

22 March 2013

**VIA EXPRESS MAIL**

His Highness Sultan Qaboos bin Said al Said  
Sultan of the Sultanate of Oman  
Al Alam Palace  
Muscat / Sultanate of Oman

**RE: NOTICE OF DISPUTE**

Dear Your Highness,

Please find enclosed the Notice presented under Article 9.1 of the Agreement between the Government of The Republic of Turkey and The Government of the Sultanate of Oman Concerning the Reciprocal Promotion and Protection of Investments.

We would be delighted to hear from your office regarding the issues included therein.

Respectfully,



Ronan McHugh and Akin Alcitepe

Enclosures.

cc. H.E. Mohammed bin Hamad Al Rumhy  
Minister of Oil and Gas  
Al-Khuwair, Ministry Streets, Opposite Sultan Qaboos Street  
P.O. Box: 551  
Postal Code: 100, The Sultanate of Oman  
(Via First Class Mail)

H.E Darwish bin Isma'eel bin Ali al Balushi  
Minister of Finance  
s. 506, Postal Code: 100, Muscat, The Sultanate of Oman  
(Via First Class Mail)

H.E. Ambassador Fuad Mubarak Al-Hinai  
Permanent Mission of the Sultanate of Oman to the United Nations  
305 E 47th Street, 11th & 12th Floor  
New York, NY 10017  
(Via Express Mail)

H.E. Ambassador Hunaina Al-Mughairy  
Embassy of the Sultanate of Oman in Washington DC  
2535 Belmont Rd NW, Washington, DC 20008  
(Via Express Mail)

Attila Dogan (Via Electronic Mail)

**NOTICE OF ATTILA DOGAN CONSTRUCTION AND INSTALLATION CO.  
TO THE SULTANATE OF OMAN**

22 March 2013

This letter constitutes formal notice, under Article 9 of the Agreement between the Government of the Republic of Turkey and The Government of the Sultanate of Oman Concerning the Reciprocal Promotion and Protection of Investments (hereinafter the "BIT"), that a Dispute exists between the qualifying BIT Investor, Attila Dogan Construction and Installation Co. Inc. ("AD") and the Sultanate of Oman ("Oman"). AD is an Investor within the definitions contained in Article 1 of the BIT, thereby qualifying for protections afforded under Article 9 of the same. Please note that this Dispute arises out of and relates to the treatment accorded to AD by Oman in breach of its treaty obligations under the BIT as well as Oman's derogation from customary international law, which treatment has caused AD to suffer harm and damages.

**I. Statement of Relevant Facts**

For the reasons, and as detailed below, AD notifies Oman of harm and damages amounting to not less than USD \$182,763,000.00 exclusive of interest, consequential losses, moral damages and legal fees and costs, as a consequence of Oman's breach of the BIT and customary international law. As explained further herein, Oman, acting via and through a number of its agencies, sought systematically to deprive, and ultimately did take and deprive AD of its Investment comprising the Off Plot Delivery Contract C311162 North as well as all receivables related to the work arising out of that contract.

From the outset of AD securing its Investment, Oman did not wish to allow AD to maintain and keep the Investment. As such, Oman took deliberate and intentional actions to take portions, and ultimately all, of the Investment away from AD; further Oman

caused harm and loss to AD by preventing or delaying access of AD and its personnel to Oman, so that AD could not perform its obligations and the secure its Investment; Oman also discriminated against AD in favor of other Omani contractors thus causing AD harm and injury through an inability to again adequately and properly perform its obligation and secure its Investment.

**A. The Parties and Relevant Entities**

AD is a Turkish construction company based in Ankara, which has specific experience in oil and gas and industrial facilities construction since 1967. In or about 2010, AD bid on, and successfully won, Off Plot Delivery Contract C311162 North, a long term oil and gas engineering and construction concession contract related to Block 6 of Petroleum Development of Oman LLC's oil concession in Oman (the "Project").<sup>1</sup> Petroleum Development of Oman LLC ("PDO") is the foremost exploration and production company in the Sultanate of Oman ("Oman"). PDO accounts for more than 70% of Oman's crude oil production and nearly all of its natural gas supply (*See*, <http://pdointernet.pdo.co.om/Pages/AboutUs.aspx>). PDO operates in a concession area of about 100,000 km<sup>2</sup> (one third of Oman's geographical area), has more than 126 producing fields, more than 5,000 producing wells and a workforce of about 6,000. (*Id.*) PDO is majority owned and controlled by the Government of Oman. PDO represents itself to be "owned by the Government of Oman (with a 60% interest), Royal Dutch Shell (34%), Total (4%) and Partex (2%)" (*Id.*). Further, Oman controls the Board of Directors and the ultimate decision making of PDO as the Board consists of twelve

