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30 June 2015

VIAC Case No. SCH-5317

Respondent's comments re Procedural Order No. 48, count 9

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In the Arbitration Proceedings of

Debt International Advisory Ltd.	Njësia Bashkiake No. 5, Rruga "Irfan Tomini", Pallati No.3, Shkalla 2, Ap. 18 Tirana, Albania
	- Claimant -
allegedly represented by:	Dr. Wulf Gordian Hauser and Mag. Peter Blaschke Hauser Partners Rechtsanwälte – Attorneys at Law P.C. Seilerstätte 18-20 A-1010 Vienna Austria

against

Operatori i Shpërndarjes së Energjisë Elektrike Sh.a	Rruga "Andon Zako Cajupi", Pallati Conad, Kati i 3, Tirana, Albania
	- Respondent -
represented by:	Clifford Chance Tim Schreiber and Oliver Seyd Theresienstraße 4 - 6 80333 Munich

Respondent comments on Procedural Order No. 48, count 9 and submits further evidence for the massive illegality in this case in support of its move to obtain security for costs:

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A.
Respondent's comments on Procedural Order No. 48, count 9

I.
Outline and result

1649 Respondent understands from Procedural Order No. 48, count 9, that the Arbitral Tribunal considers to order the interim measure of security for costs and in that light intends to balance

- Respondent's prejudice if the arbitration continues and if later it turns out that it should have been terminated since 3 December 2014, with
- Claimant's prejudice if the arbitration is terminated and if later it turns out that there was no reason to terminate it now.

1650 In the following, Respondent will demonstrate that in any possible scenario

- Respondent suffers and will suffer considerable prejudice;
- Claimant suffers hardly any prejudice; so that
- Respondent's interest to receive cost security by far outweighs Claimant's/Mr. Ismailaj's interest not to provide security for costs.

1651 Respondent requires security for costs as Claimant is not a solvent debtor for any kind of cost reimbursement nor can anyone reasonably assume that BVI-hid Claimant (steered by Mr. Ismailaj) would – in view of the various

fraudulent actions committed already – honour any cost order to Respondent's benefit. In detail:

II.

Respondent suffers considerable prejudice from continuation of proceedings despite their valid termination

1. Respondent suffers prejudice in any possible continuation scenario

1652 According to Art. 25 (b) VIAC-Rules, the conclusion of a settlement terminates the proceedings *ipso jure* without any further action required from the Arbitral Tribunal. They are in any event to be terminated by an order of the Tribunal pursuant to Article 25 (c) (aa) and/or (bb) of the Vienna Rules. Therefore, due to the effective termination of the arbitration, Respondent suffered considerable prejudice from the continuation of the proceedings after its request for termination on 12 December 2014 as it incurred significant costs to defend the Settlement against Mr. Ismailaj's fraudulent attempts to reverse the Claimant's sole director's decision to stop these fraudulent arbitration proceedings. Should the arbitration continue, Respondent will further suffer substantial prejudice.

1653 Respondent's damage has exclusively been triggered by Mr. Ismailaj's and Hauser Partners' unfounded challenges against the Parties' Settlement Agreement. These must be attributed to Claimant under both the Arbitral Tribunal's assumption that Hauser Partners are still representing the Claimant and the Respondent's assumption that it would have been Claimant's duty to effectively ban Mr. Ismailaj and Hauser Partners from obstructing the termination of the arbitration proceedings.

1654 Respondent's will incur further prejudice irrespective of whether Mr. Ismailaj prevails in the BVI court proceedings or not: If the BVI court finally dismisses Mr. Ismailaj's action, the continuation of the arbitration proceedings after the Settlement will have been unjustifed in any event. Respondent would then have suffered prejudice from the additional costs incurred since its request to terminate the arbitration of 12 December 2014.

1655 Even if Mr. Ismailaj eventually succeeds with his ill-founded actions on the BVI (for which it would suffice that Ms. Gaskin Gain simply decided not to pursue the defence anymore), the termination of the arbitration proceedings would not be in question: Respondent would in this case also have suffered prejudice from the additional costs incurred since its request to terminate the arbitration of 12 December 2014. That is because the Arbitral Tribunal would then have to consider the several other reasons why the termination of the arbitration is effective irrespective of the outcome of the BVI proceedings. The outcome of the BVI proceedings is irrelevant for this arbitration because:

- The Tribunal is not bound by a BVI court decision and has to independently decide on Ms. Gaskin Gain's authority to act on behalf of the Claimant on basis of the presented facts;
- Mr. Ismailaj and Hauser Partners – despite several demands of the Arbitral Tribunal – failed to provide conclusive evidence denying Ms. Gaskin Gain's authority to act on behalf of the Claimant;
- Ms. Gaskin Gain was not effectively called off as Claimant's director;
- Respondent could rely on the Certificate of Incumbency identifying Ms. Gaskin Gain as Claimant's sole director and on the National Commercial Register entry confirming Ms. Gaskin Gain as Claimant's director on 1 December 2014;
- Mr. Ismailaj and Hauser Partners did not establish bad faith on behalf of Respondent;
- Ms. Gaskin Gain was also acting on the basis of a valid Power of Attorney when signing the Settlement Agreement and terminating the arbitration proceedings. Mr. Ismailaj's allegation of a withdrawal of that Power of Attorney has meanwhile been proven wrong and fraudulent, see below.

1656 Hence, also in this scenario, the discussions about the termination of the arbitration proceedings were not warranted by the events in early December 2014.

2. Mr. Ismailaj's/Hauser Partners' arguments against Respondent's prejudice are to be rejected

a) Prejudice despite "stay" of proceedings

1657 Mr. Ismailaj's and Hauser Partners' argument that a "stay" of proceedings does not cause costs (so that a security for costs is not warranted) is to be rejected. It is of course not the period of an actual stay of proceedings that causes considerable costs, but rather the dispute about the effective termination of the proceedings (the "termination dispute") which has been causing substantial costs for 6 months now. It will, with or without a stay of the proceedings, cause further substantial costs although the arbitration proceedings should have been terminated a long time ago. This is the basis for Respondent's request for security for costs.

b) Respondent did not "waive" claims for compensation of costs triggered by challenge of Settlement

1658 Mr. Ismailaj and Hauser Partners further argue that Respondent "waived" all cost claims. By letter of 29 December 2014, Respondent only made a conditional withdrawal of cost claims in this arbitration. Respondent's compensation claims were only waived under the procedural condition that the termination is ordered immediately or at least within a reasonably short timeframe. Respondent did not waive any claims for the compensation of costs triggered by an unfounded challenge of the Settlement causing prejudice to Respondent up to an amount of several hundred thousand Euros.

