BEFORE THE SECRETARY GENERAL OF THE ICSID

Secretary-General of ICSID, MSN U3-301, 1818 H Street, NW, Washington, D.C., 20433, USA

ICSIDsecretariat@worldbank.org

IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF ARBITRATION OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

"MAMIDOIL JETOIL GREEK PETROLEUM PRODUCTS SOCIETE ANONYME S.A."

(Claimant)

-V-

THE REPUBLIC OF ALBANIA

(Respondent)

REQUEST FOR ARBITRATION PROCEEDING

1. The company with the trade title "**MAMIDOIL JETOIL GREEK PETROLEUM PRODUCTS SOCIETE ANONYME S.A.**" and trade name "**JET OIL S.A.**" (hereinafter "**The Claimant**") hereby submits its Request for Arbitration in accordance with the Regulations and Rules of the International Centre for the Settlement of Investment Disputes (hereinafter "**ICSID Rules**").

2. Pursuant to the ICSID Rules, the Claimant sets out below: (a) a description of the parties; (b) description of the nature and circumstances giving rise to the claims herein; (c) a statement of the claims and the relief sought, including an indication of the amounts claimed; (d) the relevant agreement referred to; (e) all relevant particulars concerning the number of arbitrators; and (f) Claimant's comments as to the place of arbitration, the applicable rules of law and the language of arbitration.

Further more, the Claimant has deposited the non-refundable fee in favour of ICSID as proven by the respective wire transfer copy dated 16/06/2011 of Attica Bank S.A., which under the current Schedule of Fees is US$25,000[1]

[1] **Exhibit 1**

A. DESCRIPTION OF PARTIES

3. The Claimant is a Company dully incorporated in Greece since 1974 by virtue of contract no. 11930/20.07.1974 drafted by Athens Notary Public Athanasios Ioannou Chalkias, approved by virtue of decision no. 108312/1974 of the Athens Prefecture published in Government Gazette no. 1687/05.08.1974[2] registered in the Athens Prefecture Societe Anonyme record with registration number 01301/1AT/B/86/1727, with its seat located in *Greece, 27 Evrota and Kifisou, 146 64 Kifissia - Attica, (telephone +30 210 8763100 and fax numbers +30 210 8055850).*

The Board of Directors of the Claimant was elected by virtue of the Claimant's General Assembly decision dated 18.10.2010 with a turn until 18.10.2016 and was legally constituted by virtue of BoD decision dated 26/01/2011 submitted to the Athens Prefecture on 09.02.2011 and published in Government Gazette no. 630/16.02.2011[3].

The company has not until this day been liquidated or bankrupt or put under any kind of similar procedure nor is there any petition pending before any competent authority in respect to placement under any liquidation, bankruptcy or similar procedure.

The Claimant is represented in this procedure by:

1. Spyros G. Alexandris and Nassos Felonis both residents for this purpose at 26, Fillelinon str, 105 58 Athens - Greece
Tel: +30 210 3318 170 / Fax: +30 210 3318 171
E-mail: s.alexandris@bahagram.com / nassos.felonis@bahagram.com.

2. Artan Hajdari and Elira Kokona residents for this purpose at Bl. Deshmoret e Kombi, Twin Tower No. 2, 9/1, Tirana, Albania
Tel: +35542280170 / Fax: +35542280171
E-Mail: artan@lawfirmh-h.com.al / elirakokona@lawfirmh-h.com.al

[2] **Exhibit 2**
[3] **Exhibit 3**

3. Emmanouil Kalogerakis and Evanthia Mamidakis both residents for this purpose at 27 Evrota and Kiffisou str. Kifissia – Greece
Tel: +30210 8763 100 / Fax: +30210 8055 850
E-mail: mkalogerakis@jetoil.gr / evimamidaki@jetoil.gr

Above attorneys at law are dully authorized to represent the Claimant in this procedure by virtue of the Claimant's BoD resolution dated June 8, 2011[4] as well as the respective Notarial Power of Attorney no. 13874/09.06.2011[5]

All documents issued to the Claimant in connection with this Arbitration should be addressed to: **Spyros G. Alexandris** resident for this purpose at 26, Fillelinon str. 105 58 Athens – Greece who is appointed by the Claimant as its Agent for Service.

4. **THE REPUBLIC OF ALBANIA,** (hereinafter **"the Respondent"**), represented by the Government of Albania, Council of Ministers, with address *"Blv "Dëshmorët e Kombit", Nr.1,1000, Tirana, Albania* and/or the State's Advocate Office with address *Blv. " Zogu I ", Ministria e Drejtësisë, Tiranë. Tel & fax: 04-22 53 563, email: kabineti@avokaturashtetit.gov.al*

All documents issued to Respondent in connection with this Arbitration should be addressed to:

(a) Council of Ministers of the Republic of Albania
Blv "Dëshmorët e Kombit", Nr.1,1000, Tirana, Albania
(b) State's Advocate Office of the Republic of Albania
Blv. " Zogu I ", Ministria e Drejtësisë, Tirana Albania.
Tel & fax: 04-22 53 563, email: kabineti@avokaturashtetit.gov.al

Together hereinafter, collectively referred to as **"Parties"** or individually as **"Party"**.

[4] **Exhibit 4**
[5] **Exhibit 5**

B. DESCRIPTION OF THE NATURE OF THE DISPUTE AND CIRCUMSTANCES GIVING RISE TO THE CLAIMS

(I) Preamble

5. The Claimant, being a juridical entity dully incorporated in Greece since 1974 is a Greek national, Contracting State Party of the ICSID Convention, in compliance with the provision of Article 25 of the ICSID Convention (*see among other awards Champion Trading vs. Egypt* - ICSID Case No. ARB/02/9). As established by ICSID practise the nationality of the investor is determined purely on the basis of the law of its incorporation or seat.