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<sup>1</sup> In order to carry out its construction activities related to the project, AD formed as majority partner and together with an Oman company, an Omani joint venture named Attila Dogan & Seeh Al Sarya LLC ("ADS"). ADS was duly formed in full compliance and conformity Oman laws.



members; seven including the Chairman, who is the Minister of Oil & Gas, representing the Government of Oman and five represent PDO's private shareholders.

The Oman Ministry of Oil and Gas (“MOG”) is tasked with safeguarding Oman’s interests with companies operating in the field of oil and gas. MOG oversees all oil and gas exploration and production activities in Oman, which are carried out by companies operating within the concession areas in Oman. MOG also establishes petroleum agreements with the oil and gas companies and oversees the implementation of the terms and conditions of the agreements. In addition, MOG is responsible for managing, following-up and overseeing Oman’s investments (within and outside the Sultanate) in the oil and gas sectors to ensure maximum utilization of these investments. (*See*, <http://www.mog.gov.om/english/tabid/85/Default.aspx>).

In sum, Oman closely controls every aspect of its oil and gas infrastructure and is actively involved in supervising the implementation of agreements related to the oil and gas industry. An example of Oman’s direct control over and involvement within its oil and gas industry may be evidenced by the fact that Oman Oil Company SOAC, a commercial company which invests in the oil and gas sector is also wholly owned by Oman. (*See*, <http://www.oman-oil.com/>).

Oman Ministry of Manpower (“MOM”) is the agency of the Oman government responsible for issuing employment visas for expatriate workers to work in Oman. As MOM’s website states: “studying the private sector's requirements of expatriate labor force and drafting procurement regulations and issuing pertinent licenses, in accordance with regulations and decisions in force” (*See*, [http://www.manpower.gov.om/en/ministry\\_home.asp](http://www.manpower.gov.om/en/ministry_home.asp)).

**B. Applicable Facts Relevant to Breach of the BIT**

In or about October 2010, AD was awarded by Oman the Off Plot Delivery Contract C311162 North- Contract (the “Contract” or “Investment”). The original approved estimated contract value was OMR 286,278,815.00 (USD \$743,563,417.35). Despite being the lowest bidder for the contract and clearly meeting the qualification criteria in Oman’s tender, Oman initially refused to award the Contract to AD. Instead, Oman sought to breach the tender procurement terms and conditions and not award the Contract to AD, but to retain the contract with an Omani contractor bidder, Galfar Engineering & Contracting SAOG (“Galfar”). It was only through the intervention of the Turkish Government in communicating directly to Oman that the Contract was properly awarded under the tender criteria to AD. Nevertheless, despite AD’s securing of the Contract, Oman consistently and systematically sought to remove AD from its Investment and ultimately succeeded in taking the Investment from AD and giving it to Galfar which ultimately not only caused financial damages to AD, but also to the economy of Oman, given the fact that Galfar is likely to perform the work at a much higher price than AD. These actions were comprised of the following acts and omissions by Oman<sup>2</sup>:

**1. Oman prevented AD from Staffing Its Investment**

Oman’s Ministry of Manpower prevented AD from timely and appropriately staffing its Investment so as to put its Investment to work properly. For example, as of 16 February 2011, Oman had only approved 41% of AD’s personnel admission into Oman. There was significant delay in Oman approving personnel of AD, if it approved

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<sup>2</sup> Many of these breaches were communicated in detail via letter dated 20 March 2013 to PDO. This Notice will provide a summary of those issues mentioned in that letter as well as providing additional information related to Oman government’s further violations of the BIT and customary international law.