1659 Respondent's cost compensation claims are likewise not waived by the waiver clause in the Settlement Agreement. Respondent's compensation claim is not a "*future*" claim in terms of clause 3 of the Settlement Agreement. When concluding the Settlement Agreement, Claimant and Respondent explicitly considered the arbitration proceedings to be terminated immediately. Respondent's prejudice suffered by the endless continuation of the proceedings in disregard of the Settlement was clearly not anticipated by the Parties when the Settlement Agreement was concluded.

3. Amount of prejudice suffered by Respondent

1660 As of 3 December 2014 to date, due to Mr. Ismailaj's/Hauser Partners' costly moves (incorrect pleadings, deceptive challenges with regard to the Settlement Agreement and Ms. Gaskin Gain's Power of Attorney, submission of manipulated documents on multiple occasions, and continued conspiracy concerning the DIA/DAI deceit as documented in Hauser Partners' letter to Mr. Ismailaj from 2 September 2013, Exhibit R 264), Respondent had to obtain legal advice costing approximately EUR 350,000 to defend the Settlement and fight the fraudulent challenges.

1661 With regard to the prejudice still to be expected, Respondent can only estimate. Bearing in mind the possible continuation scenarios (main proceedings and possible appeal proceedings on the BVI, witnesses, forensic investigations of at least Mr. Ismailaj's "revocation documents") and Mr. Ismailaj's/Hauser Partners' previous conduct in this arbitration, Respondent believes that additional costs of up to an amount of EUR 500,000 could accrue.

1662 Hence, Respondent has a security interest of up to EUR 850,000 just for the active "termination dispute".

III.
Claimant hardly suffers any prejudice (in any possible continuation scenario)

1663 In contrast to Respondent, Claimant hardly suffers any prejudice if it turns out that the request for termination of the arbitration made in 2014 was invalid and that the arbitration was terminated at this stage although it should have continued.

1664 First of all, if the Arbitral Tribunal ordered security for costs and Claimant and/or Mr. Ismailaj complied with such order, Claimant would suffer no prejudice at all. The arbitration proceedings would not be terminated if – theoretically – it later turned out that Mr. Ismailaj was right in challenging the Settlement. The security for costs would be returned, and Respondent would be ordered to reimburse to Claimant the costs of the security for costs. Respondent is an active and sizeable company with a management that has already shown

that it complies with significant "cost orders" of this Tribunal (cf. the Partial Award). No prejudice would occur.

1665 If the Arbitral Tribunal ordered security for costs and the Claimant and/or Mr. Ismailaj refused to provide this security for costs, solely Claimant and/or Mr. Ismailaj would be responsible for the damage possibly resulting from their conduct including the termination of this arbitration which would be more than warranted if a security-for-costs order were to be disregarded. The interests of a party that does not comply with orders of the Tribunal must not be balanced against the interests of a party rightfully aiming for security for costs. For these reasons, Respondent respectfully submits that the Tribunal's (possible) approach in Procedural Order No. 48, count 9 to balance Respondent's prejudice "in compliance with orders" with Claimant's prejudice "after non-compliance with the Arbitral Tribunal's orders" would have to be reconsidered.

1666 Even if the Tribunal decided to analyse the situation of a non-complying Claimant (and the resulting consequence of the termination of this arbitration), the Claimant would suffer no prejudice: Claimant's main "claims" would not be decided by the Arbitral Tribunal and could be raised again in a new arbitration. The costs Claimant may believe to have spent in vain in this arbitration could be recovered in a new arbitration at least under general rules for (i) payment default under the Debt Collection Agreements and (ii) malpractice with regard to the Settlement. Respondent is financially able to settle such claims, and it has also shown in connection with the Partial Award that it respects such cost orders – a quality Claimant would have already failed to adhere to in this scenario which is based on Claimant's disregard of the Tribunal's order for security for costs.

1667 Hence, Claimant is not facing any substantial prejudice if the Tribunal orders it to provide security for costs.

IV.
Balancing Respondent's interest to obtain security for costs with Claimant's interest not to provide any security

1668 In light of the above, Respondent's interest to obtain cost security clearly prevails over Claimant's interest not to provide security for costs. The current

state of the proceedings gives various grounds to order security for costs to Respondent's benefit.

1. Respondent's prospect to fully fail with cost compensation vs. Claimant's interest not to provide cost security

1669 Balancing the Respondent's interest to obtain security for costs (and the termination theoretically turning out to be ineffective later) with the Claimant's interest not to provide security for costs (and the termination turning out to be effective later), Respondent's interests clearly outweigh Claimant's interests:

1670 Without security for costs, Respondent has no recognisable prospects to recover any of the prejudice suffered from Claimant after the formal termination of this arbitration. It appeared throughout the arbitration that – despite Respondent's payments of an aggregate of more than EUR 4.563 million and aggregate operating costs of Claimant of below EUR 1 million – Claimant is practically insolvent and relies on third-party funding at least since 2014. Any third-party funding will obviously not occur in Respondent's favour. Respondent therefore will highly likely suffer a prejudice of EUR 850,000 or even more.

1671 Claimant, however, will hardly suffer any prejudice from an order for security for costs. As explained above, Claimant will not suffer "prejudice" as all costs would be recoverable from a solvent and honest Respondent if it turned out that the Respondent's request for termination in December 2014 was unfounded.

1672 Even if balancing the Respondent's possible prejudice from not obtaining security for costs with Claimant's prejudice "after non-compliance with the Arbitral Tribunal's orders" and therefore termination of the arbitration proceedings, Respondent's interest still outweighs Claimant's interest:

2. Extremely high likelihood of valid request for termination of arbitration

1673 The Arbitral Tribunal can in particular not ignore the likelihood of a certain outcome in the case at hand. Based on a reasonably objective analysis of the current state of the arbitration, there is an extremely high likelihood that the arbitration is terminated *ipso jure* as of 3 December 2014. In addition, the

Arbitral Tribunal needs to take into consideration that Mr. Ismailaj/Hauser Partners are continuously trying to mislead the Arbitral Tribunal by presenting manipulated evidence, most recently through the forged cancellation notice of Ms. Gaskin Gain's Power of Attorney (Exhibit C 324), Claimant's protocol (Exhibit C 326), and an entirely wrong witness statement by Ms. Shahini. Analyzing the current state of the arbitral proceedings, there is an extremely low probability that the arbitration was not terminated since 3 December 2014.

a) Manifold objective evidence supports Respondent's position

1674 The outcome of the BVI Court Proceedings is irrelevant as Mr. Ismailaj/Hauser Partners are precluded from arguing that Ms. Gaskin Gain was not Claimant's director on 3 December 2014. Despite the various clear and unequivocal cut-off dates set by the Arbitral Tribunal, Mr. Ismailaj/Hauser Partners expressly refused until today to provide compelling or at least conclusive evidence with regard to their allegations. Besides a blackened sheet of paper they did not submit the slightest modicum of evidence which could reasonably prove Ms. Gaskin Gain's removal as Claimant's director. The interim relief granted to Mr. Ismailaj was purely based on Mr. Ismailaj's (unverified and incorrect) allegations and without any oral hearing on the merits so far.