6. The Claimant is a well-known company in the field of Hydrocarbons with business activities and investments spread in Greek and broader EU territory, as well as the Balkan area through various subsidiaries such as Mamidoil Albanian Sh.a., Mamidoil Kosovo LLC, Jetoil Bulgaria Ltd, Mamidoil Belgrade S.A. and Standardplin Sh.p.K.

7. In 1999 with the aim to enlarge its business activities, facilitated by the vicinity with the territory of the Respondent, taken into consideration, *inter alia,* the guarantees given by the latter in the Albania-Greece Bilateral Investment Treaty, the Claimant decided to invest in Albania through the establishment of an Albanian subsidiary company incorporated in Albania, with the trade title *Mamidoil Albanian Sh.A.* (hereinafter **"Subsidiary"**) which is an Albanian juridical entity, primarily registered as a Limited Liability company by virtue of decision no. 21035/15.03.1999[6] of the competent Tirana Court and transformed into a Societe Anonyme on 27.09.1999 by virtue of decision no. 21035/1/27.09.1999[7] of the competent Tirana Court.

8. According to the establishment act, the Subsidiary was owned by 80 % of its share capital by the Claimant, and the remaining 20% of its share capital by its Albanian partner "Anoil Sh.A.", with the purpose of establishing a storage, distribution and sales network of oil related products in the territory of the Respondent State.

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[6] **Exhibit 6**
[7] **Exhibit 7**

9. More specifically, the Subsidiary's shareholders scheme during the last 10 years has been developed as follows: In 1999, as mentioned above, its shares were divided in 80% owned by the Claimant, Greek incorporated company and 20% owned by "Anoil Sh.A.", an Albanian incorporated company. In 2006, the Claimant purchased by virtue of Contract no.11229/1479-22.9.2006[8] the remaining 20% of shares from its Albanian partner. Thus, from 2006 onwards the Subsidiary is owned in its entirety by the Claimant.

10. In particular, the share capital invested by the Claimant in its Albanian Subsidiary currently has a nominal value of **Lek 1.069.680.000,00** corresponding approximately to **USD 11.000.000** as proven by the respective certificate issued by the competent Albanian authorities dated 17/03/2011[9].

11. During the 12 years of activity in Albania, notwithstanding difficulties encountered, the Claimant distributes considerable amounts of petrol, using its tankers to supply the Albanian market and thus contributing to the development of the Albanian economy and particularly the energy sector, as admitted by the Respondent by virtue of Albanian Minister of Economy, Trade and Energy letter no. 9642/14.4.2010.

12. In this context, during the last nine (9) years of the Claimant's operation in the territory of the Respondent, the Albanian authorities have accumulated from the Claimant's investments in Albania - apart from the annual corporate tax on earnings and Value Added Tax on purchases - over **Lek 170.000.000** corresponding approximately to **USD 1,700,000**, in terms of Extra Income Tax and Value Added Tax, obligations and penalties arising from audits carried out to confirm the company's compliance with the legal framework applied to companies with legitimate operations in the fuel wholesale industry within the Albanian territory.

In respect to said capital value, the Claimant's Subsidiary due to its audited financial years that accumulated losses has never distributed dividends to its shareholder and

[8] **Exhibit 8**

[9] **Exhibit 9**

therefore, the Claimant anticipated receiving the invested capital as well as dividends, in the following years of its subsidiary's operation. In addition to the above, the operational needs of the Claimant's subsidiary are currently detaining approximately **Lek 228,804,000.00,** corresponding approximately to **USD 2,300.000** in short term loans that need to be repaid in the event that it is forced to terminate its activities.

(II) The jurisdiction of the ICSID and the nature of the dispute

a. <u>The procedural requirements</u>

13. In 1991 the Respondent entered into an agreement with the Hellenic Government and concluded a Bilateral Investment Treaty (hereinafter **"Albania-Greece BIT"** or **"BIT"**) for the encouragement and reciprocal protection of investments, according to which investments of respective nationals, including legal entities, would have been encouraged and protected.

Said agreement has been ratified by the Greek Republic by virtue of L. 2069/1992 published in Government Gazette no. 121A/1992[10] whereas it has also been ratified by the Republic of Albania and entered into force on 04.01.1995 as proven by the BIT official copy and the respective notification protocol no. 6871/21.06.2011 provided by the competent Directorate of International Law and Treaties of the General Directorate of International Law and Consular Affairs of the Ministry of Foreign Affairs of the Republic of Albania [11].

The Respondent is a Contracting Sate Party in the ICSID Convention since 1991, as Albania has signed the ICSID Convention on 30.09.1991, depositing its ratification on 15.10.1991 and making possible that the Convention is entered into force with respect to Albania on 14.11.1991 and the Hellenic Government is a Contracting Sate Party in the ICSID Convention since 1969, as Greece has signed the ICSID Convention on 16.03.1966, depositing its ratification on 21.04.1969 and making possible that the Convention is entered into force with respect to Greece on 21.05.1969.

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[10] **Exhibit 10**
[11] **Exhibit 11**

The Claimant's consent, as a national of a Contracting State, is considered to be provided through the initiation of arbitral proceedings before ICSID, thus perfecting the agreement between the Parties on ICSID jurisdiction. Therefore, the submission of the present request amounts to the explicit consent of the Claimant in respect to ICSID jurisdiction (see among other awards Gruslin vs. Malaysia – ARB/99/3).

14. Furthermore, as already found in other awards with respect to Albania regarding the implementation of the Albania-Greece BIT, and especially Article 10 of the BIT, both Governments consented in advance in respect to the jurisdiction of ICSID in the event an investment dispute arose between the BIT parties and their nationals (see among other awards, the recent ICSID award in the case Pantechniki S.A. Contractors & Engineers v. Republic of Albania - ICSID Case No. ARB/07/21, award dated July 30, 2009).