them at all. There was no valid and proper reason for such delays and refusals. For example, in or about May 2012 Oman (PDO) refused to approve AD employee, Ali Burak, a Turkish National, as Lead NDIP Engineer although Mr. Burak was qualified for this position. Oman (PDO) also banned Mr. Burak from attending any meetings regarding the project. Ultimately, Mr. Burak was approved, showing he was qualified, but this took an unduly long time. Also, Operations Manager Mr. Atilla Demirci, another qualified AD employee who was instrumental to the supervision Project was deported from Oman in June of 2012 by MOM for no valid reason, thereby causing additional delay and hardship to the Project. Such refusals and delays to admit AD personnel continued throughout. This delay and refusals related not just to obtaining visas but also the imposition of qualification standards that were unjustified. Oman imposed qualification criteria upon AD's Key and Core personnel that were more stringent than PDO's internal requirements and those set forth in the Contract, and which were being applied to other contractors. Oman briefly allowed AD a blanket approval for its personnel in September 2011, but then retracted this blanket approval, for reasons unknown to AD and again continued to delay and restrict admission of AD's personnel. However, other contractors of Oman (PDO) executing similar projects obtained such blanket approval for admission. Ultimately, as of the date of this Notice, as a result of MOM's actions and inactions, AD had experienced at least 106 days of total manpower blockage of over 1300 personnel, including 655 non-Omanis.

## **2. Oman Required AD to Exceed the Omanization Levels**

AD's Investment required it to invest in Oman by employing a certain number of Omani Nationals, under a program known as "Omanization". AD complied with this



program. To do so, initially, AD asked Galfar, who had previously been the incumbent contractor from whom AD took over the Contract, if they would be releasing as a consequence Omani employees, whom AD might hire. Galfar said no. As such, AD went about hiring other Omani workers and staffed up accordingly. After AD had staffed up and was nearly completely mobilized, however, Galfar laid off 911 Omani personnel. When Galfar laid off these 911 Omani workers, Oman, via the MOM, required AD to hire these workers even though there was no obligation on AD to do so under the Contract or the law. When AD rejected such an imposition, MOM blocked AD's visas hence crippling AD from being able to continue and complete its mobilization. AD informed Oman of this effect noting on or about 22 October 2011 "Please be informed that Ministry of Manpower has blocked our company due to problem in transfer of Omani nationals from Galfar." Under Oman's directive, AD had no option but to hire 439 of these ex-Galfar Omani employees. While it did so, because of Oman's decision to intentionally take 60% of the Investment away from AD, AD had no use for these employees and they caused additional burden and cost to AD — arising as a result of PDO's failure to implement a salary payment mechanism for these persons and the salary difference between AD and Galfar, and the management issues created by having these personnel on staff. In effect, Oman's directive that AD employ Galfar's ex-employees was an Oman-imposed requirement forcing AD to assist Galfar by keeping its former employees employed, so that Galfar could easily rehire them when needed, which occurred after AD was terminated.



**3. Oman Took From AD Over 60% of its Investment and Gave it to Galfar and others, Choking AD's Ability to Perform and Utilize its Investment**

Oman improperly took away from AD over 60% of its Investment. This taking of AD's Investment is evidenced in the following examples:

(i) By e mail dated 2 May 2012 Oman (PDO) summoned AD to a meeting to discuss the "way forward" with AD's Investment and to instruct AD on Oman's "decision on workload distribution and management". Upon attending this meeting, Oman informed AD that two weeks prior, there had taken place meeting of the PDO tender board, shareholders, and the government, where it was decided that:

(a) AD was to demobilise from Qarn Alam (approximately 60% of the workload of the Contract), which would be given to Galfar for 2 years – this demobilization would include AD giving up the Oman (PDO) facilities it now has control of in Qarn Alam;

(b) All gas jobs in the other areas would be given now by Oman to Galfar and others;

(c) AD's fixed management & overhead fees would be adjusted downward and transferring these savings to the unit rates. Oman directed that this change was necessary measure because descopeing a significant volume of the work made the unit rates in the Contract were neither feasible nor attractive for AD's subcontractors, causing many issues such as delays in work activities and non-payment to subcontractors. As such, Oman decided to take money from AD and give it to others, most of whom were Omani, even though Oman had initially agreed these unit rates.