1675 Even if Mr. Ismailaj obtained a decision in the BVI Court Proceedings stating that Ms. Gaskin Gain was not entitled to act as Claimant's director on 3 December 2014, such a decision would still not prove the invalidity of the Settlement Agreement. Regardless of whether Ms. Gaskin Gain had been effectively removed from office on 5 November 2014, Respondent would still have acted in good faith and could rely on the National Commercial Register and the Certificate of Incumbency confirming Ms. Gaskin Gain's directorship when concluding the Settlement Agreement on 3 December 2014.

1676 Finally, even if Mr. Ismailaj/Hauser Partners (despite their complete failure to provide any compelling evidence in this regard) were able to demonstrate Respondent's bad faith with regard to Ms. Gaskin Gain's directorship, Respondent could still rely on the Power of Attorney granted to Ms. Gaskin Gain which obviously was not revoked. Instead, the witness statement given by Ms. Shahini has been revoked, *cf. infra.*

1677 Hence, Respondent's request for termination would only have been invalid in a scenario where:

- Mr. Ismailaj/Hauser Partners had presented compelling evidence with regard to Ms. Gaskin Gain's dismissal from office in this arbitration (which they did not and are now precluded to do so – instead Respondent can show that Mr. Ismailaj's pleading is inconclusive), and
- the BVI-Court decided that Ms. Gaskin Gain was not entitled to act as Claimant's director on 3 December 2014 (which it has not), and
- Mr. Ismailaj/Hauser Partners demonstrated Respondent's bad faith when concluding the Settlement Agreement on 3 December 2014 (which they have not even after more than 6 months time), and
- Mr. Ismailaj/Hauser Partners demonstrated that the Power of Attorney granted to Ms. Gaskin was revoked before 3 December 2014 (for which they have now lost their manipulated evidence).

1678 Bearing in mind Mr. Ismailaj's and Hauser Partners' burden of proof and the facts presented in this arbitration in the last half year, there is no basis whatsoever to reasonably plead that Respondent's request for termination in December could be unfounded.

b) Mr. Ismailaj's history of lies, fraud, and forgery supports Respondent's position as to security for costs

1679 In addition, Mr. Ismailaj has repeatedly presented manipulated documents and given false statements in the arbitration proceedings (e.g. manipulated e-mail of 8 December 2010 [Exhibits C 6, C 6a]; false statements about Claimant's true shareholders [Exhibit R 257], and the deletion of his inbox to cover the manipulation of Exhibts C 6, C 6a) thereby forfeiting any credibility in these proceedings.

1680 Today, the Tribunal is requested to finally start sanctioning Mr. Ismailaj's conduct who tried to mislead the Arbitral Tribunal by presenting a backdated cancellation notice regarding Ms. Gaskin Gain's Power of Attorney (Exhibit C 324), a manipulated protocol (Exhibit C 326), and who pushed former employees to give false statements within this arbitration (Exhibit CWS 16). In detail:

aa) Mr. Ismailaj's and Hauser Partners' wrong pleadings regarding Ms. Gaskin Gain's Power of Attorney

1681 In their submission of 10 April 2015 (count. 2.3.3., p. 19) Hauser Partners pleaded that Mr. Ismailaj revoked Ms. Gaskin Gain's Power of Attorney by an alleged cancellation notice which was personally handed over *"on or about 30 January 2012"*.

> "(...) The Power of Attorney of 3 October 2011 has already been revoked by a letter dated 30 January 2012 by the person who has issued the PoA of 3 October 2011, namely Mr. Ismailaj. The respective letter is hereby submitted. [...] The **document has been handed over personally by Mr. Ismailaj to Ms. Gaskin Gain on or about 30 January 2012**. This is also evidenced by the Protocol Number on the letter [...]. Claimant hereby submits an **extract from Claimant's Protocol, showing that the letter has been signed and registered on 30 January 2012** (...)". [emphasis added]

1682 Mr. Ismailaj explicitly confirmed the alleged cancelation in his Witness Statement (CWS-15, count 18) pretending that:

> "(...) [i]n any event, this Power of Attorney was revoked by me in writing by a letter dated 30 January 2012 (**Exhibit ./C-324**), which was handed over personally by me to Ms. Gaskin Gain on or about 30 January 2012 (...)".

bb) Mr. Ismailaj instigated Ms. Shahini to give false testimony

1683 Contrary to Mr. Ismailaj's statements, the alleged revocation letter was neither produced on 30 January 2012 nor was it handed over to Ms. Gaskin Gain "*on or about 30 January 2012*". As Respondent already suspected, "*the cancellation notice has been prepared after Ms. Gaskin Gain's Power of Attorney was submitted in this arbitration*" (Respondent's submission of 20 April 2015, count 1585 ff.). The cancellation notice has been fabricated by Mr. Ismailaj in March/April 2015, years after the (backdated) date of 30 January 2012. Hauser Partners sent a witness statement to Ms. Shahini drafted for her

on 9 April 2015, one day before the Exhibit CWS-16 was filed in this arbitration.

1684 All this has been confirmed by Ms. Marilda Shahini in a recent witness statement given to the Albanian Special Police for Organized and Financial Crime:

> "(...) **22. Question:** Have you ever seen the letter of DIA, named C-324, with no. 195/1 Prot., Dated 30 January 2012, addressed to Rebecca Gaskin Gain, with the description: Subject: Notice, signed by Kastriot Ismailaj as administrator of DIA? If yes, when has this letter been drafted, and where was it registered in the protocol from you? When has this letter been registered in the book of DIA protocol and in which of the books? Who has made the registration of this letter in the book of protocol?
>
> **Answer: I received this letter [Exhibit C-324] a long time after the date that it holds.** I have received this letter **from Kastriot Ismailaj through the law firm Hauser & Partners** Vienna, in the first months of 2015, and Mr. Kastriot Ismailaj requested me to register this letter in the protocol, and I registered it with protocol number 195/1, dated 30 January 2015[1] with subject Dear Rebecca Gaskin Gain subject: Notice. Kastriot Ismailaj gave me the letter at Vojsava bar on the first floor below the former DIA offices, at Cont Urani Street, and **requested from me to register the correspondence in the protocol with the date that the letter carries**. Based on the date that the letter contained, I registered it in the protocol with another number with fraction.
>
> (...) **24. Question**: Have you seen personally the citizen Mr. Kastriot Ismailaj to hand over Ms. Rebecca Gaskin Gain the document of DIA named C-324, with no. 195/1 Prot., Dated 30 January 2012?
>
> **Answer:** This document has been **made much later, at the beginning of 2015**, after he told me that he needed it only for the lawyer (...)". [emphasis added]

Evidence: Witness statement of Ms. Marilda Shahini given to the Albanian Special Police for Organized and Financial Crime on 19 June 2015 (including translation)

- Exhibit R 275 -

1685 Ms. Shahini's statement was made in front of the Albanian Special Police for Organized and Financial Crime. It confirms the strong suspicion Respondent

[1] The reference to the year "2015" appears to be a typo as Question No. 22 referred to Exhibit C 324, the letter dated 30 January 2012.

substantiated in its brief of 20 April 2015 against Mr. Ismailaj's/Hauser Partners' submissions on the alleged revocation letter.