15. As to the nationality of the Claimant, that is examined as already mentioned in terms of territory of incorporation and legal seat, it is currently and was at the time of signature of the BIT, Greek. Thus in the present case the Claimant complies with the requirement provided by Article 1 § 3 (b) of the Albania-Greece BIT that as far as relevant provides that "Investor shall comprise with regard to either Contracting Party: (a) Natural persons having the nationality of that Contracting Party in accordance with its law; (b) Juridical persons constituted in accordance with the law of that Contracting Party and having their seat within its territory [...]"

b. The investment

16. Having regard to the wording of **Article 1 § 1** of the Albania-Greece BIT, which as far as relevant provides that: *"**1.** "Investment" means every kind of asset and in particular, though not exclusively, includes: **(a)** Movable and immovable property and any other property rights such as mortgages, liens or pledges ; **(b)** Shares in and stock and debentures of a company and any other form of participation in a company; **(c)** Loans, claims to money or to any performance under contract having a financial value; **(d)** Intellectual and industrial property rights, including rights with the respect to copyrights, trademarks, trade names, patents, technological processes, Know-how and goodwill; **(e)** Rights conferred by*

law or under contract with a Contracting Party, including the right to search for, cultivate, extract or exploit natural resources. [...]".

17. Having regard to the fact that the Claimant owns 100% of its Subsidiary's share capital, both in the meaning of Article 1§§ 1(b) of the BIT and ICSID Convention, such participation constitutes an investment. Regardless of the Greece Albania BIT definition of investment, a considerable number of Tribunals have accepted shareholding as a form of investment (*see among other cases* Appendix 1 of Vivendi Universal S.A. v. Argentine Republic, ICSID Case No. ARB/97/3, decision on jurisdiction November 14, 2005).

c. The nature of the dispute

18. It is of course uncontested that the facts presented in the present request constitute a dispute as the respective definition is provided by the International Court of Justice i.e. as "a disagreement on a point of law or fact, a conflict of legal views or interests between parties", since the Respondent has failed to respond to the Claimant's specific demands within the period that elapsed from the time the Claimant has brought them to the Respondent's attention until the present day. More specifically, the Claimant's claims remained outstanding for more than nine months with the respective BIT providing for six months of negotiations prior to the subjection of the dispute in arbitration. The Claimant considers that said period of time has commenced on 21.09.2010, when it stated to the Respondent its intention to amicably resolve the dispute as well as its intention to subject the dispute in arbitration by virtue of its respective letter dated 21.09.2010 [12]

Furthermore, the present dispute is a legal dispute according to ICSID practise, which considers a dispute to be such when the claim is couched in terms of violation of legal rights, is based in legal arguments and seeks legal remedies. Therefore, the present dispute is of legal nature, that steams directly from the failure of the Respondent to honour obligations assumed in virtue of the BIT, and ensure protection of a Greek national's investments, operating in the Albanian territory, from unlawful and unfair actions of the Albanian authorities, thus giving grounds to

[12] **Exhibit 12**

conclude that this dispute clearly falls under the protective provisions of said BIT and therefore ICSID jurisdiction over the matter is unquestioned.

19. The Respondent's actions which led to the breach of the BIT in respect to this dispute are Council of Ministers Decisions (hereinafter **"CM decisions"**) and Ministerial Decisions of the Respondent's Government, which according to the Claimant's view amount to the deprivation of property and/or the peaceful enjoyment of such property in the meaning established by ECHR practice and provided under Article 1 of the First Protocol on the European Convention on Human Rights.

The justicability of disputes that result from sovereign prerogative may be disputed but ICSID practice shows that Tribunals have examined the legality of several typical governmental actions such as those that are on display in the present request without hesitation (*see among other awards SPP vs. Egypt ARB/84/3).*

20. Furthermore, in the event that the measures taken by the Albanian State are considered as general measures affecting investments and is therefore argued that said measures should not constitute a dispute arising directly out of an investment, it is noted that general measures are considered those that are designed to serve the national welfare and are thus not specifically directed at any particular investment. At first glance said measures may be viewed as general, however ICSID practice has distinguished between measures of general economic policy not directly related to the investment and measures specifically addressed to the operations of the business concerned. Even though the former would normally fall outside ICSID jurisdiction a relationship is established since the general measures are adopted in violation of specific commitments given to the investor in the BIT. Through the present request we bring before ICSID not the general measures themselves, but the extent to which they directly violate Albania's specific commitments. (See amongst other awards CMS vs. Argentina ARB/01/8)

d. Jurisdiction of the ICSID

21. Consequently, and with regard to the foregoing considerations the present dispute should be deemed falling within the jurisdiction of the International Centre for Settlement of Investment Disputes.

(III) The Facts

a. Factual Circumstances

(i) The Claimant's investments in Albania

22. On 6[13] and 8[14] of January 1999, the Respondent, in virtue of decisions of the Ministry of Public Works and Transport, approved the Claimant's request to invest in Albania, through the construction of a Tank Farm situated within the Albanian Durres Port, in an area measuring 13.992 m2, with the initial investment value amounting to 8 million USD. Said request was officially lodged on 03.07.1998[15]

23. As already mentioned, in March 1999, having regard, among others, to the above mentioned decisions the Claimant established its Subsidiary in Albania with the trade name "Mamidoil Albanian Sh.A.", with its legal seat situated in Tirana – Albania and with the purpose of establishing storage, distribution and sales network for oil related products which was the Claimant's Subsidiary fundamental object of business's activities, as proven by its Memorandum of Association dated 09.07.1999[16].