Following this meeting, a week later AD met with Oman's Minister of Oil & Gas. At that meeting, attended also by the Turkish Trade Counselor, the Minister merely confirmed the decision taken by Oman and would not even let AD present its position. Further, the Minister clearly expressed at that the meeting the intention of the Omani government to terminate AD if the purportedly weak financial status of the Project did not improve.

The removal by Oman of the Qarn Alam from AD was particularly disruptive for two reasons. First, in October 2011, Oman had directly instructed AD to increase its staff and activities in Qarn Alam, which AD had done, including a significant number of Omanis. These resources of AD became idle yet a cost for AD. Second, Oman took from AD a piece of its Investment that was productive for AD and left it with Investment portions in which it was difficult for AD to be productive, as AD had advised Oman contemporaneously.

(ii) In addition to taking this 60% of the Investment value from AD, Oman expropriated further parts of the Investment. This began as early as October 2011, when Oman (PDO) issued a letter to Galfar to reopen their previous contract. This decision by Oman impaired AD's operations, including its ability to raise financial support for the Investment. For example, at the same time that Oman reinstated Galfar's contract, AD was seeking to raise financing for the Investment from Al Omaniya Financial Services. A first tranche of 2 million OMR and up to a total of 6 million OMR was ready to be utilized. Indeed, at that time, a cheque was ready to be collected from Al Omaniya Financial Services. But, with the news of Oman's reopening of Galfar's contract Al Omaniya withdrew the facility because of their concern that the Investment

would not be there as security. Hence, as a direct consequence of Oman's actions, AD lost the chance to raise financing, and instead had to self-finance the working capital for the Investment. Other examples, of Oman taking AD's Investment are set forth a series of emails dated November 13, December 3, and December 5, 2011, Oman (PDO) informed AD that certain portions of the Investment had been removed from AD. These emails explicitly state that the Work was being assigned to Galfar. In some cases this work was taken away by Oman even after AD had started the work. For example, the following quotes are taken from a December 3, 2011 exchange:

*Oman, 7:26 am: "Please note Galfar will do the design & construction for BRN-P29-OP infill; 15733, ADS not yet started the design."*

*AD, 7:41 am: "Well ID 15733 flow line AFC package has been completed..."*

*Oman, 8:42 am: "Please issue the package urgently; Galfar will do the construction"*

These facts unequivocally indicating that Oman did not know AD's' progress status, and persisted in taking AD's Investment and giving it to Galfar after being informed that AD had completed the approved for construction design is evidence that the Investment was not removed from AD for performance reasons. Indeed, this is indicated even further by the fact that in certain instances *after* taking parts of AD's Investment from it, Oman (PDO) gave certain parts back to AD, including on or about January 23, 2012, when Oman (PDO) returned to AD at least ten (10) integrity projects which had been removed from AD's Investment.

(iii) Oman's taking of the majority of AD's investment caused AD financial harm and forced AD, in connection with the remainder of its Investment, to sign



a Memorandum of Understanding (“MOU”) with Oman on or about 15 October 2012. This MOU, however, took further control of the Investment away from AD and vested it in Oman. Under the Memorandum of Understanding, Oman set up a bank account solely in Oman’s name and under its control into which AD was required to deposit up to at least 3,000,000 OMR (\$7,791,810 USD) in order to retain its Investment. Oman declared that “[AD] shall have no entitlement over the above amounts.” When AD sought to obtain a partner who was ready, willing and able to assist with the payment of 3 Million OMR, Oman refused to allow it to do so, without imposing arbitrary and onerous conditions on such partner solely under the subjective control of Oman, which in turn prevented the funding.

(iv) Oman finally expropriated the entirety of AD’s Investment by terminating AD’s Investment on or about 3 March 2013. Having by its actions choked AD’s Investment and cash flow therefrom, Oman terminated AD’s Investment as an exact consequence of the circumstances that Oman sought to create from the outset of the project.