1686 The Tribunal can safely assume that Ms. Shahini, a former or actual employee of Claimant, did not lie to the police/prosecutors about the date when the revocation letter was issued and shown to her, and about the fact that she was ordered by Mr. Ismailaj to register the revocation letter "3 years in the past", which is an admission of illegal conduct in front of the police.

cc) Mr. Ismailaj's continued (other) attempts to influence this arbitration with illegal means

1687 Since the Parties settled the dispute in December 2014, Mr. Ismailaj has been interfering in the arbitration proceedings with various (unfounded) allegations against Respondent and Ms. Gaskin Gain. Mr. Ismailaj's interference results from his personal (financial) interest in this dispute. He is one of Claimant's (at least former) shareholders trying to personally benefit from the financial outcome of the arbitration proceedings – a fact Mr. Ismailaj is still trying to conceal to the Arbitral Tribunal and to Respondent, but which is the sole explanation for his determination in this arbitration to fully expose himself to criminal liability.

1688 The Tribunal can safely assume that the alleged dismissal notice for Ms. Gaskin Gain as Claimant's director (Exhibit C 328) and the related documentation has also been manufactured "after the fact" (after 3 December 2014) and then backdated. In particular, Mr. Ismailaj has not presented the slightest evidence for correspondence with this documentation between 4 November 2014 and 3 December 2014. A revocation of the sole director is an urgent measure which is usually followed by immediate information to the commercial register / the company agent. Mr. Ismailaj could not present a single e-mail to Trident before 3 December 2014. Likewise, he could not show conclusive evidence for a formally effective invitation to the shareholder meeting.

1689 These attempts to obstruct the Parties' Settlement Agreement by all means, including major criminal offences, strongly call to order Claimant to provide security for costs to Respondent.

3. Irreparable harm almost certain for Respondent without security for costs

1690 Even without taking into consideration Mr. Ismailaj's and Hauser Partner's deceptive actions in this arbitration, all grounds to order security for costs in this arbitration are satisfied. Without security for costs, Respondent would be exposed to irreparable harm. According to *Berger,* security for costs is generally warranted in several scenarios:

> "(...) Ganz allgemein ist, wie mehrfach betont wurde, zum Erlass einer Sicherungs- oder Erhaltungsmaßnahme erforderlich, dass der Gesuchsteller Gründe vorbringt, die glaubhaft erscheinen lassen, dass die spätere Erfüllung seines Anspruchs bei nicht sofortiger Sicherung erheblich gefährdet ist. Vorbehaltlich einer sorgfältigen Prüfung des Einzelfalls sind erhebliche Gefährdungen des allfälligen, nachmaligen Anspruchs auf Parteientschädigung in folgenden Situationen vorstellbar:
>
> 1. Nachgewiesene *Zahlungsunfähigkeit* des Klägers. [...]
>
> 2. Klagen durch *Special Purpose Vehicles* [...]
>
> 3. Klagen nach erfolgter *Vermögensentäusserung* [...]".
>
> **English translation:**
>
> "[...] In general, as emphasised before, taking interim measures of protection or preservation require the party seeking the benefit of such an order to present reasons that prove prima facie that the later fulfilment of his or her claim is seriously endangered.
>
> Stand alone the necessity to judge the specific circumstances in the case at hand, a danger of irreparable harm can be generally derived from the following circumstances:
>
> 1. The claimant's evident insolvency [...]
>
> 2. Claims of *Special Purpose Vehicles* [...]
>
> 3. Claims after the wilful reallocation of the company's assets [...]."

Evidence: *Berger* in Prozesskostensicherheit (cautio iudicatum solvi) im Schiedsverfahren, ASA Bulletin 2004, Volume 22, p 4, 10 ff.

- Exhibit R 276 -

1691 All three scenarios listed by Berger are relevant in the case at hand. There are even two additional circumstances which warrant security for costs. The

dispute leading to the termination dispute belongs to Claimant's sphere and this dispute is only possible due to third-party funding in Claimant's favour:

a) Claimant has hardly any liquid funds and assets

1692 Based on Claimant's balance sheet for the year 2013, Claimant has hardly any liquidity and assets left, and it incurred significant losses in 2013:

- In the years 2012 and 2013, Claimant's **revenues were ALL 0**;
- Claimant declared for the year 2013 **a loss of ALL 163,421,888.00** which is around EUR 1,167,299.00;
- Claimant **reduced its assets by more than ALL 172,888,225.00** (around EUR 1.2 million) in 2013, in particular by withdrawing an amount of ALL 136,404,868 – almost EUR 1 million – which is entirely unwarranted in view of the lack of operations and the impeding costs / cost compensation claims in the arbitration just initiated; and
- Claimant incurred "other expenses" of ALL 144,810,368 in 2013 which is around EUR 1.034 million (probably mostly lawyer fees for this arbitration).

Evidence: Claimant's balance sheet for 2013 (including translation of pages 1 and 4)

- Exhibit R 277 -

1693 It is recognised that the danger of irreparable harm is typically prompted through

> "[...] the serious deterioration of the opponent's financial status compared to the time when the arbitration agreement was concluded (...)".

Evidence: *Berger,* Security for Costs, Trends and Developments in Swiss Arbitral Case Law – ASA Bulletin, Volume 28, p. 7 - 15)

- Exhibit R 278 -

1694 Today, Claimant's financial situation is that of an empty shell company hiding on the BVI, practically without assets, significant expenditures (just the legal

costs for this arbitration), no revenues at all, which has lost all business after Respondent effectively and lawfully terminated its contractual relationship with Claimant. On the basis of Claimant's balance sheet, it is proven that Respondent will never be able to recover any of the costs it incurred in these proceedings from Claimant without a security for costs.

b) Claimant is an SPV and its Albanian Branch has been suspended

1695 In addition, Claimant's Albanian Branch (which was the only "operating" part of Claimant) terminated any business activity in December 2014, long after the conclusion of the arbitration agreement, when its status in the National Commercial Register was designated as *"suspended"*. It is undisputed (cf. Hauser Partners' Letter of 10 April 2015 (p. 9)) that this change of Claimant's status leads to the cessation of any of Claimant's business activities in Albania. Accordingly, it is impossible that Claimant's financial situation as outlined in its balance sheet for the year 2013 will ever recover.

c) Total dissipation of Claimant's assets

1696 Mr. Ismailaj has dissipated funds amounting to the approximately EUR 4.563 million that were cashed in from Respondent. He has taken the money for himself, for "partners" and relatives, and for beneficiaries in the public sector.