24. In June 1999, after having researched the Albanian legal framework, the Claimant entered into a twenty (20) year term lease contract (hereinafter **"the Contract"**) with the Albanian State represented by the Ministry of Public Finance and Privatization, according to which the Respondent undertook the obligation to lease

[13] **Exhibit 13**

[14] **Exhibit 14**

[15] **Exhibit 15**

[16] **Exhibit 16**

to the Claimant an area of 13,992 m2 situated within Duress Port with the sole purpose of building an oil container terminal. For the signing of said Contract, the Respondent was represented by Mr. Genci Celo in virtue of authorization protocol no. 414/2 – 02.06.1999[17]. Following an agreement between Durres Port Authority and the Claimant's Subsidiary concerning the handing over of the plot of land, which was made official in virtue of the respective minute compiled on September 1st 1999[18], the aforementioned area was officially leased on 02.06.1999[19] as certified by the lease agreement itself as well as document 44-4/21.07.1999[20], issued by the Albanian Ministry of Public Works.

25. By virtue of the contract and in collaboration with the competent Albanian authorities, the Claimant moved on to complete Phase 1 of the Albanian Investments Project through its Subsidiary. In particular, all necessary materials were purchased and the respective construction agreements with Greek and Albanian companies were signed. The respective construction of the Oil Tank Deposit and approximately 85% of the Project had been completed in November 1999. It is hereby clarified, that the specific location was selected for the construction of the Claimant's facilities, mainly due to the existence of a pipeline in the particular dock, which would greatly serve the efficient supply of raw materials. Said pipeline as well as the dock were renovated by the Claimant who undertook the high renovation cost due to the specific assets vital importance.

26. The Claimant's installations, consisting mainly of the Tank Farm and pipelines, in Durres Port were constructed according to A.P.I rules and under Lloyd's supervision. In addition, the Claimant's Subsidiary in Albania fully complied with the relevant tax legislation in force as well as any decisions issued periodically from governmental bodies applicable to fuel wholesale companies operating in the Albanian State and complied in full with all relevant tax obligations.

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[17] **Exhibit 17**

[18] **Exhibit 18**

[19] **Exhibit 19**

[20] **Exhibit 20**

(ii) The Respondent's action and liability

- *Actions aiming to ban the use of the Claimant's fuel deposits*

27. At the time of the Respondent's approval of the Claimant's request for investing in Albanian territory and more specifically at the time of the respective lease agreement's signing, the former had guaranteed the latter the use of the leased premises for twenty (20) years. Said premises were selected by the Claimant due to their vicinity with the see as well as the dock and pipeline installations located there as mentioned above. In parallel and in contradiction with any sense of *"good faith"* and *"business ethics"* the Respondent had already commenced the process of studying a strategy paper according to which the Durres Port Area, leased to the Claimant, would no longer be used for hydrocarbon deposit. Instead the so called "Porto Romano" area was proposed for the relocation of all installations located in Durres Port.

28. Indeed, in June 2000, one year after the Claimant's Subsidiary establishment in Albania, through the issuance of CM Decision no 294[21] dated 13.06.2000, the Respondent changed the use of the Port of Durres area in a non industrial zone and approved the so called Land Use Plan for the Port of Durres, in compliance with which, the oil storage network established by the Claimant and other Greek Subsidiaries such as "GLOBAL SA" and "EVROIL LTD" should be relocated.

It is here noted that the so called "Porto Romano" project that was originally conceived in 2000, primarily aimed at the creation of an area for the marketing and storage of fuel, to reach its final form of a project regarding the construction of an Energy Park.

29. On 21.07.2000 the Respondent, in accordance with above decision no 294/13.06.2000 and through its letter no. 5334-3247/21.7.2000[22] of the Ministers of Public Finance and Privatization and the Minister of Transportation, requested the

[21] **Exhibit 21**

[22] **Exhibit 22**

Claimant's Subsidiary to interrupt its investments in Durres Port, regardless of the obligations undertaken under the BIT, the Contract and technical decisions and licenses issued in its Subsidiary's favour, and of course regardless of the damages caused to the Claimant and the diminishment of the investment already established in Albania. The competent authorities would later inform the Claimant about a new area where it would be able to relocate its deposit tanks.

30. In the light of these developments, the Claimant officially engaged the London based law firm Barlow Lyde & Gilbert in order to protect its investment. The latter, in response to the Respondent's actions addressed its letter dated August 3rd 2000[23] inviting Albanian authorities to refrain from the implementation of above CM decision, on the grounds that such an action would amount in violation of the Claimant's Subsidiary contractual rights and would mostly amount to the deprivation of the Claimant's investment in Albania in apparent breach of the BIT.

31. The Respondent, in reply to the Claimant's request decided the constitution of a working committee aiming to examine the problems created by the implementation of said CM decision and the respective repercussions, which mainly amounted to the interruption of all relevant investments in the area i.e. those of the Claimant and other Greek companies.

32. In the context of the BIT, the Claimant informed the Greek Government of the above mentioned developments and requested its intervention towards resolving the situation caused by the actions of the Albanian Authorities.

33. As a result, the Greek Minister of Finance addressed on the 15th of September 2000[24] a letter to the World Bank in order to inform it of steps taken by the tree (3) Greek companies and the Greek Government against the decision of the Albanian Council of Ministers and furthermore to request its active involvement towards resolving the arising dispute.

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[23] **Exhibit 23**

[24] **Exhibit 24**

34. After the intervention of the Greek Government, the Albanian Minister of Finance and Privatization through his letter no. 6343/5-23.10.2000[25] to the Claimant's Subsidiary, informed the latter about the World Bank's request for the preparation of a study regarding the relocation of installations located at Durres Port and requested, until October 31st, 2000 the Subsidiary's suggestions concerning said relocation plan. Further to that, the Respondent addressed to the Claimant's Subsidiary its letter no. 6343/11-21.12.2000[26] requesting its commitment regarding its cooperation in respect to the implementation of the project approved by the World Bank as well as regarding the extraction of data required in order to execute the respective study.

35. Under these circumstances that indicate the Respondent's pretentious commitment towards resolving the dispute that was created due to its unlawful actions, it was inevitable that regardless the several meetings and exchange of opinions that took place, no concrete measures where taken towards its resolution.

