

**Caratube International Oil Company LLP**

v.

**Republic of Kazakhstan  
(ICSID Case No. ARB/08/12)**

**First Session of the Arbitral Tribunal**

**Date:** Thursday, 16 April, 2009

**Time:** 9:30 a.m.

**Venue:** Frankfurt International Arbitration Centre (FIAC)  
Frankfurt Chamber of Commerce, Börsenplatz 4, 60313 Frankfurt

The first session of the Arbitral Tribunal was held at the FIAC in Frankfurt on 16 April, 2009, starting at 9:30 am.

***Members of the Tribunal:***

1. Professor Dr. Karl-Heinz Böckstiegel, President
2. Dr. Kamal Hossain, Arbitrator
3. Dr. Gavan Griffith QC, Arbitrator (absent)

***ICSID Secretariat:***

4. Mr. Tomás Solís, Secretary of the Tribunal

***Attending on behalf of the Claimant:***

5. Mr. Devincci Hourani, Caratube International
6. Mr. Qassim Omar, Caratube International
7. Mr. Omar Antar, Caratube International
8. Ms. Judith Gill, Allen & Overy LLP
9. Mr. Jan Schäfer, Allen & Overy LLP

***Attending on behalf of the Respondent:***

10. Mr. Peter M. Wolrich, Curtis, Mallet-Prevost, Colt & Mosle LLP
11. Ms. Gabriela Alvarez Avila, Curtis, Mallet-Prevost, Colt & Mosle LLP
12. Mr. Geoffroy Lyonnet, Curtis, Mallet-Prevost, Colt & Mosle LLP
13. Mr. Galileo Pozzoli, Curtis, Mallet-Prevost, Colt & Mosle LLP

**I. PROCEDURAL MATTERS**

Opening of the Session

At 9:30 am, the President of the Tribunal (the President) declared the meeting open. It was noted that one of the arbitrators was not present at the session. Due to the procedural nature of the meeting, and taking into account that the Parties had reached substantial agreements based on the Provisional Agenda, the President invited the

28

Parties' agreement to proceed with the discussion of the procedural matters of the first session, in the absence of one of the arbitrators. The Parties so agreed and the President requested the Parties to introduce their respective teams.

The session considered matters listed on the Provisional Agenda circulated by the Secretary of the Tribunal (the Secretary) prior to the meeting and attached to these Minutes as Annex 1; as well as the parties' Joint Submission of 3 April 2009, attached to these Minutes as Annex 2.

The President invited the Parties to confirm the agreements reached as contained in their Joint Submission, as follows:

**1. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6)**

The President noted that the Tribunal had been constituted on 23 February, 2009. The Parties confirm that the Tribunal has been properly constituted and the declarations of its Members have been distributed in accordance with the ICSID Convention and the ICSID Arbitration Rules, and that the Parties have no objection to the appointment of any of the Tribunal Members.

**2. Representation of the Parties (Arbitration Rule 18)**

Each Party will be represented by its respective counsel listed below, and may designate additional agents, counsel, or advocates by providing notice of such designation to the ICSID Secretariat.

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One Bishops Square  
London E1 6AD  
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Attention: Judith Gill / Matthew  
Gearing / Jan Schaefer / Anthony  
Sinclair / Alexander Thavenot /  
Henrietta Jackson-Stops

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**3. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28)**

- 3.1. It was noted that the Centre had, under cover of a letter of 25 February, 2009, requested that each Party pay a sum of US\$100,000 (one hundred thousand United States dollars) to cover the expenses to be incurred during the first three to six months of the proceedings. It was confirmed that payment had been received from both Parties. Except as provided below, both Parties agree, in accordance with Article 61 of the ICSID Convention and Administrative and Financial Regulation 14, to defray the expenses of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to allocation of costs.
- 3.2. The Tribunal's assessment of the costs set forth in Convention Article 61(2), and its decision pursuant to that Article as to how and by whom those costs should be paid, may be set forth at the Tribunal's discretion in the Award or in one or more separate Orders preceding or subsequent to the Award. Each Party may present, in addition to the information required by Arbitration Rule 28(2), its position as to how and by whom costs should be paid and arguments supporting that position. Without prejudice to the foregoing, absent any

contrary decision by the Tribunal, all costs shall be borne by both Parties in equal shares.

**4. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees)**

The fees and expenses of the Tribunal Members shall be determined and paid in accordance with Article 60 of the ICSID Convention, Administrative and Financial Regulation 14 and the ICSID Schedule of Fees dated 1 January, 2008.

The Parties agreed that the Members of the Tribunal shall be entitled to receive the fees, per diem subsistence allowances, travel and other expense reimbursements referred to in Administrative and Financial Regulation 14(1). Such payments are to be calculated in accordance with the Memorandum on Fees and Expenses of ICSID Arbitrators. In accordance with the ICSID Schedule of Fees, each Member of the Tribunal shall receive:

(a) a fee of US\$3,000 (three thousand US dollars), or such other fee as may be set forth from time to time in the Centre's Schedule of Fees, for each day of meetings or each eight hours of other work performed in connection with the proceeding or *pro rata*; and

(b) subsistence allowances and reimbursement of travel and other expenses within limits set forth in ICSID Administrative and Financial Regulation 14.