1697 As shown above, Claimant has hardly any liquid funds and assets remaining, although its aggregate operating costs for staff and premises must have remained below EUR 1 million. If Claimant incurred expenditures of approx. EUR 1 million for this arbitration, Mr. Ismailaj and his "partners" must have cashed in (or wasted for other purposes than Claimant's debt collection business in Albania) an amount of at least EUR 2,5 million.

d) Respondent suffers prejudice from Claimant's internal disputes commenced by Mr. Ismailaj

1698 Respondent suffers prejudice due to Claimant's internal disputes blocking the formal termination of this arbitration. Neither the Respondent nor the Tribunal need to accept being sidelined in this arbitration by Claimant's purely internal conflicts regarding the directorship, the Power of Attorney, and the subsequent (BVI) court proceedings. It is not acceptable that arbitration proceedings are

indefinitely delayed merely because a BVI-hid Claimant is not in the position to organize its own corporate structure. Neither Respondent nor the Arbitral Tribunal has any influence on whether or how Claimant resolves its internal disputes on the BVI. It is Respondent's understanding that the BVI court – after 6 months – has not even closed the pending *interim proceedings*! This option opens the door for one arbitrant to completely derail an arbitration by simply initiating an internal dispute before the BVI courts. This conflict, however, lies solely in Claimant's sphere and must not be allowed to cause prejudice for Respondent.

1699 If the Tribunal nevertheless permitted Mr. Ismailaj/Hauser Partners to introduce Claimant's purely internal conflicts in this arbitration, Respondent needs at least to be secured for any damage that might accrue from the pertaining delay/additional costs. Irrespective of whether Ms. Gaskin Gain or Mr. Ismailaj prevails in the BVI court proceedings, it will always have been Claimant who caused unnecessary costs for Respondent in this arbitration. If Respondent is not secured now, the harm will be irreparable.

e) Third-party funding for Claimant calls for security for costs

1700 In light of Claimant's financial situation and the suspension of the Albanian Branch, Claimant relies on third-party funding to finance the costs of this arbitration proceeding. Claimant incurred in 2013 "other expenses" of more than EUR 1 million which it paid by drastically reducing its assets. At the end of 2013, Claimant's remaining assets were practically zero (see above).

Evidence: Claimant's balance sheet for 2013

- Exhibit R 277 -

1701 Taking into account Claimant's financial situation, Claimant's costs incurred for this arbitration since early 2014 must now be funded by third parties. At the date of Mr. Ismailaj's arrest, the police secured documents *inter alia* containing a (draft) notarial deed according to which Mr. Ismailaj personally undertook to guarantee for lawyer fees amounting to EUR 1,087,667.74.

Evidence: Draft notarial deed of Mr. Ismailaj in favour of Hauser Partners

- Exhibit R 279 -

1702 The fact that Claimant has to rely on third-party funding constitutes another generally-recognised reason for an arbitral tribunal to order security for costs.

> "Where a party appears to lack assets to satisfy a final costs award, but is pursuing claims in an arbitration with the funding of a third party, then a strong *prima facie* case for security for costs exists."

Evidence: *Gary B. Born*, International Commercial Arbitration, 2nd Edition 2014, Volume II, p. 2495

- Exhibit 280 -

> "Security for costs is also **one of the only remedies** for the relatively common occurrence of third-party financing of claimants, where the respondent is placed in a "lose-lose" situation [...]." [emphasis added]

Evidence: Weixia Gu, *Security for Costs in International Commercial Arbitration*, Journal of International Arbitration Vol. 22 No. 3 (2005), page 168

- Exhibit R 281 -

1703 Third-party funding was the main reason for a recent ICSID tribunal's decision to order a claimant to provide security for costs. The tribunal held:

> "Moreover, the admitted third party funding further supports the Tribunal's concern that Claimant will not comply with a costs award rendered against it, since, in the absence of security or guarantees being offered, **it is doubtful whether the third party will assume responsibility for honouring such an award**. Against this background, the Tribunal regards it as **unjustified to burden Respondent with the risk emanating from the uncertainty** as to whether or not the unknown third party will be willing to comply with a potential costs award in Respondent's favour." [emphasis added]

Evidence: *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs, dated 13 August 2014, para 83

- Exhibit R 282 -

1704 Co-arbitrator *Gavan Griffith QC* even stated that third-party funding is the main reason for an order of security for costs:

> "[I]n my view the preferred ground for making such orders here concern the third party funding issue. [...] Such a business plan for a related or professional funder is to embrace the gambler's Nirvana: Heads I win, and Tails I do not lose."

Evidence: *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs, dated 13 August 2014, Assenting reasons of Gavan Griffith, paras 11 and 13

- Exhibit R 282 -

1705 It is necessary to order Claimant to provide security for costs in order to mitigate the risks of its "hit-and-run" strategy. Respondent submits that this case of third-party funding and financial crime, with several pieces of manipulated evidence introduced, a Claimant set up as an SPV in a hide-away-jurisdiction, and documented dissipation of assets is not a suitable affair to fuel the academic discussions with a "contrast case" to *RSM Production Corporation v. Saint Lucia.*

4. Conclusion

1706 The balancing of Respondent's interest to obtain security for costs with Claimant's interest not to provide security for costs is to be decided in Respondent's favour.

V.
Respondent's views and proposals as to any security to be ordered

1707 Respondent would request the Arbitral Tribunal to order security for costs against Claimant and Mr. Ismailaj up to an amount of EUR 850,000 through cash deposit into an escrow account administered by the Chairman of the Arbitral Tribunal, or at least by bank guarantee, or by any other type of security the Arbitral Tribunal deems reasonable and immediately enforceable.

1. Purpose of security

1708 The security would have to cover Respondent's cost expenses in this arbitration incurred after the notification of the Settlement Agreement on 12 December 2014. This restriction to the costs for "the termination dispute" only would no longer apply if the Arbitral Tribunal considered continuing the proceedings on the merits. In this case, the Respondent would have to file a request covering all past and future costs (to be) incurred in this arbitration.

2. Amount of security

1709 As of 12 December 2014 to date, due to Mr. Ismailaj's/Hauser Partners' highly costly guerrilla tactics, legal services rendered to Respondent amount to approx. EUR 350,000. Respondent's total costs for the "termination dispute" might increase to more than EUR 850,000 until this dispute (and the BVI court proceedings) is finally terminated.