36. On April 2001, without taking into consideration the Claimant's claims and suggestions and in direct contradiction with the supposed attempt for the resolution of the dispute at hand, in virtue of CM decision no 251/20.4.2001[27] two new zones were identified with the purpose of construction and usage of seashore deposits for oil products. These zones were situated in Porto Romano area in Duress and in Vlora Bay respectively. The above mentioned decision was followed and supplemented by CM decision no 358/27.5.2001[28] which provided the conditions for obtaining lots as well as permits for the installation of hydrocarbon deposit facilities in the newly established hydrocarbon deposit zones. According to the aforementioned decision, companies that were in contractual relationships with the Albanian State regarding facilities located at Durres Port would be given priority for obtaining lots in the newly established hydrocarbon deposit zones.

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[25] **Exhibit 25**

[26] **Exhibit 26**

[27] **Exhibit 27**

[28] **Exhibit 28**

➢ *Actions aiming in disrupting the investments' exploitation*

37. The Respondent in accordance with its policy to restrict the use of Durres port by the Claimant's Subsidiary issued the latter a temporary eighteen (18) month period renewable trading license. In particular, CM decision no 704/21-12-2000[29] exempted companies already operating in the port of Durres from the license renewal conditions at force and therefore allowed their further presence in the area.

38. On February 2001, Commercial Licence No 52/16.2.2001[30] regarding the processing, transporting and trade of oil products was issued in favour of the Claimant's Subsidiary by the competent Ministry as provided by CM decision no 704/21-12-2000.

39. In 2003, the uncertainty of the Claimant's investments future in Albania was aggravated by the frequent pressure being exerted by several Respondents' authorities. Indicatively, on January 14th, 2003 the Albanian Ministry of Environment conducted an inspection within the Durres site where the container terminals are located and addressed to the Claimant's Subsidiary letter no 124/31-1-2003[31] regarding the announcement of the conclusions of the above inspection and of the relative penalties imposed.

40. In the meantime, the Albanian Minister of Finance requested through document no 1712/11.03.2004 to be informed about the progress in granting environmental permits to the Greek companies' subsidiaries operating installations in Durres Port.

41. The Albanian Minister of Environment through his letter of reply no 309/1 - 26.03.2004[32] informed the Albanian Minister of Finance that the Greek companies' subsidiaries are yet to submit the relevant eligibility documents in order to be supplied with an environmental license by virtue of the new environmental

[29] **Exhibit 29**

[30] **Exhibit 30**

[31] **Exhibit 31**

[32] **Exhibit 32**

legislation and more specifically Law 8934/05.09.2002 on "Environmental Protection" and Law 8990/23.01.2003 on "The Estimation of Environmental Influence", as well as Council of Ministers decisions no 268/24.04.2003, 249/24.04.2003 and 805/04.12.2003.

42. Further to that, the Albanian Minister of Environment through his letter no 1844-1/30.03.2004[33], insisting on the eventual relocation of all Greek Subsidiaries maintaining installations at Durres Port, informed the Albanian Minister of Finance that the Greek Subsidiaries who were operating oil container terminals in Durres port would be supplied with an eighteen (18) month temporary commercial license that would be made effective after the Albanian State's notice regarding the relocation of all hydrocarbon storage facilities located in Durres Port.

43. The Albanian State continued to exert pressure on Greek Subsidiaries operating in Durres Port and on April 2004, the Albanian Minister of Finance addressed his letter no 1712-3/23.04.2004[34] to all abovementioned companies operating their installations in Durres Port, informing them of the following: a) to the so called interest of their unobstructed activity in Durres port they should proceed with the submission of eligibility documents required for the issuance of a "Fuel storage Tanks in Durres Port Exploitation Permits" by virtue of the legislation in force, prior to their translocation in Porto Romano and b) that they should submit a petition to the Ministry of Industry and Energy along with the required eligibility documents, in order to be granted a lot for the construction of facilities in Porto Romano.

Finally, on the 31st of May, 2007 the environmental license protocol no. 312/31.5.2007[35] was issued in favour of the Claimant's Subsidiary.

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[33] **Exhibit 33**

[34] **Exhibit 34**

[35] **Exhibit 35**

➢ *Actions aiming to ban the supply of the Fuel Tank Farm from the sea*

44. Unfortunately, regardless of the issuance of said environmental permit the Respondent, displaying once again contradictory behaviour, following almost 7 years of uncertainty and pressure continued its actions that were in breach of the BIT, with the issuance of CM decision no 486/25.7.2007[36] "On the interruption of the processing activities for ships transporting oil, gas and their by-products in Durres and Shengjiin Ports". Said decision imposed the Claimant a ban in supplying its fuel tanks situated within Durres Port via sea and thus made it impossible to use its pipeline installations. More specifically, the Albanian Council of Ministers decided, based on article 100 of the Albanian Constitution as well as articles 1 and 2 of L. 8450/24.02.1999 as in force, the interruption of the processing of ships carrying oil, gas and their by-products within eighteen (18) months of said decision's enforcement and the diversion of said activity to ports specially designated for such purposes, granting to the Ministry of Economy, Trade and Energy, the Ministry of Public Works, Transport and Telecommunications as well as the Ministry of Finance authority to execute the decision.

45. Notwithstanding the Claimant's stated objections to the relocation of its activities, the Albanian Deputy-Minister of Economy, Trade and Energy addressed to the Claimant letter no 896/25.01.2008 [37]reiterating the Respondent's request for the Claimant to manifest its interest in obtaining a lot for relocation within one month.

46. On the 22nd of February 2008[38] a letter of reply was addressed to the Albanian Deputy Minister of Economy, Trade and Energy, according to which the Claimant's Subsidiary requested the Respondent to re-examine its relocation schedule since the relocation of such installations would require the creation of the necessary infrastructure to support it i.e. land works, road access to the site etc. Furthermore, the Claimant as well as other investors affected by the relocation should have been imminently, sufficiently and effectively compensated prior to the implementation of

[36] **Exhibit 36**

[37] **Exhibit 37**

[38] **Exhibit 38**

said plan due to its effects on their investments. The Respondent dismissed the request through the Albanian Minister of Economy, Trade and Energy letter no 896/4 – 11.3.2008, claiming that all companies in the region were in full knowledge of the Albanian States actions and therefore, not entitled to any compensation for the diminishment of their investments.

