INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.

In the Proceedings Between

CEAC HOLDINGS LIMITED
(Claimant)

v

MONTENEGRO
(Respondent)

REQUEST FOR ARBITRATION

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7 March 2014

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1. Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**"), CEAC Holdings Limited ("**CEAC**", the "**Claimant**", or the "**Investor**") hereby requests the institution of an arbitration proceeding against Montenegro ("**Montenegro**," the "**State**", or the "**Government**") to the Secretary-General of the International Centre for Settlement of Investment Disputes ("**ICSID**").

I. PRELIMINARY STATEMENT

2. This dispute stems from Montenegro's unlawful interference with CEAC's investments in Montenegro. Prior to the events described below, CEAC was the majority owner of, and managed, Kombinat Aluminijuma Podgorica, A.D. ("**KAP**"), an aluminium plant located near the capital city of Podgorica, Montenegro (the "**Plant**").

3. Historically, KAP has been an industrial powerhouse of Montenegro, representing 51% of the country's exports and accounting for approximately 15% of the country's GDP. By the early 2000s, however, KAP had become buried in debt, and desperately needed foreign funds to update its obsolete facilities, to enable it to meet environmental standards, to improve the competitiveness of the state-run company, and to ensure KAP's viability going forward. This is the context in which CEAC invested substantial sums of money to modernise the Plant.

4. Unfortunately, however, CEAC's considerable financial and technological investments in KAP were repaid by hostility and interference from the Government. In particular, the Government thwarted CEAC's efforts to make the Plant profitable, caused KAP to default on its payment obligations, and thereafter initiated insolvency proceedings (in which it was the largest creditor) against KAP in order to exact control over the Plant without paying compensation to CEAC. The insolvency manager thereafter appointed a company called Montenegro Bonus, the Government's state-owned oil trader with no experience in the aluminium business, to "manage" KAP and thereby enabled the State to reap the benefit of the revenues associated with KAP's aluminium production. The Government likewise initiated

ludicrous and baseless criminal allegations against CEAC's CFO and Russian national Mr Dmitry Potrubach, to deflect attention from its own wrongdoing.

5. Collectively, the effect of the Government's actions was to deprive CEAC of the use and enjoyment of its substantial investment in KAP, without payment of any compensation.

6. In light of the foregoing, Montenegro's actions with respect to CEAC's investments in Montenegro violate the Agreement between the Republic of Cyprus and Serbia and Montenegro on the Reciprocal Promotion and Protection of Investments (the "**BIT**" or the "**Treaty**").[1]

7. In particular, Montenegro, through its own actions and omissions, and by the acts and omissions of state instrumentalities (for whom Montenegro is internationally responsible), has: (i) unlawfully expropriated CEAC's investments; (ii) failed to guarantee fair and equitable treatment and full protection and security to CEAC's investments; (iii) failed to "encourage and create stable, equitable, favourable and transparent conditions for investors of [Cyprus] to make investments in its territory"; (iv) breached its obligation to provide national and most-favoured-nation treatment including with respect to the "management, maintenance, use, enjoyment, expansion or disposal" of the CEAC's investments; and (v) failed to "guarantee . . .. free transfers of payments" related to CEAC's investments.

II. THE PARTIES

A. Claimant

8. CEAC is a company duly incorporated under the laws of Cyprus, and is headquartered at:

Dimosthenous 4
P.C. 1101
Nicosia

[1] Agreement between the Republic of Cyprus and Serbia and Montenegro on the Reciprocal Promotion and Protection of Investments **[CLA-1]**. The BIT was concluded on 21 July 2005, and entered into force on 23 December 2005.

Cyprus

9. CEAC is represented in these proceedings by King & Spalding International LLP, and has authorised the law firm to act accordingly.[2] Contact details for all communications to Claimant in relation to this matter are as follows:

King & Spalding International LLP
125 Old Broad Street
London EC2N 1AR
United Kingdom
T: +44 20 7551 7500
F: +44 20 7551 7575

Attention of:
Egishe Dzhazoyan (edzhazoyan@kslaw.com)
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Sarah Z. Vasani (svasani@kslaw.com)
Pui Yee (Lisa) Wong (lwong@kslaw.com)

B. Respondent

10. Respondent is Montenegro (formerly the Republic of Montenegro), a sovereign state and a Contracting Party to the BIT.