3. Type of security

1710 Respondent would propose to order Claimant / Mr. Ismailaj to provide security for Respondent's reasonable legal and other costs incurred in this arbitration since 12 December 2014 by:

- Preferably paying an amount of EUR 850,000 in cash (deposit) into an escrow account administered by the Chairman of the Arbitral Tribunal for the purpose described above (principal motion); or, in any event, by
- providing an unconditional and irrevocable guarantee, which is unlimited in time, from an internationally recognised bank in Respondent's favour covering an amount of up to EUR 850,000 for the purpose described above; or, in any event, by
- any other amount and type of security the Arbitral Tribunal deems reasonable and immediately enforceable for the purpose described above.

1711 Such guarantee or deposit or any other security should be released and paid to Respondent upon

- joint instruction of the Parties; or
- procedural order or interim award on costs to the extent Claimant is ordered to compensate Respondent's costs; and/or
- further conditions deemed just and reasonable by the Arbitral Tribunal.

4. Security for costs to be ordered against Claimant *and* Mr. Ismailaj

1712 Respondent would request the Arbitral Tribunal to order security for costs against Claimant as well as against Mr. Ismailaj personally. Due to Mr. Ismailaj's manifest personal involvement in this dispute, the Tribunal has jurisdiction to (also) issue such an order against Mr. Ismailaj.

a) Security for costs to be ordered against Claimant

1713 The Tribunal is competent to order security for costs against Claimant pursuant to Article 22 para 1 of Vienna Rules:

> "Unless otherwise agreed by the parties, the sole arbitrator (arbitral tribunal) may, at the request of a party order any party, after hearing such party, to take **such interim measure of protection as the sole arbitrator (arbitral tribunal) may consider necessary** in respect of the subject matter of the dispute, as otherwise the enforcement of the claim would be frustrated or considerably impeded or **there is a danger of irreparable harm**. The sole arbitrator (arbitral tribunal) may require any party to provide appropriate security in connection with such measure. The parties are obliged to comply with such orders, whether or not they are enforceable by State courts." [emphasis added]

1714 Aricle 22 para 1 of the Vienna Rules is also applicable in case of an order for security for costs. Commentators state:

> "A particular form of interim relief is security for costs."

Evidence: *Schwarz/Konrad*, The Vienna Rules: A Commentary on International Arbitration in Austria, 2009, section 22-101

- Exhibit R 283 -

1715 The Tribunal therefore enjoys the power under the Vienna Rules to order an interim measure of protection awarding security for costs if it considers the security necessary and if there is a danger of irreparable harm. Respondent already demonstrated that irreparable harm is certain to Respondent if it is referred to a cost compensation claim against Claimant without Claimant having deposited a security.

b) Security for costs to be ordered against Mr. Ismailaj

aa) Mr. Ismailaj bound as Claimant's (former) director and as sole driver for continuation of proceedings

1716 Respondent respectfully repeats its opposition against Mr. Ismailaj making submissions in this arbitration. It is solely due to his unsubstantiated and false allegations concerning Ms. Gaskin Gain's dismissal that the arbitral proceedings are still ongoing despite the termination *ipso jure* on 3 December 2014.

1717 Regardless of Mr. Ismailaj's position as a third party, however, the Arbitral Tribunal is entitled to also order interim measures against him personally: Mr. Ismailaj's significant involvement while negotiating and executing the Debt Collection Agreements as well as his constant interference with the arbitration proceedings demonstrates his tacit consent to be subject to the Arbitral Tribunal's jurisdiction even though he is formally a third party (non-signatory) to the arbitration agreement.

1718 Several arbitral tribunals have recognized that through constant interference with the subject matter in dispute and the arbitration proceedings, a non-signatory party tacitly demonstrates its intent to become a party to the arbitration agreement.

> "[I]t is not only by formal execution of an agreement, as a specifically identified contractual party, that an entity can become a party to that agreement. Under most developed legal systems, an entity may become a party to a contract, including an arbitration agreement, impliedly – typically, either by conduct or non-explicit declarations, as well as by express agreement or formal execution of an agreement"

Evidence: *Gary B. Born*, International Commercial Arbitration, 2nd edition, 2014, p. 1427.

- Exhibit R 284 -

1719 The Swiss Federal Court expressly approved an ICC-Ruling which extended the arbitration agreement to a non-signatory party based on the predominant involvement of the third party in the conclusion and execution of the contract subject to arbitration, thereby proving the third party's consent.

"[...] le fondement juridique de l'extension de la clause compromissoire à un tiers non-signataire réside dans l'usage du commerce international, lesquelles font de la participation du non-signataire à la conclusion ou à l'exécution du contrat le critère déterminant pour décider de l'extension de la clause compromissoire à cette partie (...)".

English translation:

"[...] the justification to extend the arbitration clause to a third (non – signatory) party can be found within the international commercial customs, which denominate the third party's participation during the conclusion and execution of the contract to be the prevailing criterion to extend an arbitration agreement to this Party (...)".

Evidence: X. S.A.L., Y. S.A.L. et A. v. Z. Sàrl, Swiss Federal Court, 1st Civil Chamber 4P.115/2003, 16 October 2003, ASA Bulletin, Volume 22, 2004, pp. 364-389 (English translation included).

- Exhibit R 285 -

1720 Similarly the Munich Higher Regional Court ruled:

"(...) Die Geschäftsführer sind folglich unmittelbar in die Vereinbarung eingebunden, deren Zustandekommen sie als Organe der juristischen Person veranlaßt haben. Aufgrund ihrer Organstellung wirkt die Schiedsvereinbarung auch für sie, denen die gesamten Interessen der Gesellschaft anvertraut sind und durch die sie ausschließlich handelten [...] Auch wenn sie persönlich neben der juristischen Person selbständig in Anspruch genommen werden, können sie nicht als sonstige Dritte angesehen werden, die nicht von der Schiedsvereinbarung betroffen sind (...)".

English translation:

Thus, the directors are directly involved in an agreement the conclusion of which they have arranged as the legal representatives of the legal person. It is their position as legal representatives that justify the extension of the arbitration agreement to them. They are entrusted with the entire interests of the company and acted exclusively through it. [...] Even though claims arise against them personally besides any claims against the company, they cannot be compared to any other third party,which is in no way concerned by the arbitration agreement.

Evidence: OLG München, 13. 2. 1997 - 29 U 4891–96, NJW-RR 1998, p. 198, 199

- Exhibit R 286 -

1721 The Higher Regional Court also relied on the third party's position as a director possessing a preeminent role in the contract subject to arbitration.

1722 This doctrine, derived from the Dow-Chemical Doctrine, has also been confirmed by the High Court in Paris, which stated that arbitral tribunals can extend their jurisdiction to a third party that demonstrates an outstanding position during the negotiation and execution of the contract or if the third party treats the pending lawsuit as its own and thereby demonstrates its personal implication.