It was noted that by letters of 23 February, 2009, the Parties agreed that the Chairman of the Tribunal could claim as expenses in addition to his fees the VAT of 19% which the Chairman has to pay to the German tax authorities on all his fees. The Parties' letters are attached to these Minutes as Annex 3.

**5. Applicable Arbitration Rules (Convention Article 44)**

The ICSID Arbitration Rules as amended and effective on 10 April, 2006, shall apply to the proceedings.

**6. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3))**

The Parties agreed that the place of the proceeding shall be Frankfurt, Germany, although individual hearings may take place elsewhere if the Parties and the Tribunal so agree.

**7. Procedural Language (Arbitration Rules 20(1)(b) and 22)**

7.1. The procedural language shall be English. All instruments, that is, all memorials, witness statements, expert statements and administrative or procedural correspondence shall be submitted in English, provided that witness or expert statements may be submitted in the principal language of the witness or expert, but shall be accompanied by an English translation. In the

case of exhibits and authorities, which originals are in another language, translations into English may consist of only relevant portions of the exhibit or authority in question, in which case the translation shall comply with Administrative and Financial Regulation 30(4).

The Parties agreed that it should not be required to produce certified translations (a confirmation from counsel that the document is a translation will suffice) on grounds of: (i) the additional time and expense involved in procuring certified translations; and (ii) the technical and specific nature of the language contained in many of the documents likely to be in evidence. Most independent translation services do not have the industry-specific knowledge necessary to certify translations of such documents. Claimant adds that in the event that the Parties dispute the translation of any document, the following procedures are sufficient to resolve any issue as between them.

Each Party reserves its right to: (i) challenge the accuracy of the English translation submitted by the other and submit a new translation that clearly identifies the differences; and (ii) submit additional translated parts of any document not submitted or translated in its entirety. Any disputes as to the accuracy of a translation shall be decided by the Tribunal.

- 7.2. Oral testimony before the Tribunal shall be in English or in the principal language of the witness or expert, at the option of such witness or expert. If the witness or expert gives evidence in a language other than English, ICSID shall arrange at the request of the Parties with sufficient time in advance of a hearing, independent, professional interpreters to provide simultaneous interpretation. Without prejudice to the Tribunal's final allocation of costs, costs of interpretation shall be borne by both Parties in equal shares.

#### **8. Records of Hearings (Arbitration Rule 20(1)(g))**

- 8.1. Verbatim transcripts shall be made of each day's proceedings during any oral procedure (not including the First Session or any other hearing as the Parties may agree). Provisional transcripts of each day's proceedings shall be provided to both Parties and the Tribunal (a) in electronic form on the same day and (b) if requested, in real time (*e.g.*, by electronic link) during the course of the proceeding. Both Parties shall be given the opportunity to correct the accuracy of the transcripts with the Tribunal to determine (in the event of disagreement between the Parties) whether or not such corrections are to be adopted. Final edited and corrected transcripts of each day's proceedings during any hearing shall follow in due course. The transcripts shall be prepared by a professional service selected by ICSID or by agreement of the Parties.
- 8.2. Complete sound recordings shall be made of all sessions, conferences and hearings, and the sound recordings shall be provided to both Parties.
- 8.3. Without prejudice to the Tribunal's final allocation of costs, the costs of transcription and sound recordings shall be borne by both Parties in equal shares.

**9. Means of Communication and Copies of Instruments (Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30)**

- 9.1. Administrative and Financial Regulation 24 (communications through the ICSID Secretariat) shall apply generally. In urgent situations, a Party may also send copies directly to the Tribunal, in addition to the Secretary and to the other Party.
- 9.2. Any written instrument (i.e. submissions not including routine, administrative, or procedural correspondence) shall be submitted to the ICSID Secretariat, by courier, in the form of one original and four copies, together with any supporting exhibits, including documents, witness statements, expert reports, and legal authorities. A copy of the instrument also shall be delivered to the other Party, by courier, at the same time. Copies intended for the Claimant shall be delivered to its counsel in London and copies intended for the Respondent shall be delivered to its counsel in Paris.
- 9.3. An electronic version (in word searchable PDF format, where possible) of each written instrument together with witness statements and expert reports (excluding documentary evidence) shall be transmitted directly to the other Party and to the ICSID Secretariat via e-mail (at the e-mail addresses indicated in § 9.7 below).
- 9.4. In addition, each Party shall provide copies of an optical storage medium, such as DVD or CD-ROM, containing an electronic copy (in word searchable PDF format, where possible) of each submission and supporting exhibits referred to in § 9.2. Four copies of such optical storage medium shall be sent to the ICSID Secretariat and one copy to counsel for the other Party, in London, or Paris, as the case may be. Such copies shall be dispatched by courier not later than the business day after the date of the respective submission.
- 9.5. A written submission shall be considered to have been submitted in a timely fashion if the submission is transmitted in electronic form (as set forth in § 9.3 above) on or before the applicable deadline, followed by hard copy dispatched by courier on the next business day of the submission (as set forth in § 9.2 above).
- 9.6. Routine, administrative, or procedural correspondence shall be transmitted to the ICSID Secretariat by e-mail (in PDF format), with copies sent by e-mail (in PDF format) to the other Party.
- 9.7. Electronic versions shall be sent to counsel and to the ICSID Secretariat at the following e-mail addresses:

