

**IN THE MATTER OF AN ARBITRATION**

**BEFORE THE INTERNATIONAL CENTRE  
FOR THE SETTLEMENT OF INVESTMENT DISPUTES**

**BETWEEN**

**CARATUBE INTERNATIONAL OIL COMPANY LLP**

**Claimant**

**AND**

**THE REPUBLIC OF KAZAKHSTAN**

**Respondent**

---

**REQUEST FOR ARBITRATION**

---

**ALLEN & OVERY**

One Bishops Square  
London E1 6AD  
United Kingdom

Ref: JAEG/MPG/JJCS

**FILED**  
**APR 28 2010**  
Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

10-285  
t

**TABLE OF CONTENTS**

A. INTRODUCTION ..... 4

B. THE PARTIES ..... 5

B.1 The Claimant..... 5

B.2 The Respondent ..... 5

C. THE INVESTMENT ..... 6

C.1 The Exploration and Production Contract ..... 6

C.2 Long-term Rights Granted Under the Contract..... 6

C.3 Substantial Investments Made Under the Contract..... 7

C.4 Harmonious Execution of the Contract Between 2002 and 2007 ..... 8

C.5 Two-year Extension of the Exploration Period in 2007 ..... 8

C.6 Commercial Discoveries and Imminent Start of Commercial Production..... 9

C.7 Summary..... 9

D. THE DISPUTE ..... 10

D.1 Kazakhstan's Sudden and Unfounded Alleged Concerns with CIOC's Contractual Performance ..... 10

D.2 The Timely Coincidence of the Unfounded Allegations With Political Factors ..... 12

E. KAZAKHSTAN'S BREACHES OF ITS OBLIGATIONS..... 14

E.1 Kazakhstan's Breaches of the Contract ..... 14

E.2 Kazakhstan's Breaches of the Treaty ..... 14

E.3 Fair and Equitable Treatment..... 14

E.4 Prohibition Against Unreasonable or Discriminatory Measures ..... 14

E.5 Expropriation Guarantees ..... 15

E.6 Observance of Obligations..... 15

F. ARBITRATION UNDER THE TREATY ..... 15

F.1 The Existence of an Investment Dispute..... 16

F.2 Kazakhstan Is a Party to the Treaty ..... 16

F.3 CIOC Is a National of the Other Party..... 16

F.4 The Parties Have Consented to the Arbitration of this Dispute..... 17

F.5 Prior Attempts at Amicable Settlement of this Dispute Have Failed..... 17

G. ICSID JURISDICTION ..... 19

G.1 CIOC and Kazakhstan Have a Legal Dispute..... 19

G.2 The Dispute Arises Directly out of CIOC's Investment..... 19

G.3 The Dispute Is Between a Contracting State and a National of Another Contracting State ..... 20

G.4 Conclusion on ICSID Jurisdiction ..... 20

II.	PROCEDURAL ISSUES .....	20
H.1	Authorisation of Request .....	20
H.2	Number of Arbitrators and Method for Appointment.....	21
H.3	Language of the Proceedings .....	21
I.	RELIEF SOUGHT.....	21
J.	RESERVATION OF RIGHTS .....	22

**A. INTRODUCTION**

1. The Claimant, Caratube International Oil Company ("CIOC"), files this Request for Arbitration (the "Request") against the Respondent, the Republic of Kazakhstan ("Kazakhstan"), pursuant to the Treaty Between the United States of America and the Republic of Kazakhstan Concerning the Reciprocal Encouragement and Protection of Investment dated 19 May 1992 and in force since 12 January 1994 (the "Treaty" or the "BIT"<sup>1</sup>). CIOC's claims in this arbitration relate to breaches of the Treaty and also breaches of Contract No. 954 dated 27 May 2002 (as amended) (the "Contract") which provided for the exploration and production of hydrocarbons within parts of Blocks XXIV-20-C and XXIV-21-A including the Caratube Field in the Baiganin District of the Aktobe Oblast region of Kazakhstan (the "Field").
2. In short, following five years of successful and harmonious operation during which time the Claimant made very substantial investments in the Field, from September 2007 the relationship between the parties suddenly and dramatically deteriorated, apparently for reasons unconnected with the contractual performance of CIOC. By order of 30 January 2008 the Minister of Energy and Mineral Resources (the "Minister") purported to inform CIOC that the Contract was "*unilaterally terminated*". CIOC denies that it was in breach of the Contract or failed to fulfil its obligations as alleged or at all.
3. The Kazakh Ministry of Energy and Mineral Resources (the "Ministry"), acting on behalf of the State, has acted in flagrant breach of the Contract by purporting unilaterally to terminate CIOC's rights in circumstances where there is no justification for doing so. Furthermore, CIOC, together with its principal shareholder and his family, as well as senior management and employees of CIOC, have been subjected to a campaign of sustained and unlawful harassment. In particular there has been a series of protracted, intrusive and burdensome investigations into the affairs of CIOC conducted by various authorities, including the finance police, state prosecutors, the police force, secret services agencies and the tax authorities. CIOC's principal shareholder and his family, as well as senior management and employees of CIOC, have also been subjected to personal threats and intimidation.
4. Kazakhstan has repeatedly breached not only its obligations under the Contract but also its obligations under both international and Kazakh law with respect to CIOC's investment in Kazakhstan. These breaches have caused very substantial loss and damage to CIOC, not least because CIOC stood to make at least USD 2 billion from the Production stage of the reserves it had already identified in the Exploration stage of the Contract. CIOC commences these proceedings to enforce its rights, and seeks compensation for the loss and damage which it has suffered as a result of Kazakhstan's breaches.

---

<sup>1</sup> The Treaty is attached as Exhibit C-1. References to Exhibits are referred to in this Request as "Exhibit C-\_\_\_." Attached to this Request are copies of the documents of central relevance to CIOC's claims.