11. Whilst the Respondent will act in these proceedings through the authority designated by it, interim contact details for communications in relation to the matter are as follows:

Igor Lukšić
Deputy Prime Minister and Minister of Foreign Affairs
Ministry of Foreign Affairs and European Integration
Stanka Dragojevića 2
Podgorica
Montenegro
T: + 382 (0)20 246 357 / + 382 (0)20 201 530
F: + 382 (0)20 224 670
Email: kabinet@mfa.gov.me

[2] **C-17**.

III. BACKGROUND OF THE DISPUTE

12. KAP is a large aluminium smelter situated on the outskirts of Montenegro's capital, Podgorica. Historically, and by its own account, KAP has served as the industrial powerhouse of Montenegro, representing approximately 51% of the country's exports and accounting for 15% of the nation's GDP. As Montenegro's largest company, the Plant employs approximately 1,200 people, making it the country's single leading industrial employer.

13. The Plant was constructed between 1968 and 1971 under the ownership of the former state of Yugoslavia. It commenced operations in the 1970s, and increased its capacity throughout the 1980s.[3] By the early 2000s, however, KAP had become buried in debt, and desperately needed foreign investment to update it obsolete facilities and to improve the Plant's environmental standards. The Government viewed foreign investment as the only means to improve the competitiveness of the failing state-run company, and to make KAP a viable ongoing concern. As the Government's Privatization Strategy explained, "*the target of the privatisation of KAP for the Government of Montenegro is to ensure survival and long-term development of the Company*" . . . [foreign investment] "*will secure the position of KAP on international markets, improve its competitiveness and allow rehabilitation of production tool* [sic] *by introduction of new technologies and international standards of business and management*".[4] In short, by the early 2000s, KAP had become an unsuccessful state-owned company in desperate need of foreign funds and know-how.

14. In light of KAP's deteriorating competiveness and escalating debts, the Government undertook to privatise KAP through a public tender process, issuing a Public Invitation on 9 August 2003 for this purpose.[5] Rusal Holdings Limited ("**Rusal**") – CEAC's sister company — submitted an expression of interest on 13 September 2004, and was designated as a Qualified Tender Participant thereafter. As part of the tender process, Rusal was permitted to enter into negotiations with KAP's major

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3 KAP website, http://kap.me/index1.php?module=1&menu=17 **[C-1]**.

4 KAP Privatisation Strategy Presentation, at p. 7 **[C-5]**.

5 KAP SPA, Introductory Recitals **[C-7]**.

creditors (Glencore International AG, Standard Bank London Limited, and Preduzece za Proizovodnju i trgovinu – Vektra DOO) in relation to a Debt Restructuring Agreement.[6]

15. Rusal ultimately submitted a bid for KAP on 20 January 2005, and entered into negotiations with Montenegro's Tender Commission thereafter.[7] On 15 April 2005, the Tender Commission invited Rusal to enter into a share purchase agreement,[8] and the Tender Commission's recommendations were adopted by the Montenegrin Privatisation Counsel on 25 July 2005.

16. Shortly thereafter, on 27 July 2005, and based on representations made by the Government during the negotiation process, CEAC as Rusal's affiliate company entered into the Agreement for the Sale and Purchase of the shares in Kombinat Aluminijuma Podgorica, A.D. by Public Tender (the "**KAP SPA**"). Given KAP's prominence in the national economy and its intertwinement with various governmental ministries, the KAP SPA was executed between (1) the Fund for Development of the Republic of Montenegro; (2) the Republic Fund for Pension and Disparity Insurance; (3) the Bureau for Employment of the Republic of Montenegro (collectively the "**Sellers**") and (4) the Government, on the one hand; and (5) Salamon Enterprises Ltd[9] (as the "**Buyer**") and (6) Eagle Capital Group Limited (as the "**Corporate Guarantor**"),[10] on the other hand.

17. Pursuant to the KAP SPA, the Sellers transferred 6,234,072 shares representing 65.4394% of the Company in exchange for a purchase price of €48,500,000.[11] The breakdown of shares transferred by various governmental entities and corresponding purchase prices is as follows:

    17.1 the Investor paid €32,714,215 to the Fund for Development in exchange for 44.1402% of KAP's capital;

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6 *Id*.