- (i) to counsel for Claimant at:  
  
judith.gill@allenoverly.com

matthew.gearing@allenoverly.com  
jan.schaefer@allenoverly.com  
anthony.sinclair@allenoverly.com  
alexander.thavenot@allenoverly.com  
henrietta.jackson-stops@allenoverly.com

(ii) to counsel for Respondent at:

pwolrich@curtis.com  
glyonnet@curtis.com  
amoukhitdinov@curtis.com  
gpozzoli@curtis.com  
galvarez@curtis.com

(iii) to the ICSID Secretariat at:

tsolis@worldbank.org

9.8. In order to facilitate that parts can be taken out and copies can be made, submissions of all documents including statements of witnesses and experts shall be submitted separated from the memorials, unbound in ring binders and preceded by a list of such documents consecutively numbered with consecutive numbering in later submissions (C-1, C-2, etc. for the Claimants; R-1, R-2- etc. for the Respondent). Longer submissions shall be preceded by a Table of Contents.

#### **10. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a))**

The attendance of all Members of the Tribunal is required at all sittings of the Tribunal.

#### **11. Decisions of the Tribunal by Correspondence (Arbitration Rule 16(2))**

The Tribunal shall take its decisions by a majority of votes, and its decisions shall be issued in writing. The Tribunal may take decisions by correspondence among its members, or by any other appropriate means, provided that all Members are consulted.

#### **12. Delegation of Power to Fix Time Limits (Arbitration Rule 26)**

12.1. The parties agreed that the President, acting under power delegated by the Tribunal, may fix time limits by assigning dates for the completion of the various steps in the proceeding, provided that the President consults with the other Members of the Tribunal to the extent possible. The President noted that, as a general rule, he will exercise this power only after consulting the other Members of the Tribunal.

12.2. Short extensions may be agreed between the parties as long as they do not affect later dates in the Timetable and the Tribunal is informed before the original due date.

12.3. Extensions of deadlines shall only be granted by the Tribunal on exceptional grounds and provided that a request is submitted immediately after an event has occurred which prevents a party from complying with the deadline.

12.4. The Tribunal indicated to the parties, and the parties took note thereof, that in view of travels and other commitments of the Arbitrators, it might sometimes take a certain period of time for the Tribunal to respond to submissions of the parties and decide on them.

**13. Written and Oral Procedures (Arbitration Rules 20(1)(e) and 29)**

13.1. The proceedings shall consist of a written procedure and an oral procedure.

13.2. The length of time allocated to each Party during the oral procedure(s) shall in principle be equal, subject to the Tribunal's determination, based on all relevant factors, including the number of witnesses for each Party, that one Party should be afforded a greater share of the available time.

13.3. The oral procedure(s) may include oral closing arguments if so decided by the Tribunal. The oral procedure(s) may be followed by written post-hearing submissions if so decided by the Tribunal, limited by page number and including specific issues as may be identified by the Tribunal, unless the Parties otherwise agree.

**14. Number and Sequence of Pleadings, Time Limits, Supporting Documentation (Arbitration Rules 20(1)(c) and 31)**

14.1. By 14 May 2009:

Claimant's Principal Memorial on all aspects of the case including jurisdiction and the merits including quantum, together with witness statements, documents, and expert reports (if any). The Tribunal made reference to Exhibit 5 to the request for arbitration and invited the Claimant to comment in its Memorial on the assignment of the Contract.

14.2. By 14 July 2009:

The Respondent shall indicate whether or not it will request bifurcation of the proceeding.

14.3. By 14 September, 2009:

Respondent may submit a Brief with reasoned objections to jurisdiction and a request for bifurcation of the proceeding.

14.3. If such a Brief is submitted, by 16 November 2009:

The Claimant may submit a reasoned Reply-Brief.

14.4. Thereafter, the Tribunal will take appropriate steps to deal with this matter in consultation with the Parties, and, if it decides to bifurcate the proceedings, decide on a new timetable. The Tribunal shall issue a summary decision on bifurcation prior to the due date for the Respondent's Counter-Memorial (see

item 14.6 below). The summary decision shall contain only the *dispositif* of the Tribunal's decision, a reasoned decision will be issued shortly thereafter;

14.5. If Respondent has not objected to jurisdiction or if the Tribunal has decided that there shall be no bifurcation of the proceeding, the Timetable shall continue as follows:

14.6. By 15 December, 2009:

Respondents' Principal Counter-Memorial on all aspects of the case including jurisdiction and the merits including quantum, together with witness statements, documents, and expert reports (if any)

14.7. By 15 January 2010:

Parties exchange document requests (if any) without sending copies to the Tribunal.

14.8. By 1 February, 2010:

Parties try to agree on document requests, if any.

14.9. By 19 February 2010:

In so far as they have not reached agreement, the Parties may submit reasoned applications to Tribunal in the form of "Redfern Schedules", to order the production of documents.

14.10. By 19 March 2010:

Tribunal rules on applications.

14.11. The parties shall produce the documents so ordered by 16 April 2010.

14.12. By 16 July 2010:

Claimant's Reply Memorial.

14.13. By 16 November 2010:

Respondents' Rejoinder Memorial.

14.14. In their Reply and Rejoinder Memorials, the Parties may only include new factual allegations and additional evidence of any kind responding to or rebutting matters raised by the other Parties in their 1st Round of memorials or regarding new evidence obtained in the above procedure on document production. Thereafter, no new evidence may be submitted, unless agreed between the Parties or expressly authorized by the Tribunal, in accordance with item 15.1 below.