**B. THE PARTIES**

**B.1 The Claimant**

5. The Claimant, CIOC, is a corporation constituted under the laws of Kazakhstan, with legal domicile at 92A Polezhaeva St., Zhetysusskiy Region Almaty, 050050, Republic of Kazakhstan.

6. CIOC is directly owned by nationals of the United States of America and the Republic of Lebanon, namely:

(a) Mr Devincci Salah Hourani, a national of the United States of America,<sup>2</sup> who owns 92 % of the shares of CIOC.

(b) Mr Kassem Omar Abdallah, a national of the Republic of Lebanon, who owns the remaining shares of CIOC.

7. Accordingly, 92 % of CIOC's shares are controlled directly or indirectly by a US national.

8. CIOC is represented in these proceedings by Allen & Overy LLP.<sup>3</sup> Contact details for all communications in relation to this matter are as follows:

Allen & Overy LLP  
One Bishops Square  
London E1 6AO  
United Kingdom  
Tel. +44 (0)203 088 0000  
Fax. +44 (0)203 088 0088

Attention:  
Judith Gill - judith.gill@allenoverly.com  
Matthew Gearing - matthew.gearing@allenoverly.com  
Jan K. Schaefer - jan.schaefer@allenoverly.com  
Alexander Thavenot - alexander.thavenot@allenoverly.com

**B.2 The Respondent**

9. The Respondent is the Republic of Kazakhstan, a sovereign State and Contracting Party to the Treaty.

10. While Kazakhstan will act in these proceedings through the authority designated by it, contact details for all communications in relation to this matter are as follows:

---

<sup>2</sup> An excerpt of the passport of Mr Devincci Salah Hourani is attached as Exhibit C-2.

<sup>3</sup> CIOC's power of attorney to Allen & Overy LLP is attached as Exhibit C-3.

His Excellency Nursultan Nazarbayev  
The President of the Republic of Kazakhstan  
11 Beybitshilik St.  
473000, Astana  
Republic of Kazakhstan

Minister of Energy and Mineral Resources of the Republic of Kazakhstan  
Mr S M Mynbayev  
22 Kabanbay-Batyr St.  
010000, Astana  
Republic of Kazakhstan

## **C. THE INVESTMENT**

### **C.1 The Exploration and Production Contract**

11. On 27 May 2002, the Contract was awarded by Kazakhstan to Consolidated Contractors (Oil and Gas) Company S.A.L. ("CCC").<sup>4</sup> The Claimant will adopt the defined terms in the Contract for the purposes of this Request for Arbitration.
12. The Ministry concluded the Contract with CCC on behalf of Kazakhstan. The Contract was registered by the Ministry on 27 May 2002 and designated Contract No. 954. It expressly provides in its preamble that the "*Government of the Republic of Kazakhstan has designated the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan as the Competent Authority to execute and perform this Contract on behalf of the Republic of Kazakhstan*".<sup>5</sup>
13. CCC, Kazakhstan and CIOC formally concluded Amendment No. 1 to the Contract on 26 December 2002 pursuant to Clause 31.5 of the Contract, acknowledging that CCC had assigned all of its rights under the Contract to CIOC.<sup>6</sup> In the amendment, the parties agreed to substitute references to CCC by CIOC but otherwise to keep the Contract unchanged.

### **C.2 Long-term Rights Granted Under the Contract**

14. The Contract granted CIOC, among other things, the exclusive right to conduct operations connected with prospecting and exploration for petroleum and its extraction onto the surface (Clauses 4.1 and 7.1.1 of the Contract).

---

<sup>4</sup> The English language version of the Contract is attached as Exhibit C-4 (without annexes)

<sup>5</sup> By Clause 7.4.1 of the Contract the Ministry is empowered to represent the State in negotiations relating to the Contract and by Article 27.7 the Ministry warrants that it is a structural subdivision and agent of the Government of Kazakhstan.

<sup>6</sup> Amendment No. 1 to the Contract is attached as Exhibit C-5.

15. The Exploration period was initially fixed at five years pursuant to Clause 3.2 of the Contract and later formally extended for another two years by Amendment No. 3 to the Contract dated 27 July 2007 (see further paragraph 23 below). In the event of a Commercial Discovery during the Exploration period CIOC was given the exclusive right to proceed to the Production stage. Pursuant to Clause 3.2 of the Contract the Production period was at least 25 years from the date of commercial Production for each deposit.<sup>7</sup>

### C.3 Substantial Investments Made Under the Contract

16. The Exploration rights relate to an extensive territory stretching over 50 sq. km. Initial exploration had previously been undertaken in this area prior to CCC or CIOC's involvement and some oil deposits were discovered, though the exploration was not completed and no production was ever commenced. When CIOC took over the exploration area in 2002, it was essentially undeveloped and lacking any infrastructure. Specifically, there were no electricity or other facilities, and all but one of the former wells had been crudely but permanently blocked with concrete.
17. Since 2002, CIOC has spent substantial funds to develop the area. By way of example, CIOC set up its own electricity supply and built office space, a medical clinic, living quarters and a duty mess for its workforce of about 120 personnel. It also built an extendable processing plant for the treatment of 1,500 tonnes of oil per day, storage tanks with a capacity of 5,000 tonnes (36,500 barrels) and an infield pipeline system of about 22 km in length.
18. In addition, CIOC has made all of the developmental and social fund contributions required by the Contract,<sup>8</sup> including payment of USD 5 million "*for the development of the city of Astana*" as required under Clause 7.2.13 of the Contract.
19. In line with the contractual work programme CIOC carried out substantial exploratory work between the years 2002 and 2007, a summary of which is set out in its letter dated 11 March 2008 to Mr A B Batalov, Executive Secretary at the Ministry.<sup>9</sup> By way of example, CIOC drilled 26 new wells, re-entered 10 old wells, undertook a full study of the subsoil water reserves, conducted a 3D seismographic examination of the 50 sq. km Field, completed exploration and a pilot production programme for the upper zones of the Field, completed the oil reserves calculations and carried out projects relating to deep zone exploration including drilling deep wells.
20. CIOC's projected operational expenditure under the Contract was USD 36,980,000, of which USD 28,890,000, or 78.12%, had been invested by CIOC by the end of 2007. During the 2002-2007

---

<sup>7</sup> In the event of commercial Production, the Contractor has the right to extend the term of the Contract "*for such period as the contractor requires to realise the full commercial Production of the Deposits [..]*" (Clause 3.5 of the Contract).