#### **4. Oman Discriminated Against AD in Favor of Other Contractors, Including Galfar**

Upon AD being awarded the Investment, Oman was to cause Galfar to hand over certain areas and machinery to AD. Oman did not do so, expeditiously or productively, impacting AD’s ability to utilize and benefit from its Investment productively. Yet, conversely, when Oman took portions of AD’s Investment and gave them to Galfar, Oman required a much more expeditious handover of the Investment from AD. Furthermore, Oman discriminated against AD in the manner in which it took portions of the Investment from AD. The Contract did not permit Oman to unilaterally decide to



give parts of AD's Investment's core services to competing contractors where there remained work available for AD to perform in the geographic Concession Area. Yet, Oman did this and did so on grounds much more favorable to Galfar and the replacement contractor than given to AD, even though AD was the lowest bidder for the Contract.<sup>3</sup>

Further, the Investment portions removed from AD were finished by others no more quickly or effectively than AD. Indeed, this was reflected in the giving back of portions of the Investment to AD taken from it. Despite this, Oman further discriminated against AD by, among other things, criticizing AD in front of its competitors. This occurred in connection with at least one well hook-up where on 10 April 2012, Oman (PDO) accused AD of a 69 day delay for a hook up of MLM 55, even though AD did not have a purchase order for this hook up, it having been issued to another contractor, as Oman (PDO) knew or should have known. Indeed, this was reflected in the giving back of portions of the Investment to AD taken from it.

AD was further discriminated against by Oman not allowing AD access to camp accommodation for its personnel on the same basis as it made such available to others such as Galfar, Special Technical Services LLC ("STS"), and Al Turki Enterprises LLC, for example.

(i) By April 2012, Oman was also requiring AD to reimburse Oman for up to OMR 4 Million (\$10,389,880 USD) in relation to HSE (health and safety) supervision by four people: 92,250 OMR (\$239,616 USD) per month. Oman sought this money from AD even though Oman did not provide a level of supervision of this magnitude. And, Oman refused to provide AD with information supporting such

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<sup>3</sup> It is also quite telling that as of 18 February 2013, prior to the termination by PDO of AD in March of 2013, the full Project at issue in this Notice was listed on Galfar's website as a Galfar project even though AD was officially the contractor of record on that date.

costs. Oman's demands for payment for this HSE supervision further diminished AD's Investment. Likewise, the Ministry of Manpower, in or about April 2012 instructed AD employees to demand a letter confirming that they would be paid based on patently false rumors that the Ministry itself created about payment not being forthcoming. This action by the Ministry of Manpower caused AD employees to strike, thereby preventing AD from performing its obligations.

C. **Consequential Losses Caused As a Result of Oman's Breach of the BIT**

At the outset of the project, AD had a reasonable expectation that Oman would comply with its obligations under the BIT as well as customary international law, thereby allowing AD to profitably benefit from its Investment and prosecute the work while having the ability to take on various additional construction projects. Given Oman's above-outlined actions intended to disrupt AD's work and Investment, however, AD was forced to expend additional amounts of capital, manpower and other resources. Consequently, AD was unable to bid on other projects, and was in fact informed by Oman that it was excluded from gas projects entirely, resulting in a number of missed business opportunities. These occurred as a result of Oman's direct actions for which AD is due just compensation.

Further, given the continuing "blame propaganda" carried out by PDO and Oman, AD's reputation as a reliable contractor was irreparably damaged. As an EPC contractor that had operated in not only Turkey but also the Middle East, Central Asia, South America for almost half a century, AD had acquired a stellar reputation as a top-notch contractor for projects in both the oil industry and other types of projects, specifically in the Gulf Region. Unfortunately, Oman's systematic efforts to besmirch AD's reputation

have adversely affected AD's ability to obtain similar projects. As this is a further effect of Oman's breaches of the BIT and customary international law, Oman is obligated to compensate AD for its loss of reputation.

**D. Human Rights Violations**

Throughout the course of the Project, Oman, through various agents including, but not limited to the MOM, engaged in a number escalating intimidation tactics geared towards sabotaging AD's Investment. For example, at numerous occasions during the Project, MOM would visit AD's offices and confiscate Turkish individuals' ID Cards. On or about 16 June 2012, MOM, informed AD's employee Attila Demirci that he would be deported. MOM told him, incorrectly, that he held a position which is reserved for Omanis. Mr. Demirci replied that was a management employee of AD and held a supervisory position which gave him authority to bind AD in certain matters, but MOM disregarded this and the MOM manager, even not reading the file on his case submitted by inspectors, decided he should be deported.