14.15. By 17 December 2010:

Parties submit notifications of the witnesses and experts presented by themselves or by the other Party whom they wish to examine at the Hearing.

14.16. By 10 January 2011:

Pre-Hearing Conference between the Parties and the Tribunal, if considered necessary by the Tribunal, either in person or by telephone.

14.17. As soon as possible thereafter, Tribunal issues a Procedural Order regarding details of the Hearing.

14.18. From 7 to 18 February 2011:

Hearing which shall be held in Paris, unless otherwise agreed between the Parties and the Tribunal.

14.19. After consultation with the Parties during the Hearing, the Tribunal may, if it considers that necessary, extend the Hearing from 21 to 22 February, 2011. The Parties and the members of the Tribunal will block all these days and book accommodation for the full period.

14.20 By dates set at the end of the Hearing after consultation with the Parties, Parties may submit Post-Hearing Briefs (no new documents allowed, unless otherwise directed by the Tribunal).

**15. Witnesses and Experts; Written Statements and Reports (Arbitration Rules 35 and 36)**

15.1. Without prejudice to the power of the Tribunal to request or allow the Parties to produce further evidence at any stage of the proceedings, written witness statements and expert reports shall be submitted together with the written instruments which they support and shall constitute the direct testimony of each factual or expert witness, respectively. There shall be no direct examination of witnesses or experts at the oral procedure by the Party presenting the witness or expert, save an introduction to the witness. Prior to the oral procedure and within time limits agreed by both Parties or established by the Tribunal, each Party or the Tribunal may call upon the other Party to produce at the oral procedure for cross-examination any witness or expert whose written statement has been advanced by the requested Party with the written submissions. Any witness or expert so called shall be subject to cross-examination at the oral procedure under the control of the Tribunal.

During cross-examination of a witness, each Party shall be allowed to impeach the credibility of that witness. In this respect, no new documents should be produced during the hearing.

All evidence shall be submitted together with the written submissions. If any new and material evidence comes to the knowledge of a Party after the filing of its last written submission, or any new facts or issues arise since the date of a witness or expert's last signed statement, the Tribunal, upon a reasoned written request from a Party and after receiving comments on the request from the other Party, may admit such new evidence or allow a witness or expert to submit an additional witness or expert statement before the hearing. If the Tribunal admits new evidence or additional witness or expert statements into the record, it shall grant the other Party an opportunity to submit evidence or witness or expert statements in rebuttal.

Re-direct examination shall be limited to matters arising directly out of cross-examination.

- 15.2. If a witness or expert called by a Party or the Tribunal does not appear without a valid reason at the oral procedure, the Tribunal may disregard that witness's or expert's statement or opinion. If a witness or expert is unable to attend the hearing in person, the Tribunal may provide for examination by videoconference or other means. A decision by either Party not to call a witness or expert to appear for cross-examination at a hearing shall not be considered a concession as to the substance of the written statement of the witness or report of the expert.
- 15.3. Witnesses and experts shall be examined by each Party under the control of the President of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in Arbitration Rule 35(2), and experts the declaration set out in Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure.
- 15.4. The parties agreed that the Tribunal may be guided, insofar as they are not inconsistent with these minutes, by the IBA Rules on the Taking of Evidence in International Commercial Arbitration adopted by a resolution of the IBA Council on 1 June 1999.

**16. Production of Evidence (Convention Article 43; Arbitration Rules 24 and 33-37)**

Subject to the timetable, each Party reserves the right to request the production of information relevant to the other Party's claims, defenses, and objections, or to oppose the request of the other Party for such information.

**17. Pre-Hearing Conference (Arbitration Rule 21)**

See item 15.14.

**18. Dates of Subsequent Sessions (Arbitration Rule 13(2))**

The dates for the subsequent sessions shall be set by the Tribunal pursuant to Arbitration Rule 13(2).

**19. Publication of the Decision and Award (Arbitration Rule 48(4))**

The Parties reserve their right to give their consent to publication by the Centre of any award or decision of the Tribunal at a later stage of the proceeding.

**II. OTHER MATTERS**

**20. Claimant's Application for Provisional Measures**

The Tribunal noted that the Claimant submitted on 14 April, 2009 a request for provisional measures.

The Respondent shall submit its response to the Claimant's request for provisional measures on 15 June 2009 (within two months from the first session). The Respondent noted that, if necessary, it may request an extension of this deadline.

A hearing on provisional measures is provisionally fixed by 30 June 2009 in London, if considered necessary by the Tribunal after consultation with the Parties.

If the need arises, the Tribunal shall request from the parties additional information prior to issuing its decision on the Claimant's request.

**21. Assistant to the President of the Tribunal**

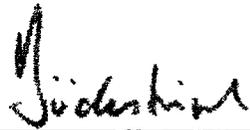
The Parties agreed to the possibility of the President of the Tribunal hiring an assistant of the Tribunal for logistical assistance on the file in this case. In due time, the Parties will be informed of the costs involved and invited to submit any comments they might have.

**Closing of the Session**

The President asked the parties if they wished to raise any other issues to be discussed. Neither party had any other matter to discuss.