> "[...] [le tiers] continue de s'impliquer dans l'exécution du contrat et se comporte comme si le contrat litigieux était le sien, [...] confirme que la création du [signataire] était purement formelle et qu'il était la véritable partie à l'opération économique (...)".
>
> English translation:
>
> "[...] [the third party] continuing to intervene in the contract's execution and behaving as if the disputed contract, subject matter to the lawsuit, was its own [...] confirms that the establishment of the [signatory] [as a separate legal entity] was purely formal and that [the third party] was the real party to the economic activity (...)".

Evidence: Cour d'appel de Paris, 17 February 2011, Revue de l'arbitrage, 2011, p. 286

- Exhibit R 287 -

1723 Mr. Ismailaj meets all of these requirements. It is solely due to his continued interference with the arbitration and his unfounded allegations that the arbitration is not yet terminated. Mr. Ismailaj obviously treats the proceedings as a personal lawsuit by using all (legal and illegal) means to jeopardise the overdue termination of proceedings. It is Hauser Partners themselves who outlined Mr. Ismailaj's predominant role in Claimant's organisation when explaining the non-conformity with a cut-off-date ordered by the arbitral tribunal to present evidence for Ms Gaskin Gain's alleged dismissal (cf. Submission of 23 March 2015, p. 14 ff). Once again in their letter of 5 June 2015, Hauser Partners refer to the inability to comment on any of Respondent's remarks without being able to communicate with Mr. Ismailaj.

1724 How deeply Mr. Ismailaj is involved in this matter is also reflected by the fact that he actively manipulated evidence. In fact, the arbitration is currently not held between Claimant and Respondent, but rather between Mr. Ismailaj personally and Respondent.

1725 Mr. Ismailaj is Claimant's former director who negotiated and concluded the Debt Collection Agreements. He also manifestly intervened with Respondent's Supervisory Council prior to the signing of the Debt Collection Agreements. Through this manifest interference he demonstrated his desire and ability to personally interact in the debt collection relationship and the arbitration.

1726 Mr. Ismailaj is one of Claimant's (former or still current) shareholders with a predominant financial interest in the outcome of the arbitration. Claimant was set up for the 75% personal benefit of Mr. Ismailaj and the 25% benefit of Mr. Laci.

1727 Claimant was planned as Mr. Ismailaj's tool to escape personal liability, including cost compensation claims, but at the same time to take its funds "à volonté". Within just two years time, Mr. Ismailaj's transfers and personal withdrawals have emptied Claimant entirely. The result of such a "self-service-scheme" is the personal liability of the shareholder-director.

bb) Mr. Ismailaj bound as Claimant's litigation costs sponsor (third-party funding)

1728 Mr. Ismailaj can also be addressed by an order for security for costs given his position as Claimant's litigation costs sponsor. As the proceedings revealed, Claimant has not been able to finance the litigation costs for these proceedings because Mr. Ismailaj has dissipated the approximately EUR 4.563 million cashed in from Respondent. Within just two years time, he is reported to have taken the money for himself, for "partners" and relatives, and for "paying back" his connections in Albanian politics. Hauser Partners as Claimant's (alleged) Counsel appear now to be mainly financed through Mr. Ismailaj's personal guarantee for which a notarial deed was prepared (cf. Exhibit R 279). Thus, Claimant entirely relies on third-party funding to finance this arbitration.

1729 In situations of third-party funding, it is recognised that the party without need for funding can request an order for security for costs against the sponsor of the funded party. Such an order is the sole measure by which an arbitration tribunal can assure a level playing field for both parties. Mr. Ismailaj is using Claimant as an empty shell company to avoid any liability for costs within the arbitral proceedings ("Heads I win, and Tails I do not lose").

1730 A previous arbitral decision under the ICC-Rules points out that:

> "[...] the right to have [continued] access to arbitral justice can only be granted under the condition that those third parties are also ready and willing to secure the other party's reasonable costs to be incurred (...)".

Evidence: X. SARL (Lebanon) vs. Y. AG (Germany) - Decision of 4 July 2008 - ASA Bulletin 2010, Volume 1, p. 37 – 45, para 21

- Exhibit R 288 -

1731 In the case at hand, however, the arbitration funder's role is not only about funding the arbitration. The funder is at the same time the person driving this arbitration and seeking the whole or overwhelming benefit in this arbitration for himself personally, which makes the call for cost security against the funder crystal clear.

5. Consequence of failure to provide security for costs: Another termination ground

1732 Although the Vienna Rules do not explicitly set out the consequences of the failure to comply with an order for security for costs, Respondent submits that in the "termination dispute" at hand the sanction should be a Procedural Order decreeing the immediate termination of the arbitration. This would be the fourth independent ground to terminate the proceedings[2], still a very soft sanction when compared with standard international practice which provides even for a dismissal of the action with prejudice.

1733 For instance, Section 41 para 6 of the English Arbitration Act of 1996 states:

> "If a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim."

Evidence: Section 41 of the English Arbitration Act of 1996

- Exhibit R 289 -

[2] (1) Rebecca Gaskin Gain not dismissed as Claimant's director (backdating, no evidence, formal invalidity); (2) public faith in the Certificate of Incumbency and entry in the National Commercial Register; and (3) Power of Attorney by Ms. Gaskin Gain not revoked.

1734 This is also reflected in Article 25.2 of the LCIA Rules which reads:

> "[...] In the event that a claiming or counterclaiming party does not comply with any order to provide security, the Arbitral Tribunal may stay that party's claims or counterclaims or dismiss them in an award."

Evidence: Article 25 of the LCIA Rules of 1998

- Exhibit R 290 -

1735 The dismissal of the action with prejudice in case the ordered security for costs is not provided is the only effective sanction to ensure compliance with such an order. As *Weixia Gu* states:

> "In such circumstances, if a claim is dismissed for failure to provide security, it means the case is **dismissed with prejudice** and the case has been decided without any reference to the substantive merits of the claim. This consequence of punishing non-compliance with a dismissal having the effect of res judicata may seem harsh, but the other possibilities are unsatisfactory: **To dismiss the complaint without prejudice when no security for costs has been provided would be inappropriate**, since the claim could be refiled whenever the claimant deems appropriate. [...] [T]he **duty to provide security for costs is a duty owed to the other party** on the basis of the arbitration agreement. The **failure of such obligation should bear its own consequences and no benefits should be derived from wrongdoing**." [emphasis added]

Evidence: Weixia Gu, *Security for Costs in International Commercial Arbitration*, Journal of International Arbitration Vol. 22 No. 3 (2005), page 199

- Exhibit R 281 -

1736 To conclude, it is Claimant's contractual duty vis-à-vis Respondent to ensure that Respondent is not deprived of its cost compensation claim. If Claimant does not honour this duty or tries to jeopardise Respondent's claim, it must be denied the forum to further pursue its claims. This means that the termination dispute would have to be decided by decreeing the termination of this arbitration.