<sup>8</sup> See for example Clauses 7.2.12 and 7.2.3 of the Contract.

<sup>9</sup> Letter no 21-11-149 from CIOC to the Ministry dated 11 March 2008 is attached as Exhibit C-6

period, CIOC drilled 22,627,000 linear metres of boreholes in the subsalt section of the Field, representing 104% of that which was planned in the contractual work programme; CIOC also completed 152% of the planned geophysical works.

**C.4 Harmonious Execution of the Contract Between 2002 and 2007**

21. For the first five years of the Contract, the relationship between CIOC and the competent Kazakh authorities was constructive and harmonious, and there were no real tensions or disagreements that arose. CIOC complied with its extensive cooperation and reporting obligations under the Contract and otherwise applicable Kazakh law. By way of example, CIOC provided and agreed with the competent Kazakh authorities the annual works and geological programmes. In addition, it filed monthly, quarterly and annual progress reports with the local department of the Ministry in Aktobe, known as the Tu Zapkaznedra, which was part of the Committee for Geology and Subsoil Use. Tu Zapkaznedra was charged with supervision of the project and provided these reports to the Ministry for approval. Monthly reports were also provided directly to the Information Authority (KDY) within the Ministry by CIOC and both quarterly and annual financial and tax reports were sent by CIOC to the Tax Authority. At all times, therefore, the Kazakh authorities were fully informed about the progress of the project. In addition, CIOC duly obtained all required licences. From September 2007, however, the relationship suddenly and dramatically deteriorated for reasons unconnected with the contractual performance of CIOC (see further paragraph 42 below).

**C.5 Two-year Extension of the Exploration Period in 2007**

22. Geophysical survey operations (including the 3D seismographic examination) conducted between 2005 and 2006 revealed that the structure of the Field was more complex than at first thought and required CIOC to conduct an in-depth analysis and reinterpretation of the available geological information. This resulted in a postponement of the drilling in the subsalt section of the Field.

23. As a consequence of these complications, the Ministry extended CIOC's initial five year Exploration period by another two years in accordance with Clause 9.1 of the Contract. This was recorded in a letter of 21 February 2007<sup>10</sup> and by Amendment No. 3 to the Contract dated 27 July 2007.<sup>11</sup> By Clauses 9.1 and 10.2 of the Contract, CIOC was given the right to extend the period of exploration on two occasions, each one for a period of up to two years.<sup>12</sup>

24. In the extension phase, CIOC planned for the drilling of two deep wells, each of 5,000 meters. It had already tendered the drilling work and had budgeted additional funds of USD 18 million for further

<sup>10</sup> Letter no. 14-01-1572 from the Ministry to CIOC dated 21 February 2007 is attached as Exhibit C-7

<sup>11</sup> Amendment No. 3 to the Contract dated 27 July 2007 is attached as Exhibit C-8.

<sup>12</sup> Accordingly, CIOC has the right to one further extension from the end of the period of the first extension in 2005.



exploration costs during the two year period of the extension. In addition, the work programme for the extension period provided for the drilling of a further 3,000 meter deep well in a new zone which had not been included in the initial Exploration schedule.

#### **C.6 Commercial Discoveries and Imminent Start of Commercial Production**

25. The extensive Explorations carried out between 2002 and 2007 led to substantial Commercial Discoveries. By the summer of 2007, CIOC was ready to move towards the commercial Production stage for certain upper deposits. In particular, on 1 August 2007 CIOC agreed a contract with Caspian Energy Resources for Technical Modelling of the Field. The contract provided for Caspian Energy Resources to prepare a feasibility study of the efficiency of the development of the discoveries, i.e. the Development Plan contemplated by Clause 10.4 of the Contract. The Technical Modelling project was duly completed and would ordinarily then have been sent to a central committee at the Ministry for approval, but in light of the purported termination of the Contract described below this approval process could not proceed.
26. Despite a dramatic and sudden deterioration in the parties' relationship from September 2007, the competent Kazakh authority, the State Commission for Mineral Reserves, nonetheless provided an official confirmation of the estimated reserves (as at 1 December 2007) dated 29 February 2008 pursuant to Clause 10.3 of the Contract.<sup>13</sup> In that part of the Field which was contracted to CIOC, 4,248,000 tonnes (31,010,400 barrels) of C-1 reserves and 5,647,000 tonnes (41,223,100 barrels) of C-2 reserves were confirmed (overall C-2 reserves of the Field were estimated at 7,070,000 tonnes, i.e. 51,611,000 barrels). The provision of these official estimates constituted recognition of the fact that CIOC was, at that stage, ready to proceed with preparation for commercial Production. Such an estimate would not otherwise have been given.
27. The official reserve estimations were in fact very conservative and subject to review after conclusion of the outstanding critical subsalt exploration to be conducted in 2008 and 2009. Substantial further reserves were expected to be found in the relevant subsalt layers. In fact, CIOC had reason to expect that the subsalt area of the Field would result in an extension of CIOC's Contract Area: Clause 4.2 of the Contract provides for such an extension in case of discoveries that reach beyond the boundaries of the existing Contract Area if those adjacent areas are not licensed to other subsoil users (and they were not so licensed in this case).