There being no further business, the President thanked the participants on behalf of the Tribunal for their cooperation and constructive spirit. The session was adjourned at 12:30 pm. Sound recordings were made of the session, and deposited in the archives of the Centre.

Done in English



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Prof. Dr. Karl-Heinz  
Böckstiegel  
President of the Tribunal

Date: 05/04/09



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Mr. Tomás Solís  
Secretary of the Tribunal

Date: 05/04/09

**ANNEX I**

**Caratubte International Oil Company LLP**

**v.**

**Republic of Kazakhstan**  
(ICSID Case No. ARB/08/12)

**First Session of the Arbitral Tribunal**

**Date:**

**Venue:**

**Time:**

**Provisional AGENDA**

I. Procedural Matters

1. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6).
2. Representation of the Parties (Arbitration Rule 18).
3. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28).
4. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees).
5. Applicable Arbitration Rules (Convention Article 44).
6. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)).
7. Procedural Language (Arbitration Rules 20(1)(b) and 22).
8. Records of Hearings (Arbitration Rule 20(1)(g)).
9. Means of Communication and Copies of Instruments (Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30).
10. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a)).
11. Decisions of the Tribunal by Correspondence (Arbitration Rule 16(2)).
12. Delegation of Power to Fix Time Limits (Arbitration Rule 26(1)).
13. Written and Oral Procedures (Arbitration Rules 20(1)(e) and 29).
14. Number and Sequence of Pleadings, Time Limits, Supporting Documentation (Arbitration Rules 20(1)(c) and 31).
15. Witnesses and Experts; Written Statements and Reports (Arbitration Rules 35 and 36).
16. Production of Evidence (Convention Article 43; Arbitration Rules 24 and 33-37).
17. Pre-Hearing Conference (Arbitration Rule 21).
18. Dates of Subsequent Sessions (Arbitration Rule 13(2)).
19. Publication of Decisions and Award (Arbitration Rule 48(4)).

II. Other Matters

**ANNEX 2**

**JOINT SUBMISSION**  
**April 3, 2009**

**Caratube International Oil Company LLP**

v.

**Republic of Kazakhstan**

**(ICSID Case No. ARB/08/12)**

**First Session of the Arbitral Tribunal**

**Date: April 16, 2009**

**Venue: Frankfurt International Arbitration Centre**

**Time: 9:30 a.m.**

**1. Procedural Matters**

**1. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6)**

The Parties confirm that the Tribunal has been properly constituted and the declarations of its Members have been distributed in accordance with the ICSID Convention and the ICSID Arbitration Rules, and that the Parties have no objection to the appointment of any of the Tribunal Members.

**2. Representation of the Parties (Arbitration Rule 18)**

Each Party will be represented by its respective counsel listed below, and may designate additional agents, counsel, or advocates by providing notice of such designation to the ICSID Secretariat.

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Telephone: +7-727-3 1-1018

**3. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28)**

- 3.1. Except as provided below, both Parties agree, in accordance with Article 61 of the ICSID Convention and Administrative and Financial Regulation 14, to defray the expenses of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to allocation of costs.
- 3.2. The Tribunal's assessment of the costs set forth in Convention Article 61(2), and its decision pursuant to that Article as to how and by whom those costs should be paid, may be set forth at the Tribunal's discretion in the Award or in one or more separate Orders preceding or subsequent to the Award. Each Party may present, in addition to the information required by Arbitration Rule 28(2), its position as to how and by whom costs should be paid and arguments supporting that position. Without prejudice to the foregoing, absent any contrary decision by the Tribunal, all costs shall be borne by both Parties in equal shares.

**4. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees)**

The fees and expenses of the Tribunal Members shall be determined and paid in accordance with Article 60 of the ICSID Convention, Administrative and Financial Regulation 14 and the ICSID Schedule of Fees dated January 1, 2008.

**5. Applicable Arbitration Rules (Convention Article 44)**

The ICSID Arbitration Rules as amended and effective on April 10, 2006 shall apply to the proceedings.

**6. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3))**

The place of the proceeding shall be Frankfurt, Germany, although individual hearings may take place elsewhere if the Parties and the Tribunal so agree.

**7. Procedural Language (Arbitration Rules 20(1)(b) and 22)**

- 7.1. The procedural language shall be English. All instruments, that is, all memorials, witness statements, expert statements and administrative or procedural correspondence shall be submitted in English, provided that witness or expert statements may be submitted in the principal language of the witness or expert, but shall be accompanied by an English translation. In the case of exhibits and authorities, which originals are in another language, translations into English may consist of only relevant portions of the exhibit or authority in question, in which case the translation shall comply with Administrative and Financial Regulation 30(4).

Claimant proposes that the Parties should not be required to produce certified translations on grounds of: (i) the additional time and expense involved in procuring certified translations; and (ii) the technical and specific nature of the language contained in many of the documents likely to be in evidence. Most independent translation services do not have the industry-specific knowledge necessary to certify translations of such documents. Claimant adds that in the event that the Parties dispute the translation of any document, the following procedures are sufficient to resolve any issue as between them.

Each Party reserves its right to: (i) challenge the accuracy of the English translation submitted by the other and submit a new translation that clearly identifies the differences; and (ii) submit additional translated parts of any document not submitted or translated in its entirety.