- *Actions amounting to create monopole and irregular market*

47. Through the CM decision no. 147, dated March 21st 2007,[39] the Respondent decided that starting from 1st January 2009, only Diesel coded 27101941 (the so called D1) would have been allowed to be traded and sold to automobilists and users of generators in the territory of the Republic of Albania. In other words, this decision prohibited the marketing and trading of Diesel coded 27101945 (the so called D2) starting from January 1st, 2009.

48. In July 2008 through CM decision no. 1110/30.07.2008[40] the Respondent promoted the interests of the local refinery by allowing the usage of D1 produced in the Albanian territory, although its standards specifications were of lower quality than those defined by CM decision nr. 147 dated 21st March 2007.

Due to obstacles faced by the Claimant in the Albanian market, on July 10, 2008 a meeting was held with the Prime Minister of Albania were the Claimant had the opportunity to inform him on the situation faced in Albania. Following said meeting the Claimant addressed its letter dated July 31, 2008[41] to the Prime Minister of Albania stating in writing the issues brought to his attention during the meeting.

49. In January 2009, notwithstanding the breach of the principles governing fair concurrence in Albania, CM decision no 52[42] came into force abrogating CM decision no. 1110/2008 going even further in enriching the local refineries' profitability and

[39] **Exhibit 39**

[40] **Exhibit 40**

[41] **Exhibit 41**

[42] **Exhibit 42**

market domination by allowing said refineries to sell wholesalers not only the lower quality fuel D1 as provided in CMD 1110, but also fuel D2, which, however, wholesalers were not allowed to import in Albania, according to CMD 147.

50. Such actions of the Respondent were examined and found in breach of the Albanian Constitution on the grounds of creating a monopole environment amongst hydrocarbon actors in Albania and was overturned accordingly by the Albanian Constitutional Court on 24th July 2009.[43]

51. During the period from March 2007 to July 2009, the Claimant was obliged to implement CM decision no. 147/2007 that it found to be grounded and useful, and therefore took all necessary steps to dispose of the D2 product in its possession prior to the activation of said ban. Accordingly, the Claimant's Subsidiary in Albania proceeded in 2008 with all necessary contractual arrangements in respect to the scheduling of imports of D1 product from the Claimant.

52. Under these circumstances, with the Claimant's Subsidiary taking all necessary actions to conform to the Albanian legal framework, as shaped by CM decisions in 2008 and 2009, the Respondent through unlawful actions excluded the Claimant from participating in a regular market. The respective Albanian Constitutional Court's decision (that was not issued for more than six months until finally being issued on July 24th 2009) declared CM decision no 52/2009 to be null and void. It is obvious that this admittedly unlawful decision caused great losses to the Claimant's Subsidiary.

Due to the abovementioned irregularities imposed in the Hydrocarbon area in the period 2007 - 2009, the Claimant suffered losses in the form of foregone profits of approximately **Lek 28.800.000** corresponding approximately to **USD 290.000.**

[43] **Exhibit 43**

b. The de facto frustration of the Claimant's investment caused by the Respondent's actions

53. As noted above, the Claimant's business plan was originally drafted for investment evaluation purposes, on the basis that its Subsidiary would operate under a certain logistics infrastructure (fuel transportation via ships, discharging fuel at the Duress port through pipeline directly to the storage facility etc.) that would ensure competitive cost structure for the company to carry out its wholesale activity in the Albanian market in a profitable manner.

54. The above described actions, i.e. the frequent requests for interruption of investments in the Port of Durres at a time when the Durres Tank Farms where already constructed and in use, the frequent harassment of its activities through the creation of irregularities in the Albanian market, as well as the interruption of the processing of ships in Duress Port undoubtedly deprived the Claimant of its investment in Albania, which under normal circumstances would have enabled it to maintain and grow its market share, make profitable investments in the local market and provide credit to local wholesalers, in other words continue its operation under a regular and competitive market.

55. In particular, the decision to stop the processing of ships in Durres Port, would have as a direct consequence the elimination of the Claimant's ability to monthly obtain 3.000 m3 of fuel on average, which would inflict a dramatic limitation of its activities in the Albanian market. In this way, the depreciation of the Claimant's investment comprising in minimum of the funds of its subsidiary's share capital, is further enhanced to the point of deprivation of the use of its Subsidiary's installations.

However, the Respondent before decision 486/27.05.2007 becoming effective issued CM decision no. 154/11.02.2009[44], extending the processing activities for ships transporting oil, gas and their by-products in Durres as well as Sengjin Port until June 30, 2009 thus creating the impression that the Respondent moved away from its

[44] **Exhibit 44**

initial position on the interruption of ship processing and that the ban imposed was pretentious. Said impression was enhanced by CM decision 111/26.01.2011[45] that further amended decision CM decision 486/27.05.2007, irrevocably exempting Sengjin Port from the respective ship processing interruption. It is noted that ever since the 1st of July 2009, the Respondent has irrevocably implemented the interruption of the processing of ships in Durres Port.

C. RESPONDENT IN BREACH OF THE BILATERAL AGREEMENT AND THE APPLICABLE LAW

56. The dispute between the Claimant and the Respondent in respect to damages inflicted by the latter's actions, which climaxed with the ban imposed to the Claimant as to the use of its installations situated in the Port of Durres, and continued incessantly for almost ten years during which the Respondent acted in violation of both the BIT and applicable Albanian law, remains outstanding despite the recorded Claimant's expression of willingness and determination to resolve this issue amicably and under the principles of good faith. The Claimant, by means of official letters during the course of the years 2000-2010 has addressed the unsettled issue of the Respondent's actions that amounted in frequently disturbing the peacefully enjoyment of its investment in Albania. Said right was repeatedly violated and finally banned by the Respondent in violation of mutual obligations pursuant to the legally binding BIT.