#### **C.7 Summary**

28. Under the Contract, CIOC made substantial investments in Kazakhstan amounting to more than USD 35,000,000. Specifically, it invested in the exploration of the Field, which included accomplishing a

---

<sup>13</sup> Letter no. 16-05-708 from the Ministry dated 29 February 2008 containing the official reserve estimation is attached as Exhibit C-9.

comprehensive and expensive work programme and establishing substantial infrastructure on the site. CIOC agreed to invest in consideration of the extensive and exclusive development rights granted to it under the Contract. Given the substantial discoveries of commercially exploitable reserves it achieved, the rights granted to CIOC had enormous economic value at the point in time that the Kazakh authorities adversely and unlawfully interfered with the investment in an effort to deprive CIOC of its legitimate return (see further Section D below).

#### **D. THE DISPUTE**

29. As stated above, the relationship between CIOC and its shareholders, on the one hand, and the Kazakh public authorities, on the other hand, was entirely satisfactory for the first five years of the Contract. Both sides discharged their contractual duties in good faith and without any significant tensions or disagreements arising. In September 2007, however, the relationship suddenly and dramatically deteriorated and this culminated in Kazakhstan unlawfully purporting to terminate the Contract in February 2008.

##### **D.1 Kazakhstan's Sudden and Unfounded Alleged Concerns with CIOC's Contractual Performance**

30. On 1 October 2007, the Ministry wrote to CIOC purporting to impose an "*immediate termination of operations [...] pending decision on unilateral termination*" of the Contract.<sup>14</sup>

31. The letter referred to a previous notice of 25 March 2007<sup>15</sup> signed by Vice Minister B Aksholakov which was not in fact received by CIOC until 24 September 2007 when it was copied to CIOC by TU Zapkaznedra with its letter of 24 September 2007.<sup>16</sup> The letter from Vice Minister Aksholakov granted CIOC three months to rectify alleged breaches concerning the 2007 Work Programme under the Contract. However, if the Ministry genuinely had grounds for complaint in March 2007 then it is difficult to understand why they would have proceeded to grant a two year extension to the Contract which, as noted above in paragraphs 15 and 23, was duly signed on 27 July 2007.

32. Having finally received Vice Minister Aksholakov's letter of 25 March 2007 on 24 September 2007, CIOC responded promptly and fully by a letter dated 3 October 2007 to dispel the concerns raised.<sup>17</sup> This response from CIOC addressed substantively the matters raised, demonstrating that CIOC was not in fact in breach of its contractual obligations.

33. Nevertheless the Ministry persisted with its purported "*termination of operations*" under the Contract throughout October and much of November 2007. Such actions were in breach of the Ministry's

<sup>14</sup> Letter of notification no 14-04-8900 from the Ministry to CIOC dated 1 October 2007 is attached as Exhibit C-10.

<sup>15</sup> Notice from the Ministry dated 25 March 2007 but not received by CIOC prior to 24 September 2007 is attached as Exhibit C-11.

<sup>16</sup> Letter no 11-05-2287 of TU Zapkaznedra to CIOC dated 24 September 2007 is attached as Exhibit C-12.

<sup>17</sup> Letter no 21-11-534 from CIOC to the Ministry dated 3 October 2007 is attached as Exhibit C-13.

contractual obligations and were wholly unjustified, for the reasons made clear in CIOC's letter of 3 October 2007.

34. Eventually CIOC received from the Ministry a notification dated 27 November 2007 which provided for operations under the Contract to resume.<sup>18</sup> However just 6 days later, on 3 December 2007, the Ministry issued a further notification<sup>19</sup> threatening termination of the Contract.
35. Again CIOC responded fully and promptly by letter of 13 December 2007<sup>20</sup> in relation to each of the points raised in the letters of 27 November and 3 December 2007. Nevertheless, on 30 January 2008 the Minister purported to order that the Contract was "*unilaterally terminated*".<sup>21</sup>
36. Although the order was sent under cover of a letter dated 1 February 2008 from the Ministry's Executive Secretary Mr Batalov,<sup>22</sup> it was received by CIOC only on 11 February 2008, having been sent to its branch office in Aktobe rather than to CIOC's main office in Almaty (as all other communications from the Ministry had been and as is required by the notice provisions in Clause 31.2 of the Contract).
37. By this time, CIOC had established and sought to implement the procedure outlined in Clause 10 of the Contract for confirming a Commercial Discovery and, as explained above in paragraph 26, had received a state evaluation of the reserves under Clause 10.3 of the Contract (Exhibit C-9). Following receipt of the order purporting to terminate the Contract, however, CIOC's actions were frustrated by the Ministry.
38. CIOC denies that it was in breach of the Contract or failed to fulfil its obligations under it as alleged or at all. On the contrary, it is the Ministry, acting on behalf of the State, which has acted in flagrant breach of the Contract by purporting unilaterally to terminate CIOC's rights in circumstances where there is no justification for doing so.
39. It is simply extraordinary that relations between two counterparties to a Contract of this size and importance that had operated harmoniously for more than five years should suddenly degenerate from the first notification of any concern to a purported termination in just over four months, and just a few months after a two year extension to the Contract was granted on 27 July 2007. This is particularly so where CIOC has made huge investments throughout the period of Exploration, building up very substantial infrastructure and amenities with a view to the long term development of the Field. CIOC was also committed to expending very substantial sums during the two year extension period. In particular, and as explained above in paragraph 24, CIOC had committed to further expenditure of USD 18 million in exploration costs alone during the two year period of the extension.

---

<sup>18</sup> Notification no 14-05-10682 from the Ministry dated 27 November 2007 is attached as Exhibit C-14.

<sup>19</sup> Notification no 14-05-10942 from the Ministry dated 3 December 2007 is attached as Exhibit C-15.

<sup>20</sup> Letter no. 21-11-792 from CIOC to the Ministry dated 13 December 2007 is attached as Exhibit C-16

<sup>21</sup> Order no. 20 from the Ministry dated 30 January 2008 is attached as Exhibit C-17

<sup>22</sup> Letter no 14-05-838 from the Ministry to CIOC dated 1 February 2008 is attached as Exhibit C-18.

