims and enforcing rights with respect to: (1) the Claimant's indirect interest in the charter capital of Kozhan and thereby in the Oil Fields; (2) the loan that the Claimant extended to Kozhan under the 2006 Loan Agreement and secured through the 2007 Pledge Agreement; and (3) the Claimant's indirect interest in valuable rights under the 2004 Line of Credit Agreement and the IUS Award. For example, as discussed above, the Respondent's courts' decisions with respect to the Claimant's investments were manifestly contrary to Kazakh law. A number of devastating decisions were rendered by the Respondent's courts without even affording the Claimant an opportunity to present its case. What is more, on multiple occasions, the Respondent did not even notify the Claimant or Big Sky Canada of proceedings in the Respondent's courts in connection with the Claimant's investments.⁵⁴

(d) *Kazakhstan impaired the "management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal" of Claimant's investments*

112. Article II(2)(b) of the BIT states:

Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For purposes of dispute resolution under Article VI and VII, a measure may be arbitrary or discriminatory notwithstanding the fact that a Party has had or

⁵⁴ This is also a violation by the Respondent of Article II(7) of the BIT, which requires that "[e]ach Party [...] make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.", **Exhibit C-1**.

has exercised the opportunity to review such measure in the courts or administrative tribunals of a Party.

113. Kazakhstan violated Article II(2)(b) by way of arbitrary or discriminatory measures (most notably, through the culpable conduct of its courts and enforcement authorities) which impaired, *inter alia*, the Claimant's "management" and "operation" of Kozhan, the Claimant's "use" and "enjoyment" of its indirect interest in Kozhan, and the Claimant's "use" and "enjoyment" of the loans given to Kozhan and the compensation payable by Kozhan under the IUS Award.

(vi) The compensation claimed by the Claimant

114. The Respondent's multiple violations of the BIT have caused substantial loss and damage to the Claimant. The Claimant invested considerable sums in Kazakhstan and stood to make substantial returns on those investments.
115. The Respondent is obliged to provide the Claimant with full reparation in respect of its loss and damage in accordance with the BIT and applicable principles of customary international law. The Claimant will set out its compensation claim in full at the appropriate juncture in this arbitration.

V. THE DISPUTE IS WITHIN THE JURISDICTION OF ICSID

116. Article 25(1) of the Convention defines the extent of the jurisdiction of the Centre as follows:

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

117. Article 36(3) of the Convention provides:

The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. [...]

118. There is no basis for the Secretary-General to conclude, on the basis of the information contained in this Request, that the dispute falls manifestly outside the jurisdiction of the Centre. To the contrary, the dispute that the Claimant submits to ICSID falls squarely within the Centre's jurisdiction. The Claimant made substantial related investments in Kazakhstan for the purposes of the BIT and the Convention. The Respondent's interference with the Claimant's investments in Kazakhstan has given rise to a legal dispute arising directly out of those related investments. The dispute is between a Contracting State and a national of another Contracting State to the Convention. The Parties to the dispute have consented in writing to submit the dispute to the Centre under the terms of the BIT and in accordance with the Convention.
119. This Request therefore meets all the requirements of Article 25(1) of the Convention and the Claimant requests that the Secretary-General register it pursuant to Article 36(3) of the Convention and Rule 6 of the Institution Rules.

VI. OTHER INFORMATION

A. Authorisation of the Request

120. The Claimant has taken all necessary internal actions to authorise this Request. As required by Institution Rule 2(2), supporting documentation of this authorisation is exhibited to this Request.⁵⁵

B. Appointment of Counsel

121. The Claimant hereby appoints as Counsel with full powers of representation in connection with the Request and the ensuing arbitration proceedings:

Stephen Fietta (stephen.fietta@fietailaw.com)
Ashique Rahman (ashique.rahman@fietailaw.com)
Laura Rees-Evans (laura.rees-evans@fietailaw.com)
Sarah Macrory (sarah.macrory@fietailaw.com)
Zsófia Young (zsofia.young@fietailaw.com)

Fietta LLP

⁵⁵ Internal Authorisation of Big Sky US, **Exhibit C-3**; Power of Attorney by Big Sky US to Fietta, **Exhibit C-4**.

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122. The Claimant requests that all communications are addressed to the above counsel.

C. The Constitution of the Tribunal

123. The Parties have not agreed on the number of arbitrators or the method of their appointment.
124. In accordance with Rule 2(1)(a) of the ICSID Rules of Procedure for Arbitration Proceedings, the Claimant hereby proposes to the Respondent that the Arbitral Tribunal be composed of three arbitrators, one arbitrator to be appointed by each of the Parties and the third arbitrator, who shall be the President of the Tribunal, to be appointed by the two party-appointed arbitrators in consultation with the parties, within 30 days of the appointment of the second arbitrator.
125. In accordance with Arbitration Rule 2(1)(b), the Respondent should respond to this proposal within twenty days of its receipt of this proposal.

D. Required Copies and Payment of Fee

126. In accordance with Institution Rule 4, this Request is submitted in an original and eight additional signed copies, together with nine USBs containing electronic copies of the Request and its exhibits.
127. This Request is accompanied by proof of payment of the prescribed lodging fee at **Exhibit C-5**.

E. Supporting Documentation

128. This Request is accompanied by **Exhibits C-1 to C-33**, listed in the attached Index of Exhibits.

VII. SUBMISSION

129. On the basis of the above information, the Claimant requests that the Secretary-General of the Centre:

- a. acknowledge receipt of the Request in accordance with Institution Rule 5(1)(a); and
- b. proceed to register the Request as soon as possible in the Arbitration Register and on the same date notify the Parties of the registration, in accordance with Institution Rule 6(1).

Signed:  _____

Stephen Fietta

Counsel for the Claimant

Date: 19 June 2017