- 7.2. Oral testimony before the Tribunal shall be in English or in the principal language of the witness or expert, at the option of such witness or expert. If the witness or expert gives evidence in a language other than English, ICSID shall arrange on behalf of the Parties independent, professional interpreters to provide simultaneous interpretation. Without prejudice to the Tribunal's final

allocation of costs, costs of interpretation shall be borne by both Parties in equal shares.

**8. Records of Hearings (Arbitration Rule 20(1)(g))**

- 8.1. Verbatim transcripts shall be made of each day's proceedings during any oral procedure (not including the First Session or any other hearing as the Parties may agree). Provisional transcripts of each day's proceedings shall be provided to both Parties and the Tribunal (a) in electronic form on the same day and (b) if requested, in real time (e.g., by electronic link) during the course of the proceeding. Both Parties shall be given the opportunity to correct the accuracy of the transcripts with the Tribunal to determine (in the event of disagreement between the Parties) whether or not such corrections are to be adopted. Final edited and corrected transcripts of each day's proceedings during any hearing shall follow in due course. The transcripts shall be prepared by a professional service selected by ICSID or by agreement of the Parties.
- 8.2. Complete sound recordings shall be made of all sessions, conferences and hearings, and the sound recordings shall be provided to both Parties.
- 8.3. Without prejudice to the Tribunal's final allocation of costs, the costs of transcription and sound recordings shall be borne by both Parties in equal shares.

**9. Means of Communication and Copies of Instruments (Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30)**

- 9.1. Administrative and Financial Regulation 24 (communications through the ICSID Secretariat) shall apply generally. In urgent situations, a Party may also send copies directly to the Tribunal, in addition to the Secretary and to the other Party.
- 9.2. Any written instrument (i.e. submissions not including routine, administrative, or procedural correspondence) shall be submitted to the ICSID Secretariat, by courier, in the form of one original and four copies, together with any supporting exhibits, including documents, witness statements, expert reports, and legal authorities. A copy of the instrument also shall be delivered to the other Party, by courier, at the same time. Copies intended for the Claimant shall be delivered to its counsel in London and copies intended for the Respondent shall be delivered to its counsel in Paris.
- 9.3. An electronic version (in word searchable PDF format, where possible) of each written instrument (excluding documentary evidence) shall be transmitted directly to the other Party and to the ICSID Secretariat via e-mail (at the e-mail addresses indicated in § 9.7 below).
- 9.4. In addition, each Party shall provide copies of an optical storage medium, such as DVD or CD-ROM, containing an electronic copy (in word searchable PDF format, where possible) of each submission and supporting exhibits referred to

in § 9.2. Four copies of such optical storage medium shall be sent to the ICSID Secretariat and one copy to counsel for the other Party, in London, or Paris, as the case may be. Such copies shall be dispatched by courier not later than the business day after the date of the respective submission.

- 9.5. A written submission shall be considered to have been submitted in a timely fashion if the submission is transmitted in electronic form (as set forth in § 9.3 above) on or before the applicable deadline, followed by hard copy dispatched by courier on the next business day of the submission (as set forth in § 9.2 above).
- 9.6. Routine, administrative, or procedural correspondence shall be transmitted to the ICSID Secretariat by e-mail (in PDF format), with copies sent by e-mail (in PDF format) to the other Party.
- 9.7. Electronic versions shall be sent to counsel and to the ICSID Secretariat at the following e-mail addresses:

(i) to counsel for Claimant at:

judith.gill@allenoverly.com  
matthew.gearing@allenoverly.com  
jan.schaefer@allenoverly.com  
anthony.sinclair@allenoverly.com  
alexander.thavenot@allenoverly.com  
henrietta.jackson-stops@allenoverly.com

(ii) to counsel for Respondent at:

pwolrich@curtis.com  
glyonnet@curtis.com  
amoukhitdinov@curtis.com  
gpozzoli@curtis.com  
galvarez@curtis.com

(iii) to the ICSID Secretariat at:

tsolis@worldbank.org

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#### **10. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a))**

The attendance of all Members of the Tribunal is required at all sittings of the Tribunal.

#### **11. Decisions of the Tribunal by Correspondence (Arbitration Rule 16(2))**

The Tribunal shall take its decisions by a majority of votes, and its decisions shall be issued in writing. The Tribunal may take decisions by correspondence among its members, or by any other appropriate means, provided that all Members are consulted.

**12. Delegation of Power to Fix Time Limits (Arbitration Rule 26)**

Respondent proposes that in acting pursuant to Arbitration Rules 26(1) and 26(2), the President shall consult with all Members of the Tribunal.

Claimant notes that under ICSID Arbitration Rule 26(1), the Tribunal may delegate its power to fix time limits to its President.

**13. Written and Oral Procedures (Arbitration Rules 20(1)(e) and 29)**

13.1. The proceedings shall consist of a written procedure and an oral procedure.

13.2. The length of time allocated to each Party during the oral procedure(s) shall in principle be equal, subject to the Tribunal's determination, based on all relevant factors, including the number of witnesses for each Party, that one Party should be afforded a greater share of the available time.

13.3. The oral procedure(s) may include oral closing arguments if so decided by the Tribunal. The oral procedure(s) may be followed by written post-hearing submissions if so decided by the Tribunal, limited by page number and including specific issues as may be identified by the Tribunal, unless the Parties otherwise agree.