40. Further, as stated, CIOC has clearly set out in correspondence why the Ministry's allegations of breach were wholly unfounded, and has made very clear that the Ministry's purported termination is unlawful and in breach of the terms of the Contract.
41. On 12 March 2008, the Ministry ordered CIOC to hand over the site.<sup>23</sup> This violated the contractual provision that in the event of a dispute no termination shall occur until an Arbitral Tribunal has rendered a final award (see Clause 29.6 of the Contract which provides that, "...if the defaulting Party contests such material breach of the Contract, no termination shall occur unless an unremedied material breach shall have been judged by the final award of arbitration in accordance with Article 27 of the Contract."). Accordingly, CIOC rejected the Ministry's request on 17 March 2008<sup>24</sup> and has insisted that the wells remain in production, at least to an extent which avoids them being damaged by the cessation of oil flows. As of the date of this Request, CIOC still retains physical control of the site, but in light of the Ministry's actions is prevented from continuing with exploratory work and full pilot production, and certainly is not being allowed to proceed with its Commercial Discovery as it is entitled to do under the Contract. In addition, CIOC and those connected with it have been subjected to a campaign of sustained harassment as described in paragraph 42 below. Nevertheless, and despite intolerable interference with its operations, CIOC has maintained its workforce at the site and is continuing to pay their salaries, as well as reporting and paying all taxes and other sums due on the limited production which it is able to achieve.

#### **D.2 The Timely Coincidence of the Unfounded Allegations With Political Factors**

42. In the circumstances, CIOC is forced to conclude that the Ministry's actions are not in fact based on its performance of the Contract but rather are entirely politically motivated. This conclusion is reinforced, *inter alia*, by the following facts:
- The sudden change of attitude on the side of the Kazakh authorities has coincided with the public and dramatic disagreement between the Kazakh President, Mr Nursultan Nazarbayev, and his then son-in-law, Mr Rakhat Aliyev, in the summer of 2007. Mr Aliyev served as the First Vice Foreign Minister of Kazakhstan until February 2007, when he became the country's Ambassador to Austria. Until June 2007 he was married to the eldest daughter of the President. However, having announced that he proposed standing as a candidate in the next presidential election, Mr Aliyev was suddenly and controversially divorced from the President's daughter and subsequently accused of various crimes against the State. He fled Kazakhstan and has been sentenced to two long terms of imprisonment in his absence by Kazakh courts. His assets in the country have apparently been confiscated by the

<sup>23</sup> Letter no. 021-223 from the Ministry to CIOC dated 12 March 2008 is attached as Exhibit C-19.

<sup>24</sup> Letter no. 2 111-162 from CIOC to the Ministry dated 17 March 2008 is attached as Exhibit C-20.

government.<sup>25</sup> Since that time, members of Mr Aliyev's family, including his father, Mr Mukhtar Alyevich, an ex-Minister of Health, have also had criminal proceedings brought against them by the Government of Kazakhstan and their assets have been confiscated. The family of the majority shareholder of CIOC, US national Mr Devincci Salah Hourani, is related to Mr Aliyev by marriage. Though neither Mr Devincci Salah Hourani nor CIOC have had any involvement whatsoever in the matters giving rise to these events, CIOC concludes that the unlawful and irrational actions of the Ministry have been prompted by and are a consequence of the disagreement between Mr Nazarbayev and Mr Aliyev.

- From the summer of 2007, the Republic of Kazakhstan has permitted a series of protracted, intrusive and burdensome investigations into the affairs of CIOC to be conducted by various authorities, including the finance police, state prosecutors, the police force, secret services agencies and the tax authorities. Taken together these activities constitute harassment of CIOC and have impeded its ability to operate. Specifically, in the course of the investigations CIOC's senior management have repeatedly been called for questioning, the files and documents of CIOC were seized, including its subcontracts and agreements with suppliers relating to the Field, and its accounts frozen. Without notice or justification an amount of about KZT 117,000,000 (approximately USD 970,627) was illegally seized from CIOC's accounts by the authorities. As of today, CIOC has not been reimbursed.
- These arbitrary and unlawful actions were also directed at the employees, directors and shareholders of CIOC. They were apparently aimed at driving CIOC's shareholders and directors out of the country. Specifically, and in addition to the repeated questioning of CIOC's senior management referred to above, the Ministry of Internal Affairs has raided the offices and houses of Mr Devincci Salah Hourani and questioned him on the basis of false accusations. These raids were disproportionate in scope, timing and the manner in which they were carried out. They were clearly directed at personally threatening Mr Hourani and his family, including his brothers and sister, as well as CIOC's senior management and employees, rather than being a legitimate investigation into any alleged crime(s). Kazakhstan involved its police forces and secret service personnel in those raids and employed tactics designed to intimidate and threaten, including the taking, by plain clothes personnel, of Mr Devincci Salah Hourani from his family house in Kazakhstan in the middle of night to another location for questioning. Eventually, Mr Hourani was informed by an intermediary on behalf of the Deputy Minister of Internal Affairs that the harassment would stop if CIOC made a payment to that intermediary of USD 10,000,000. CIOC has refused to do so.

---

<sup>25</sup> A selection of press articles on the fate of Rakhat Aliyev appear at Exhibit C-21

- As explained above, by the time of the Ministry's unlawful purported termination of the Contract, CIOC had sought to implement the procedure outlined in the Contract for exploiting a Commercial Discovery. Kazakhstan's actions therefore also had the effect of depriving CIOC of the hugely valuable benefits of its years of exploration and pilot production without any compensation. The beneficiary of such action, to whom the rights in the Field would revert upon termination of the Contract, is of course Kazakhstan.