57. The Claimant consistently through official channels, exhausted all means of amicable settlement of the dispute in a non-contentious manner and has maintained its legal standing towards the fact that it had been offered twenty (20) years of unobstructed and peaceful enjoyment of its investment consisting of installations for fuel deposit and distribution and has during this period voiced its concerns before the Albanian State authorities, the Greek Government and the World Bank.

[45] **Exhibit 45**

58. The Claimant has repeatedly provided the Respondent with its well-grounded claims. However the Respondent was and continues to be unresponsive to the Claimant's just and fair demands.

59. The Respondent, without any legal ground failed to either refrain from violating the Claimant's right to use and peacefully enjoy its investment in Albanian and comply with its contractual obligations, the domestic and international legal framework or pay any compensation for damages incurred to the Claimant. Consequently the Respondent is legally obliged to fully pay any and all outstanding compensation to the Claimant.

It therefore emerges from the foregoing that the Respondent is in clear breach of its obligations under the BIT. Such breach carries the obligation on the Respondent's part to compensate the Claimant for damages suffered and more specifically the prohibition to execute vital investments as well as pecuniary and non-pecuniary damages suffered.

60. Greek Authorities have been actively involved in attempts to find an amicable solution to the aforementioned issues but unfortunately without achieving results due to the rigidity of the Respondent. In this respect reference should be made to the exchange of letters between the Greek and the Albanian Government. More specifically, an exchange of letters took place in 2008 between the Greek Minister of Foreign Affairs Mrs. Dora Bakoyannis and the Albanian Minister of Economy, Trade and Energy Mr. Genc Ruli, with the former addressing letter no. 1125/8.4.2008[46] and the latter replying through his letter no. 3759/1-29.4.2008.[47] Having achieved no results an exchange of letters took place again in 2009 between the Greek Minister of Foreign Affairs Mr. Miltiadis Varvitsiotis and the Albanian Minister of Economy, Trade and Energy Mr. Genc Ruli, with the former addressing letter no 1110-

[46] **Exhibit 46**

[47] **Exhibit 47**

AS359/27.03.2009 and the latter replying through his letter no 3143-1/02.06.2009[48] again refusing any compromise on the matter.

61. With the view to find a solution to the dispute, meetings were also held in Albania between the Greek Minister of Foreign Affairs and the Albanian Minister of Economy, Trade and Energy but have not produced any results due to the refusal of the Respondent to reach any compromise.

62. Notwithstanding this failure, the Claimant requested once again the Respondent to find a way for resolving the dispute. Specifically, the Claimant addressed its letter dated December 2, 2009[49] to the Albanian Minister of Economy, Trade and Energy requesting an amicable settlement of the dispute. The Albanian Minister replied to the Claimant by virtue of his letter no. 9642 dated April 14, 2010 preserving his view that the Claimant's rights are not violated yet he offered to arrange a meeting in order to once again seek a solution to the problem. The Claimant responded to the Minister by virtue of its letter dated April 29, 2010[50] noting that there has not been any change on the Albanian Government's views but accepting his invitation. Said meeting was held in Tirana on May 3rd, 2010 where both parties had the opportunity to express their views regarding the dispute. On June 2, 2010[51], following the Respondent request, the Claimant submitted its claims and relief sought, as further elaborated in the Claimant's estimation of the relocation cost drafted in May, 2010,[52] in order to reach a friendly settlement but unfortunately no action had been taken by the Respondent, as indicated in the Claimant's letter to the Albanian Under Secretary of the Ministry of Economy, Trade and Energy dated September 21, 2010,[53] nor has until today.

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[48] **Exhibit 48**

[49] **Exhibit 49**

[50] **Exhibit 50**

[51] **Exhibit 51**

[52] **Exhibit 52**

[53] **Exhibit 12**

63. In full compliance with Article 10 of the BIT, the Claimant exhausted all amicable means of settlement of the dispute with the Respondent, but the latter refused to meet any of the Claimant's reasonable and well-grounded demands. Therefore, the Claimant was left with no other option other than to submit the aforementioned dispute to arbitration, formally submitting a Request for Arbitration to definitively resolve said dispute by obtaining a Final Award from ICSID

64. Following the above, any allegation on the Respondent's behalf regarding the dispute falling under Albanian national law as a dispute emerging from the breach of contract and more specifically the lease contract signed 02.09.1999 is ungrounded due to the fact that the causal link to the frustration of the Claimant's investment is precisely the interruption of the processing of ships in Durres Port, which had as a direct consequence the deprivation of the Claimant's ability to exploit its investment.

D. STATEMENT OF CLAIMS AND RELIEF SOUGHT

65. The Claimant submits that: *(i)* ***The Respondent failed to accord full protection and security to the Claimant's property in Albania;*** *(ii)* ***The Respondent failed to ensure the Claimant fair and equitable treatment;*** *(iii)* ***Albania failed to honour the obligation to pay the Claimant compensation for its losses;*** *(iv)* ***The Claimant is entitled to monetary recovery as a result of these failures of compliance with the BIT.***

66. The Claimant respectfully requests an award for the payment of outstanding damages deriving directly from the Respondent's actions aiming at the deprivation of the Claimant's investments in Albania as follows:

In respect to pecuniary damages the Claimant seeks compensation equal to its Subsidiary's approved and paid nominal value of its share capital of **Lek 1.069.680.000** corresponding approximately to **USD 11.000.000.**

More specifically, the Claimant's Subsidiary has an approved and fully paid share capital with nominal value of **Lek 1.069.680.000,00** corresponding approximately to **USD 11.000.000** that includes initial share capital of **Lek 878.000.000** corresponding

approximately to **USD 9.000.000** and approved and fully paid share capital increase of **Lek 192.000.000** corresponding approximately to **USD 2.000.000**[54].