**14. Number and Sequence of Pleadings, Time Limits, Supporting Documentation (Arbitration Rules 20(1)(c) and 31)**

14.1. The Parties have different views on this matter.

Respondent's views are as follows. Attached to its Summary Reply dated March 31, 2009, Respondent has submitted a request for production of documents which are necessary for Respondent to assess whether it will have objections to jurisdiction. As stated in its Summary Reply, Respondent has serious doubts as to the Tribunal's jurisdiction over Claimant's claims. Following receipt of the requested documents, Respondent will advise the Tribunal and Claimant as to whether it will request bifurcation of the proceedings pursuant to Arbitration Rule 41(1) and (3). If Respondent's objections to jurisdiction are closely intertwined to the merits of the case, Respondent will file its objections together with its Counter-Memorial. Respondent considers it appropriate that Respondent's request for production of documents and possible request for bifurcation as well as Claimant's request for provisional measures (see § 20 below) be taken into account by the Tribunal when fixing an appropriate schedule for this Arbitration. Respondent proposes the schedule for the filing of pleadings on the merits that it sets forth in § 14.2 below. The starting date for the schedule should depend on whether or not there is bifurcation in this Arbitration.

Claimant observes that Respondent has neither raised any objections to jurisdiction nor has it applied for bifurcation of these proceedings. Moreover, Claimant notes that pursuant to Arbitration Rule 41(1), Respondent shall raise any objections to the jurisdiction of the Centre or the competence of the Tribunal "as early as possible" and in any event not later than the expiration of the time limit fixed for the filing of Respondent's Counter-Memorial on the merits. Claimant observes that if facts or legal principles are known to Respondent that would warrant it raising an objection to jurisdiction, but it chooses not to raise such objection "as soon as possible", it may be argued that Respondent has waived such objection, or that it should be estopped from raising it later, or that such objections when made are without merit and raised only in order to procure delay.

Claimant also observes that it is for Claimant to furnish such evidence as may be necessary to satisfy the Tribunal as to its jurisdiction. Claimant submits that it is inappropriate for Respondent to raise wide-ranging and early requests for disclosure in the hope that such requests will yield information from which Respondent may manufacture an objection to jurisdiction. To the extent that there is any further evidence to produce in addition to the documents produced in support of the Request for Arbitration, Claimant will produce it in an orderly manner with its Memorial.

14.2. The Parties have separate proposals as to the calendar for filing of pleadings and for the hearing:

i) Claimant proposes that it shall submit its Memorial on the merits, together with any witness statements, expert reports and all supporting documents upon which it intends to rely following the First Session on a date to be advised.

Respondent proposes that the date for Claimant's submission of its Memorial on the merits be determined by the Tribunal taking into account the matters raised in § 14.1 above.

ii) Respondent proposes to submit its Counter-Memorial, together with any witness statements, expert reports and all supporting documents upon which it intends to rely within seven months after the filing of Claimant's Memorial.

Claimant proposes that Respondent shall submit its Counter-Memorial on the merits, together with any witness statements, expert reports and all supporting documents upon which it intends to rely within four months after the filing of Claimant's Memorial.

iii) Claimant proposes that it shall submit its Reply, together with any reply witness statements, expert reports and any additional supporting documents upon which it intends to rely within three months after the filing of Respondent's Counter-Memorial.

Respondent proposes that Claimant submit its Reply, together with any reply witness statements, expert reports and any additional supporting documents upon which it intends to rely within four months after the filing of Respondent's Counter-Memorial, consistent with the time Respondent proposes for the filing of its own Rejoinder.

- iv) Respondent proposes to submit its Rejoinder together with any reply witness statements, expert reports and any additional supporting documents upon which it intends to rely within four months after the filing of Claimant's Reply.

Claimant proposes that Respondent shall submit its Rejoinder, together with any reply witness statements, expert reports and any additional supporting documents upon which it intends to rely within three months after the filing of Claimant's Reply.

- v) Claimant proposes that dates for the hearing on the merits be fixed at the First Session of the Arbitral Tribunal. The Claimant further proposes that the hearing (which the Parties estimate may require up to two weeks) should be scheduled at the convenience of the Parties and the Tribunal not less than two months after the date of the Respondent's Rejoinder.

Respondent proposes that the hearing (which the Parties estimate may require up to two weeks) should be scheduled at the convenience of the Parties and the Tribunal not less than four months after the date of the Respondent's Rejoinder.

**15. Witnesses and Experts; Written Statements and Reports (Arbitration Rules 35 and 36)**

- 15.1. Without prejudice to the power of the Tribunal to request or allow the Parties to produce further evidence at any stage of the proceedings, written witness statements and expert reports shall be submitted together with the written instruments which they support and shall constitute the direct testimony of each factual or expert witness, respectively. There shall be no direct examination of witnesses or experts at the oral procedure by the Party presenting the witness or expert, save that Claimant proposes that there may be limited direct examination of witnesses or experts in respect of new facts or issues that arose since the date of the witness or expert's last signed statement. Prior to the oral procedure and within time limits agreed by both Parties or established by the Tribunal, each Party or the Tribunal may call upon the other Party to produce at the oral procedure for cross-examination any witness or expert whose written statement has been advanced by the requested Party with the written submissions. Any witness or expert so called shall be subject to cross-examination at the oral procedure

During cross-examination of a witness, each Party shall be allowed to impeach the credibility of that witness.