## **E. KAZAKHSTAN'S BREACHES OF ITS OBLIGATIONS**

### **E.1 Kazakhstan's Breaches of the Contract**

43. For the reasons stated above, which will be expanded upon in CIOC's Statement of Claim, Kazakhstan breached the Contract, *inter alia*, by unilaterally purporting to terminate it without cause and requiring CIOC to cease performance prior to the determination of an arbitral tribunal, contrary to the terms of Article 29.6 of the Contract. In so doing, Kazakhstan also effectively sought to frustrate CIOC's entitlement to the reimbursement of its Exploration costs of more than USD 35,000,000 pursuant to Clause 10.6 of the Contract.

### **E.2 Kazakhstan's Breaches of the Treaty**

44. Kazakhstan's conduct also violated several of its obligations under the Treaty, including at least the following.

### **E.3 Fair and Equitable Treatment**

45. Article II(2)(a) of the BIT contains Kazakhstan's undertaking to accord fair and equitable treatment to foreign investments: "*[i]nvestments shall at all times be accorded fair and equitable treatment,...*" (Exhibit C-1, Article II(2)(a))
46. This standard requires that Kazakhstan provide a stable and predictable investment environment consistent with investors' legitimate expectations. Kazakhstan's unlawful purported termination of the Contract, as well as its engaging in oppressive investigations and actions aimed at the disruption and ultimate destruction of CIOC's investment and the personal affairs of CIOC's shareholder, US national Mr Devincei Salah Hourani, and his family all constitute conduct in breach of Article II(2)(a) of the Treaty, as will be detailed in CIOC's Statement of Claim.

### **E.4 Prohibition Against Unreasonable or Discriminatory Measures**

47. Article II(2)(b) of the Treaty also provides that "*[n]either Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment [...] of investments.*"

(Exhibit C-1, Article II(2)(b)) This standard of protection demands that Kazakhstan accord to CIOC treatment that is both reasonable and not discriminatory. Kazakhstan's unlawful purported termination of the Contract was wholly unreasonable. CIOC, and indeed other Kazakh interests of Mr Devincci Salah Hourani and his family, have been singled out as the subject of harassment by the Kazakh authorities.

48. Kazakhstan's conduct is not only unreasonable, but has severely impaired the operation, management, maintenance, use and enjoyment of CIOC's investment, as will be detailed in CIOC's Statement of Claim.

#### **E.5 Expropriation Guarantees**

49. Article III of the Treaty provides that, "*[i]nvestments 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).*" (Exhibit C-1, Article III)
50. Kazakhstan's actions have deprived CIOC of all or substantially all of its investment without complying with any, let alone all of the conditions set out in Article III.

#### **E.6 Observance of Obligations**

51. Article II(2)(c) of the Treaty provides that "*[e]ach Party shall observe any obligation it may have entered into with regard to investments.*" (Exhibit C-1, Article II(2)(c))
52. As stated above, Kazakhstan has failed to comply with its obligations assumed under the Contract. By virtue of Article II(2)(c) of the Treaty, these violations are transformed into violations of the Treaty.
53. Further CIOC reserves the right to rely on those provisions of the Kazakh investment law that have been violated by Kazakhstan's breaches as described in this Request, as will be set out in detail in CIOC's Statement of Claim.

#### **F. ARBITRATION UNDER THE TREATY**

54. The Treaty provides that "*the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration*" under four different mechanisms, the first of which is to the International Centre for the Settlement of Investment Disputes. (Exhibit C-1, Article VI(3)(a)) Further it sets forth the Contracting Parties' consent "*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.*" (Exhibit C-1, Article VI(4))

55. CIOC hereby accepts Kazakhstan's offer to arbitrate disputes under the Treaty, and hereby chooses to submit the dispute described in this Request to arbitration under the Convention on the Settlement for Investment Disputes between States and Nationals of Other States of 1965 pursuant to Article VI(3)(a) of the Treaty.

**F.1 The Existence of an Investment Dispute**

56. Article VI(1) of the Treaty defines an investment dispute in relevant part as "*a dispute between a Party [Kazakhstan] and a national or company of the other Party [United States of America] arising out of or relating to (a) an investment agreement between that Party and such national or company; [...]; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.*" (Exhibit C-1, Article VI(1))

57. The dispute here arises out of an investment agreement between CIOC and Kazakhstan, namely the Contract. In addition, the dispute arises out of alleged breaches of rights conferred on CIOC under the Treaty with respect to an investment.

58. Article I(1) of the Treaty defines "*investment*" broadly in relevant part as:

*"[E]very 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 [...] property, including movable and immovable property [...]; (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; [...] and (v) any right conferred by law or contract, and any licenses and permits pursuant to law."* (Exhibit C-1, Article I(1))

59. CIOC's operations constitute an investment in the territory of Kazakhstan.

**F.2 Kazakhstan Is a Party to the Treaty**

60. Kazakhstan is a "Party" for purposes of Article VI(1) of the Treaty. The Treaty was signed on 19 May 1992, and entered into force on 12 January 1994 in accordance with its Article XIII (Exhibit C-1). The Treaty has an initial period of validity of 10 years, which is extended tacitly at the end of the 10-year period. No notice of termination has been given, and thus it remains in force today.

**F.3 CIOC Is a National of the Other Party**

61. As explained in paragraphs 5 and 6 above, CIOC is a "*company legally constituted under the applicable laws and regulations of a Party [Kazakhstan] [...] but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party [United*



*States of America*." Accordingly, it "shall be treated as a national or company of such other Party in accordance with Article 25(2)(b) of the ICSID Convention." Pursuant to Article I(1)(c) a national of a Party "means a natural person who is a national of a Party under its applicable law." (Exhibit C-1, Article I(1)(c) and VI(8)) The majority shareholder of CIOC is a national of the United States of America. (Exhibit C-2)

#### **F.4 The Parties Have Consented to the Arbitration of this Dispute**

62. CIOC and Kazakhstan have expressed their consent in writing to submit this dispute to arbitration.

63. Article VI(4) of the Treaty provides that:

*"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 [which sets out the four dispute resolution options]." (Exhibit C-1, Article VI(4))*

64. By the terms of Article VI(4) of the Treaty, Kazakhstan offered its unequivocal consent to the arbitration of disputes such as this one.