Actions such as these by Oman not only created a situation whereby AD employees would constantly fear for their ability to travel back to Turkey to be taken away from them, but also allowed the Ministry to threaten AD with the cancellation and/or non-renewal of visas, directly impacting adversely AD's ability to perform the Contract and secure their Investment. Oman often came and collected the labor cards of Turkish personnel, both impacting their ability to work and intimidating them. Indeed, the pressure on AD management ultimately forced AD to execute employment contracts for 439 former employees of Galfar who were Omani citizens. While these individuals were not in any way instrumental to the prosecution of AD's work, AD's executives were



in effect forced to sign these employment contracts in order to halt the psychological pressure asserted on AD by Oman through the usage of the visa system.

Furthermore, Omani officials seized the personal belongings – including personal automobiles, of AD executives including, but not limited to Mr. A. Gokhan Dogan purportedly due to AD's alleged breach of the agreement between ADS and PDO, despite the fact that Mr. Dogan was not individually a party to that agreement. Likewise, on one occasion Oman, via its police, confiscated Mr. Kaan Dogan's passport for over a week for no apparent reason. This was done even though Mr. Kaan Dogan was not individually a party to the agreement, does not have an employment visa under AD in Oman and did not hold a specific position in AD's Oman operations.

As such, AD suffered losses of moral – in additional material – nature in its treatment by Oman authorities in breach of the protection of the BIT as well as well-established principles of international human rights.

## **II. Oman's Violation of the BIT and Customary International Law**

### **A. Oman's violation of guaranteed provided under the BIT**

Oman, acting through various state agents such as the Ministry of Finance, Ministry of Manpower as well PDO, engaged in unlawful measures under the BIT including, but not limited to, the expropriation of AD's investment in Oman, the failure to make payments related to the Project, unduly terminating ADS' contacts, thereby depriving AD of the value of its Investment and entitlement to full payment and profit and failing to allow AD to utilize top managerial and technical personnel of its choice.



## **1. Violation of the Guarantees Under Article 2 of the BIT**

Oman is obligated, under the BIT, to accord AD's Investment treatment no less favorable than that accorded to investments of Omani investors and investors of other third states. Article 2 of the BIT further incorporates the more favorable obligations of Oman contained in other investment treaties. These include but are not limited to:

- Oman's duty to treat AD's Investment in accordance with international law principles: the treatment by Oman of AD, given the aforementioned facts, evidences a denial of justice by AD and its Investment, in breach of obligations under international law.
- Oman's duty to provide fair and equitable treatment: Article 2 of the BIT incorporates the duty to provide fair and equitable treatment to AD's investment. The above-described facts are unequivocal evidence that AD's Investment was treated in an unfair and inequitable manner, based on contradictory, arbitrary and unreasonable actions of Oman.
- Oman's duty not to discriminate: while Article 2 of the BIT places a further obligation on Oman to not discriminate against AD, Oman clearly discriminated against and displayed bias to the detriment of AD.

Oman's violations of Article 2 of the BIT were particularly egregious on three occasions. First, Oman derogated from Article 2.4(a) of the BIT through, among other things, its unlawful suspension and termination of ADS on 3 March 2013. That provision of the BIT reads in pertinent part:

Nationals of either Contracting Party shall be permitted to enter and remain in the territory of the other Contracting Party for purposes of establishing, developing, administering or advising on the operation of an investment to which they, or an investor of the first Contracting Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

There is no doubt that AD, through its duly formed Omani investment vehicle ADS, committed a substantial amount of capital of no less than 25 million USD in the territory of Oman. Despite its express obligations, however, Oman failed to allow AD and its personnel to remain in its territory.

In furtherance of its primary objective of awarding the project to Galfar Engineering and Contracting SAOG, an Omani company, Oman continuously sabotaged ADS' performance on the Project, culminating in the aforementioned suspension and termination notice.

As explained in the aforementioned Statement of Facts, Oman achieved this objective by first causing ADS' non-performance under its contract with PDO, which all but ensured that ADS would not be able to timely and adequately perform. Then, on 15 October 2012, Oman gave no option to ADS but to execute a Memorandum of Understanding ("MOU"), which, in essence, stripped away ADS' ability to execute the Project as the construction manager by taking away the financial control of the Project (and consequently the Investment of AD). And finally, on 3 March 2013, Oman formally notified ADS of its suspension and termination under the contract. That termination letter further required ADS to leave the site and allow PDO to take over the project, in direct violation of Article 2.4(a).