It is noted that from the abovementioned direct investment of **USD 11.000.000** in the Claimant's Subsidiary share capital, the Claimant expected – as it happens to be the norm in every single investment taking place worldwide – to realize a positive (on average), annual return in the form of dividends that, given the various risks undertaken by the Claimant, would fully cover at least the nominal value of its investment in present value terms.

Furthermore, up to December 31, 2010, the Claimant's Subsidiary had recorded accumulated losses that exceeded **Lek 475.500.000** corresponding approximately to **USD 4.790.000**, attributed amongst others to country specific anomalies and irregularities governing the local fuel trading industry induced by the Albanian State . Given the progress that has taken place during the last two years with respect to the abovementioned anomalies, the Claimant was expecting to recover the accumulated losses of its investment in the forthcoming years, an expectation that will never realize, following the Respondent's actions.

In addition the Claimant's subsidiary has on this date outstanding loans of **Lek 228,804,000.00,** corresponding approximately to **USD 2,300.000** as working capital, for which personal guarantees by the Claimant's shareholders have been provided for and which will need to be fully paid in the event that the Claimant's Subsidiary is forced to terminate its activities in the Albanian market.

In respect to non-pecuniary damages the Claimant seeks compensation equal to **Lek 487.300.000** corresponding approximately to **USD 5.000.000.**

More specifically, in respect to non-pecuniary damages, despite the fact that investment treaties primarily aim at protecting property and economic values, they do not exclude, as such, that a party may, in exceptional circumstances, ask for compensation for moral damages. It is generally accepted in most legal systems that

[54] **Exhibit 9**

moral damages may also be recovered besides pure economic damages. It is also generally recognized that a juridical entity may be awarded moral damages, including loss of reputation.

The Claimant states that it has suffered severe moral damages as a result of the Respondent's breach of its obligations under the BIT and more specifically due to the fact that the Claimant has suffered significant injury to its credit, reputation and prestige. The Respondent's prejudice was substantial since it affected the Claimant's position in the Albanian market, diminished its ability to make profitable investments in the local market and overall continue its operation under a regular and competitive market. The Respondent's actions are malicious and are therefore constitutive of a fault-based liability. Therefore, the Respondent shall be liable to reparation for the injury suffered by the Claimant.

The quantified amount, representing less than one third of the Claimant's claims in the present arbitration, is in harmony with ICSID practise.

67. In respect to ancillary claims, the Claimant seeks that the relief awarded to him by the Tribunal for all above mentioned damages, includes interest as well as compound interest since in its view that is indispensable in order to ensure full compensation for the damage suffered by the actions of the Albanian State. More over, in the Claimant's view dies a quo should be considered commencing from July 1st, 2009 when CM decision 486/25.7.2007 "On the interruption of the processing activities for ships transporting oil, gas and their by-products in Durres and Shengjiin Ports" actually entered into force in respect to Durres Port, which in the Claimant's view amounts to the undisputed deprivation of its investment in Albania.

Furthermore, the Claimant seeks to be awarded a post award (moratory) interest form the day of the award until the day of actual payment of the sum awarded. The rate of all above interest claimed should be decided on the basis of generally prevailing rates of interest.

68. Claimant respectfully requests an Award pursuant to Articles 48 and 61 of ICSID Convention, directing the Respondent to bear all costs of these Arbitration proceedings, including payments of reasonable legal fees of the Claimant.

69. Recapitalizing, the Claimant respectfully seeks to be awarded pecuniary and non-pecuniary damages regarding:

i. Direct losses equal to the nominal value of its Subsidiary's approved and paid share capital of **Lek 1.069.680.000,00** corresponding approximately to **USD 11.000.000.**

ii. Loss of profits of **Lek 475.500.000** corresponding approximately to **USD 4.790.000**, equal to its Subsidiary's recorded accumulated losses that are attributed to country specific anomalies and irregularities governing the local fuel trading industry induced by the Albanian State.

iii. Lost working capital of **Lek 228,804,000.00,** corresponding approximately to **USD 2,300.000** which will need to be fully paid in the event that the Claimant's Subsidiary will be forced to terminate its activities in the Albanian market.

iv. Non – pecuniary damages equal to **Lek 487.300.000** corresponding approximately to **USD 5.000.000.**

The Claimant therefore, requests the payment on behalf of the Respondent of a total of **Lek 2.275.300.000** corresponding approximately to **USD 23.090.000** as well as all costs of these Arbitration proceedings, including payments of reasonable legal fees of the Claimant.

E. THE RELEVANT AGREEMENT

70. The Bilateral Investment Treaty (Albania-Greece BIT) for the Encouragement and Protection of Investments concluded between the Respondent and the Greek Government, (whose national is the Claimant), is the relevant agreement for the purposes of this arbitration as required by the applicable regulations and rules of ICSID

F. PARTICULARS CONCERNING THE NUMBER OF ARBITRATORS

71. The Claimant proposes that three (3) arbitrators be appointed to decide on the dispute.

G. COMMENTS AS TO PLACE OF ARBITRATION, LANGUAGE AND RULES OF THE APPLICABLE LAW

72. The Claimant in compliance with ICSID Regulations and Rules proposes that the proceedings be held in the premises of the World Bank in Paris.

73. The Claimant requests that the Tribunal resolve this dispute in accordance with the BIT and the generally acknowledged rules and principles of international law.

74. Claimant respectfully requests the arbitration hearings to be governed or administered by the applicable rules of Albanian law for matters not covered by ICSID Rules.

75. The Claimant hereby requests that the English language be the language of these arbitration proceedings in accordance to ICSID Regulations and Rules.

Athens, July 8, 2011

For and on Behalf of the Claimant

The attorney at law dully authorized for the submittal of the present Request

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