65. Through the filing of this Request and the choice of ICSID arbitration pursuant to Article VI(3)(a)(i) of the Treaty, CIOC accepts Kazakhstan's offer and agrees to submit this dispute to ICSID arbitration.

#### **F.5 Prior Attempts at Amicable Settlement of this Dispute Have Failed**

66. Despite CIOC's repeated offers to meet in an effort to resolve the dispute amicably, the Ministry has declined to engage in any meaningful dialogue. Specifically, CIOC expressly sought a response from the Ministry to its correspondence setting out why the Ministry was wrongly alleging breaches of the Contract, but none was given. Even when a meeting was eventually arranged with representatives of the Ministry on 13-14 March 2008, the participants on behalf of the Ministry refused to sign a protocol recording what had been discussed and agreed.<sup>26</sup>

67. CIOC's shareholder, US national Mr Devincci Salah Hourani, also unsuccessfully undertook various efforts to stop the harassment to which he and his family and CIOC's senior management and employees were being subjected. Specifically, Mr Hourani had meetings with Kazakh officials and sought a meeting with the President himself in late autumn 2007. At these meetings, Mr Hourani was informed by a Presidential aide that the President was aware of what was going on and yet declined to meet Mr Hourani. Instead, shortly after Mr Hourani's attempt to meet the President, an entity connected to the Kazakh state

---

<sup>26</sup> The minutes of the meetings on 13-14 March 2008 as prepared by CIOC and submitted for approval to the Ministry are attached as Exhibit C-22

approached CIOC's shareholders and offered to buy the company, albeit at a significant undervalue. The shareholders were told by the prospective purchasers, in no uncertain terms, that if they did not agree to sell CIOC then the operational situation for the company would become even more problematic.

68. Pursuant to Article VI(3) of the Treaty, an investor such as CIOC may commence arbitration if six months have elapsed from the date on which the dispute arose. As explained above, the dispute arose in September 2007 when the Kazakh authorities suddenly made unfounded allegations with regard to CIOC's performance of the Contract and started to harass and intimidate CIOC's principal shareholder and his family, as well as CIOC's senior management and employees.
69. The six-month term has therefore long expired, and thus CIOC has complied with the requirement in Article VI(3) of the Treaty.
70. In the event that the arbitral tribunal were to find that the six-month period prescribed under Article VI(3) of the Treaty has not yet elapsed, CIOC relies on Article II(1) of the Treaty which provides for CIOC's treatment under the most-favoured-nation principle. Under this right, CIOC invokes Article 8(1) 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 dated 23 November 1995 and which entered into force on the same day (the "UK-Kazakh BIT").<sup>27</sup> A waiting period of only three months is prescribed in Article 8(1) of the UK-Kazakh BIT.
71. In the event that the arbitral tribunal were to find that the six-month and three-month periods prescribed under Article VI(3) of the Treaty and Article 8(1) of the UK-Kazakh BIT respectively have not yet elapsed, CIOC submits that non-compliance with the waiting period does not affect the arbitral tribunal's jurisdiction over this dispute, nor does it affect the admissibility of CIOC's claims.
72. The underlying purpose of a waiting period is to facilitate opportunities for amicable settlement. In recent months, CIOC has pursued various avenues in a good faith attempt to resolve its dispute with Kazakhstan. CIOC submits that further delay would not serve any useful purpose: CIOC's persistent efforts to persuade Kazakhstan to remedy its breaches have failed, and Kazakhstan has demonstrated by its conduct that it is unwilling to comply with its obligations and resolve the matter amicably. In fact, both the Minister and the President chose not to answer the letters written by CIOC's counsel dated 8 and 19 May 2008

---

<sup>27</sup> The UK-Kazakh BIT is attached as Exhibit C-23.

respectively.<sup>28</sup> It is therefore futile to require CIOC to wait any longer before it is able to commence arbitration.

## **G. ICSID JURISDICTION**

73. The preconditions of Article 25(1) of the ICSID Convention for establishing ICSID jurisdiction are satisfied: CIOC and Kazakhstan have a legal dispute that arises directly out of an investment; the majority shareholder of CIOC, Mr Devincci Salah Hourani, is a national of the United States of America; Kazakhstan and the United States of America have ratified the ICSID Convention; and the parties to the dispute have consented in writing to submit their dispute to ICSID.

### **G.1 CIOC and Kazakhstan Have a Legal Dispute**

74. The matters at issue are "*legal disputes*" within the meaning of Article 25(1) of the Convention, as they involve the consideration of CIOC's legal rights that have been violated by Kazakhstan under the Treaty and the Contract, as well as under relevant Kazakh and international law.

### **G.2 The Dispute Arises Directly out of CIOC's Investment**

75. As stated above in paragraph 28, CIOC made substantial investments in Kazakhstan amounting to more than USD 35,000,000. Specifically, it invested in the exploration of the Field, which included accomplishing a comprehensive and expensive work programme and establishing infrastructure at the site. It also invested in the development of the local workforce and in the facilities required to support that workforce. CIOC made its investments in consideration of the exclusive right commercially to exploit the Field for a period of at least 25 years. CIOC's investments provided significant and lasting benefits to Kazakhstan and the Kazakh national economy. These benefits include, among other things:

- (i) the successful exploration undertaken by CIOC which led to the discovery of commercially exploitable reserves officially recognised by the Ministry;
- (ii) CIOC's contributions to various Kazakh developments funds pursuant to the Contract; and
- (iii) putting in place infrastructure at the Field.