Perhaps even more egregious was Oman's express violation of Article 2.4(b) of the BIT through its Ministry of Manpower's failure to issue and renew visas for key AS personnel. Article 2.4(b) reads in pertinent part:

Companies which are legally constituted under the applicable laws and regulations of one Contracting Party, and which are investments of investors of the other Contracting Party shall be permitted to engage top managerial and technical personnel of their choice, regardless of nationality.

In conformity with its intent to award the contract to Galfar sabotaging the performance of ADS, Oman consistently failed to issue and renew work visas for key Turkish personnel, including critical management employees and engineers. Even more

shockingly, the Ministry of Oil required AD to hire hundreds of Omani employees that had previously been released by Galfar, in direct violation of Article 2.4(b).

Finally, consistent with its *modus operandi*, and in derogation of the non-discrimination provision of Article 2 of the BIT, continuously treated ADS – and therefore AD’s Investment-- in a discriminatory manner, specifically in comparison to its treatment of Galfar. In addition being forced to hire former Galfar personnel, ADS was obligated, at numerous points during the project, to relinquish various scopes of work, which were then awarded by Oman to Galfar, again in direct contravention of the non-discrimination clause of Article 2.

## **2. Violation of Oman’s Guarantees Under Article 3 and 4 of the BIT**

Under the BIT, Oman was obligated to refrain from subjecting AD’s investment directly or indirectly to expropriation and to measure shaving similar effects without a public purpose, without prompt, fair and effective compensation.

The unlawful measures outlined above, however, deprived AD of valuable assets including, but limited to monies expended for the Project, expected income and profit as well as loss of reputation and other business opportunities. These measures also led to the confiscation of those assets in a discriminatory manner, in violation of due process of law and without compensation. Therefore, Oman, having expropriated AD’s Investment, is obligated to pay compensation in accordance with Article 4 of the BIT as well as principles of customary international law, specifically related to the calculation of losses under international investment law.



## **B. Oman's Violation of Guarantees Under Customary International Law**

As a foreign investor AD benefits from the legal guarantees that exist under customary international law, which are independently binding on all states.

Oman's unlawful measures constituted violations of, among others, the following rights under international law and international customary law:

- (a) the guarantee against unlawful expropriation, which included expropriation that is not accompanied by adequate effective and prompt compensation and expropriation undertaken without due process of law (and as further provided for in Articles 3 and 4 of the BIT);
- (b) the guarantee of a minimum standard of treatment, including fair and equitable treatment, and full protection and security for the investment;
- (c) the guarantee against discrimination; and
- (d) the guarantee against denial of justice.

## **III. Damages**

As a result of Oman's unlawful measures under the BIT as well as its various breaches of customary international law, AD has sustained losses in an amount that is currently being quantified by a forensic accounting and damages expert, but in any event, no less than USD 182,763,000.00 exclusive of interest, consequential losses, moral damages and legal fees and costs. A report on the nature and quantum of those losses is currently being prepared.

## **IV. Settlement of the Dispute**

Oman is obligated to fully compensate AD for the breaches of the guarantees it provided under the BIT as well as breaches of customary international law. AD is ready



to commence arbitration under the BIT to seek compensation for its losses. It is also, however, willing to discuss, without prejudice and with full reservation of its rights, the form and amount of an amicable settlement as well as providing Oman with additional information and documentation as may be requested by Oman. Failing such an amicable settlement, AD shall have no option but to commence international arbitration against Oman to recover its losses.

Respectfully submitted,

22 March 2013

A handwritten signature in black ink, appearing to read "Ronan J. McHugh". The signature is written in a cursive, flowing style.

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Akin Alcitepe  
aalcitepe@baileylawpc.com  
Ronan J. McHugh  
rmchugh@baileylawpc.com  
Egemen Egemenoglu  
eegemenoglu@baileylawpc.com  
801 15<sup>th</sup> St., NW, Suite 501  
Washington, DC 20005  
+ 1 202-887-8040 (p)  
+ 1 202-887-8044 (f)