All evidence shall be submitted together with the written submissions. If any new and material evidence comes to the knowledge of a Party after the filing of its last written submission, or any new facts or issues arise since the date of a witness or expert's last signed statement, the Tribunal, upon a reasoned written request from a Party and after receiving comments on the request from the other Party, may admit such new evidence or allow a witness or expert to submit an additional witness or expert statement before the hearing. If the Tribunal admits new evidence or additional witness or expert statements into the record, it shall grant the other Party an opportunity to submit evidence or witness or expert statements in rebuttal.

Re-direct examination shall be limited to matters arising directly out of cross-examination.

- 15.2. If a witness or expert called by a Party or the Tribunal does not appear without a valid reason at the oral procedure, the Tribunal may disregard that witness's or expert's statement or opinion. If a witness or expert is unable to attend the hearing in person, the Tribunal may provide for examination by videoconference or other means. A decision by either Party not to call a witness or expert to appear for cross-examination at a hearing shall not be considered a concession as to the substance of the written statement of the witness or report of the expert.
- 15.3. Witnesses and experts shall be examined by each Party under the control of the President of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in Arbitration Rule 35(2), and experts the declaration set out in Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure.
- 15.4. Claimant proposes that insofar as they are not inconsistent with this joint submission, the Tribunal may be guided by Articles 3 through to 6 of the IBA Rules on the Taking of Evidence in International Commercial Arbitration adopted by a resolution of the IBA Council on 1 June 1999.

#### **16. Production of Evidence (Convention Article 43; Arbitration Rules 24 and 33-37)**

Each Party reserves the right to request the production of information relevant to the other Party's claims, defenses, and objections, or to oppose the request of the other Party for such information.

#### **17. Pre-Hearing Conference (Arbitration Rule 21)**

Pre-hearing conferences may be arranged in accordance with Arbitration Rule 21.

#### **18. Dates of Subsequent Sessions (Arbitration Rule 13(2))**

The dates for the subsequent sessions shall be set by the Tribunal pursuant to Arbitration Rule 13(2).

**19. Publication of the Decision and Award (Arbitration Rule 48(4))**

The Parties reserve their right to give their consent to publication by the Centre of any award or decision of the Tribunal at a later stage of the proceeding.

**II. Other Matters**

**20. Claimant's Application for Provisional Measures**

Claimant intends to make an application for provisional measures pursuant to Article 47 of the Convention. Claimant will set out its application in writing in due course and prior to the First Session.

Respondent considers that, as provided by Arbitration Rule 39, it shall have appropriate time to file its observations on any request for provisional measures that Claimant might file. Respondent therefore proposes that the Parties and the Tribunal discuss at the First Session the appropriate way to proceed to assure that the Parties have the opportunity to be fully heard on Claimant's request for provisional measures.

**21. Respondent's Request for Production of Documents**

Respondent requests that the Tribunal require Claimant to produce the documents requested by Respondent with its Summary Reply dated March 31, 2009 and set a deadline for such production.

Claimant resists Respondent's Request for Production of Documents. It will be willing and able to argue the reasons why the request should fail at the First Session

**ANNEX 3**

ALLEN & OVERY

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Our ref JAEG/MPG/89588-00001 LT:4226200.2

23 February 2009

Dear Ms Obadia,

**ICSID Case No. ARB/08/12**  
**Caratube International Oil Company LLP v. Republic of Kazakhstan**  
**German VAT**

We refer to your letter dated 19 February 2009.

On the basis that the Tribunal will charge in accordance with ICSID's Schedule of Fees (effective 1 January 2008) we confirm that the Claimant agrees that the German VAT levied on Professor Dr Karl-Heinz Böckstiegel's arbitrator fees may be treated as an expense.

Yours sincerely

  
Allen & Overy LLP

Copy Professor Dr Karl-Heinz Böckstiegel  
Mr Gavan Griffith QC  
Dr Kamal Hossain  
c/o Ms Eloïse M. Obadia  
Senior Counsel  
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February 23, 2009

Via e-mail: [Eobadia@worldbank.org](mailto:Eobadia@worldbank.org)  
and mail

Ms. Eloïse M. Obadia  
Senior Counsel  
International Centre for Settlement  
of Investment Disputes  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA

Re: *Caratube International Oil Company LLP v. Republic of  
Kazakhstan, ICSID Case No. ARB/08/12*

Dear Ms. Obadia:

With reference to your letter dated February 19, 2009 and to the letter from Counsel for Claimant dated February 23, 2009, the Republic of Kazakhstan agrees that, on the basis that the Tribunal will charge in accordance with ICSID's Schedule of Fees (effective January 1, 2008) and to the extent that Value Added Tax ("VAT") is levied on Professor Dr. Karl-Heinz Böckstiegel's fees, such VAT be added as an expense on his fees in these proceedings.

Very truly yours,



Peter M. Wolrich

cc: Professor Dr. Karl-Heinz Böckstiegel  
Mr. Gavan Griffith QC  
Dr. Kamal Hossain  
c/o Ms. Eloïse M. Obadia  
(Senior Counsel, ICSID)  
(Via e-mail: [Eobadia@worldbank.org](mailto:Eobadia@worldbank.org))

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February 23, 2009

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