---

<sup>28</sup> The letter by Messrs. Allen & Overy LLP to the Minister dated 8 May 2008 and a copy of the letter by Messrs. Allen & Overy LLP to the President dated 19 May 2008 are attached as Exhibits C-24 and C-25 respectively

In addition, Kazakhstan will receive substantial royalties from CIOC once the commercial exploitation of the discovered reserves has started (following reimbursement of CIOC's exploration costs). As stated above, CIOC's investment also qualifies as an "investment" under the Treaty.

### **G.3 The Dispute Is Between a Contracting State and a National of Another Contracting State**

76. As stated above at F.1 and F.2, the parties to the dispute are a State (Kazakhstan) and a Kazakh company (CIOC) majority owned and controlled directly by a US national (Mr Devincci Salah Hourani). Article VI(8) of the Treaty provides that: "*For purposes of an arbitration held under paragraph 3 of this Article, any company legally constituted under the applicable laws and regulations of a Party [...] but that, immediately before the occurrence of the events or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall be treated as a national or company of such other Party in accordance with Article 25(2)(b) of the ICSID Convention.*"

77. Kazakhstan and the United States of America have both signed and ratified the ICSID Convention and are therefore Contracting States within the meaning of Article 25(1) of the Convention.

78. Kazakhstan signed the ICSID Convention on 23 July 1992 and deposited instruments of ratification on 21 September 2000. The ICSID Convention entered into force in Kazakhstan on 21 October 2000. The United States of America signed the ICSID Convention on 27 August 1965 and deposited instruments of ratification on 10 June 1966. The ICSID Convention entered into force in the United States of America on 14 October 1966.

### **G.4 Conclusion on ICSID Jurisdiction**

79. CIOC hereby consents to submit this dispute to the jurisdiction of ICSID pursuant to Article VI(3)(a)(i) of the Treaty.

## **H. PROCEDURAL ISSUES**

### **H.1 Authorisation of Request**

80. CIOC has taken all necessary actions to authorise this Request. It has also duly authorised Allen & Overy to submit the Request on its behalf.

## **H.2 Number of Arbitrators and Method for Appointment**

81. The Treaty does not set forth the number of arbitrators or the method of appointment of the Arbitral Tribunal. With regard to Article 37 of the ICSID Convention, the Claimant proposes that the tribunal consists of three arbitrators, one appointed by the Claimant, one appointed by the Respondent, and the presiding arbitrator appointed by the Chairman of the Administrative Council of ICSID. The Claimant proposes that both parties appoint an arbitrator within 14 days of agreement to this proposal, with the Chairman of the Administrative Council to be requested to appoint the Chairman as soon as possible thereafter and in any event within 90 days of notice of registration of the Request. The Respondent is invited to respond to this proposal within 20 days of the date of this Request in accordance with Rule 2(1)(b) of the ICSID Arbitration Rules.

## **H.3 Language of the Proceedings**

82. CIOC proposes that the proceedings be conducted in English.

## **I. RELIEF SOUGHT**

83. Kazakhstan's violations of the Treaty have caused substantial losses to CIOC. Under international law principles, the Treaty and applicable Kazakh law, CIOC is entitled to be placed in the position in which it would have been had its rights not been violated.
84. In addition, CIOC is entitled to damages under the Contract and other specific contractual entitlements, as will be detailed in CIOC's Statement of Claim. Specifically, CIOC is entitled to damages arising from third party claims made against it, e.g. by its subcontractors, as well as reimbursement of its exploration costs of more than USD 35,000,000 pursuant to Clause 10.6 of the Contract and all other losses including those arising from its inability to pursue the Commercial Discovery.
85. CIOC will quantify and support its computation of its losses in due course. It is clear, however, from the information currently available that CIOC's lost profits from the Production of the reserves which it had already identified and was entitled to exploit under the Contract will exceed USD 2 billion. In particular, even on the basis of the extremely conservative official reserves estimates referred to in paragraph 26 above, C-1 and C-2 reserves in the part of the Field contracted to CIOC exceed 10,600,000 tonnes (or 77,380,000 barrels) (in the whole Field the reserves exceed 11,318,000 tonnes or 82,621,400 barrels). Under the Russian system of classification of oil reserves, both classifications designate a high degree of reliability as to the estimate. For ease of reference, one ton of crude oil equals 7.3 barrels and, currently, one barrel of crude oil sells at approximately USD 135 on the world market. The figures were subject to

increase and transfer of all C-2 reserves to C-1 reserves after finalisation of the scheduled exploration programme in May 2009.

86. Accordingly the Claimant requests the following relief:

- (i) an order declaring that Kazakhstan has violated Articles II(2)(a), (b) and (c) as well as Article III of the Treaty, as well as its obligations under international law, Kazakh law and the Contract;
- (ii) an order directing Kazakhstan to pay damages equivalent to the financial loss and damage, including lost profit, which CIOC has suffered as a result of Kazakhstan's breaches of the Treaty as well as its obligations under international law, Kazakh law and the Contract;
- (iii) an order directing Kazakhstan to pay all costs incurred in connection with these arbitration proceedings, including the costs of the arbitrators and of ICSID, as well as legal and other expenses incurred by CIOC including the fees of its legal counsel, experts and consultants and those of CIOC's own employees on a full indemnity basis, plus interest thereon at a reasonable rate from the date on which such costs are incurred to the date of payment; and
- (iv) such other relief as the arbitral tribunal may deem just and proper.

**J. RESERVATION OF RIGHTS**

87. CIOC reserves the right to advance further arguments and produce such further evidence (whether factual or legal) as may be necessary to complete or supplement the presentation of its claims or to respond to any arguments or allegations put forward by Kazakhstan. CIOC also reserves the right to produce further documentary evidence and to produce witness evidence in order to supplement and support the claims made in this Request.

Respectfully submitted,

16 June 2008.

Signed Allen & Overy LLP  
Allen & Overy LLP

Counsel to the Claimant, Caratube International Oil Company LLP