B.

Respondent's further comments on Mr. Ismailaj's/Hauser Partners' latest submission

1737 Hauser Partners' allegations in the submission of 5 June 2015 are "made into the blue" and baseless.

I.

Massive corruption

1738 Hauser Partners are wrong in denying corruption on page 2 of their brief of 5 June 2015. To the contrary, Respondent has meanwhile made progress in ascertaining how the corruptive scheme in the "too-good-to-be-true" debt collection- and debtor identification relationship worked. Whilst Respondent was not called to make a detailed submission on the corruptive aspects of this case, it feels compelled by Hauser Partners' provocative denial to inform the Tribunal just about the basic scheme:

1739 As evidenced by Exhibit R 238, the introduction of Mr. Ismailaj (a just-arrived-supplier's-branch director) as "METE's candidate" for a Supervisory Council position within Respondent raises eyebrows and documents Mr. Ismailaj's strong links to the former Ministry for Economy, Trade, and Energy.

1740 In November 2010, Mr. Ismailaj suddenly disclosed DIA-internally that he needed to "take some money" from Respondent. The fake debtor identification exercise was set up to create at least superficial reasons for transferring three tranches of EUR 495,000 to Claimant in late November 2010 and early December 2010. The amount slightly below EUR 500,000 was chosen to remain below the level of authority requiring Respondent's Supervisory Council approval. The Debtor Identification Report, a document without any value to Respondent, was only delivered in March 2011 four months after EUR 1.485 million were paid.

1741 Only a few days after this suspicious payment to Mr. Ismailaj's SPV (Claimant), a *miracle* happened to Respondent: The energy supervisory entity ERE, in a world of constantly increasing energy prices, ordered a *decrease* of the price at which Respondent (the energy distributor) purchased electric

energy from state-owned energy supplier KESH from 2.03 All/kWh to 1.48 All/kWh. This is a decrease of 27%!

Evidence: 1. Decision No. 95 of the Albanian Energy Regulatory Entity ERE of 15 December 2009

- Exhibit R 291 -

2. Decision No. 97 of the Albanian Energy Regulatory Entity ERE of 7 December 2010

- Exhibit R 292 -

1742 The damage caused to state-owned and -subsidised KESH by this arbitrary price decrease is estimated to be higher than EUR 30 million p.a. With the highly detrimental Debt Collection Agreements subject to this arbitration that came within this "package deal", Mr. Ismailaj and his partners tried to obtain from Respondent at least around EUR 15 million p.a. for hardly any debt collection performance (resulting from collection results of EUR 30 million p.a. and a success fee of 50%).

1743 In summer and autumn 2011, however, Mr. Ismailaj apparently quarrelled with his accomplices, perhaps in connection with the division of the funds Claimant had received from Respondent until then (EUR 4.563 million). The February Agreement was terminated by Respondent in late October 2011, and on 29 June 2012, ERE ordered a price *increase* (effective for the years 2012 through 2014) for Respondent's energy purchases at KESH to 2.2 All/kWh, which is a price increase of 48%!

Evidence: Decision No. 87 of the Albanian Energy Regulatory Entity ERE of 29 June 2012

- Exhibit R 293 -

1744 The remarkable oscillation of the energy prices and the striking coincidence of these events with the Debt Collection Agreements is reason enough to put Claimant under the strict burden to prove the lawfulness of the use of the EUR 4.563 million received from Respondent so far. Respondent had moved to "follow the money" in this arbitration in its (extended) document production requests of 29 August 2014, already. However, Respondent has meanwhile

been informed that beneath the transferees (beneficiaries) of the money DIA gained from Respondent in connection with the alleged "Debtor Identification Report" and the enormous advances on alleged (but almost entirely invented) operational costs were

- leading Albanian politicians, including at least one past Prime Minister (who has been charged with corruption before) and/or related businesses,
- a leading ERE officer and/or related businesses and/or close relatives of the officer,
- the two (at least: former) shareholders (Mr. Ismailaj and Mr. Laci) and/or close relatives and/or related businesses, and
- Hauser Partners (who were aware of the DIA/DAI deceit in September 2013 at the latest, as documented by Exhibit R 264).

1745 Respondent understands that the investigations of the Albanian prosecutors are still ongoing. Respondent will only make use of this information in the arbitral process should Mr. Ismailaj and/or his allies succeed with their attempt to continue this arbitration on the merits. This, however, would be completely unwarranted in view of the Parties' Settlement which was effectively concluded by a DIA director refusing to take part in Mr. Ismailaj's scam.

1746 Respondent hopes that the Tribunal can now recognise the "missing link" in what may emerge as one of the biggest corruption- and fraud cases in Albania. To avoid further damage and manipulations, this case is to be closed immediately due to the Parties' Settlement – if not, Respondent requires security for costs.

II.

<u>No unfair treatment of Mr. Ismailaj by Albanian state authorities</u>

1747 In view of Mr. Ismailaj's excellent connections, it does not come as a surprise that he obtained "unofficial" intelligence about Respondent's/Clifford Chance's visit to the Tirana prosecutors in October 2013. Mr. Ismailaj still has many supporters in influential positions within the Albanian State authorities, so the *lamento* that he is subject to a State's arbitrariness is not justified at all.

Regrettably, Mr. Ismailaj has failed to timely end his attempts to secure the fruits of highly illegal conduct in this arbitration.

1748 The Respondent never hijacked any Albanian Institutions *"to get rid of claims against [him] and to prevent [Mr. Ismailaj] from arguing his case before the courts of the BVI"*. Such allegations are as baseless as Mr. Ismailaj's and Hauser Partners' suspicion about Respondent hijacking Claimant to withdraw the claims in this arbitration.

1749 Furthermore, the fact that the Tirana District Court approved Mr. Ismailaj's arrest suggests that there are more than "*vague and unsubstantiated*" accusations against Mr. Ismailaj. According to Sec. 230 para 1 of the Albanian Criminal Procedural Code

> "[...] jail arrest may be ordered only when any other measure is not proper because of the special dangerousness of the offence and defendant (...)".

1750 Thus, Mr. Ismailaj's arrest is not "*strong arm tactics by the Albanian Government*", but the only adequate measure with regard to the obvious suspicion of criminal liability.

C.
Motions

1751 In view of Mr. Ismailaj's/Hauser Partners total failure to provide any conclusive evidence which could potentially justify a further continuation of the proceedings, Respondent still pursues its principal motion

> **to confirm or, in any event, to order the termination of the proceedings as requested.**

Should the Tribunal decide not to confirm (or to order) the termination of the proceedings as requested, Respondent moves

> **to be granted leave to request security for costs as proposed.**

Respectfully submitted on behalf of Respondent

Tim Schreiber Oliver Seyd