7 *Id*.

8 *Id*.

9 Salamon Enterprises Limited changed its name to CEAC Holdings Ltd. on 1 August 2007. *See* **C-8**.

10 Eagle Capital Group Limited later changed its name to En+ Group Limited.

11 KAP SPA, at pp. 8, 10. 16. KAP's remaining minority stake, amounting to 34.5606%, was held principally by current and former KAP employees. *See* KAP SPA, Recitals at p. 2 **[C-7].**

17.2 the Investor paid €11,839,337 to the Fund for Pension and Disability Insurance in exchange for 15.977% of KAP's capital; and

17.3 the Investor paid €3,946,449 to the Employment Bureau in exchange for 5.3248% of KAP's capital.[12]

18. In addition to its initial investment of €48,500,000, the Investor undertook further commitments through its execution of the KAP SPA to invest an additional €75,000,000 pursuant to an Investment Programme in order to modernise and perform major repairs in relation to KAP's out-dated aluminium production facilities,[13] to implement social programmes in relation to KAP's employees (aimed at maintaining employment levels, providing training and improving work safety),[14] and instituting environmental programmes (including the implementation of an environmental management system, including monitoring, reporting and implementing corrective measures, controlling air pollution, modernizing mud ponds and reducing soil, water and air contaminants by improving waste disposal procedures).[15]

19. Similarly, on 17 October 2005, the Sellers sold and transferred to CEAC 32.0455% of the shares in a related entity which serves as KAP's main supplier of raw materials, Rudnici Boksita Nikšić, A.D. ("**RBN**")[16] for a purchase price of €6,000,000 (the "**RBN SPA**"), with the following breakdown:

19.1 €938,658 paid by CEAC to the Employment Bureau in exchange for 5.0133% of shares in RBN;

19.2 €2,045,194 paid to the Republic Fund for Development in exchange for 11.8776% of shares in RBN; and

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12 *Id*., at pp. 8, 10.

13 *Id*., at Annex 2.

14 *Id*., at Annex 4.

15 *Id*., at Annex 5.

16 In late 2009, Claimant purchased an additional 31.5836% of RBN's shares on the stock exchange, thus increasing its total shareholding in RBN to approximately 63.63%.

19.3 €2,816,148 paid to the Fund for Pension and Disability Insurance in exchange for 15.0408% of shares in RBN.

The RBN SPA and the KAP SPA are referred to collectively as the "**SPAs**".

20. Upon acquisition by CEAC in 2005, the Investor began to aggressively modernise the Plant as part of a significant investment programme. In particular, CEAC undertook to update the Plant's obsolete equipment pursuant to a €55 million investment programme, and it likewise committed to implement an environmental programme totalling €20 million, which was aimed at bringing the Plant's facilities in compliance with Montenegrin environmental standards. These investments were to be made over a five-year period commencing on 30 November 2005.

21. In return for these substantial investments, the Government undertook, *inter alia*, (1) to guarantee a long-term (5 year) electricity supply contract, which was linked in price with the London Metal Exchange ("**LME**") aluminium price, with the State-owned electricity producer, Elektroprivreda Crne Gore, A.D. Niksic ("**EPCG**"); (2) to warrant that all pre-2004 accounts provided during the due diligence process were accurate and correct; and (3) to assume responsibility and liability for environmental issues associated with operating KAP and RBN.

22. CEAC's intention in making the above-mentioned investment was to transform KAP into a leading aluminium producer with the capacity to meet the growing demand for aluminium in Central Europe. As part of its strategy, and following the purchase of KAP and RBN, CEAC's 100% parent company, En+ Group Limited ("**En+**") won a tender to purchase a 100 percent stake in the State-owned coal-fired power plant TE Pljevlja, and a 31 percent stake in the adjacent State-owned coal mine Rudnik Uglja. CEAC offered to pay €45 million, with further investment of €195.4 million for the TE Pljevlja plant, as well as committing to build by 2011 an additional 225 MW unit for €170.97 million. CEAC further offered €5 million for the 31 percent stake in the Rudnik Uglja mine, accompanied by an additional €78.74 million in investments. This further investment was designed to provide KAP with its own dedicated electricity supply. Given that electricity costs account for approximately 50% of the costs of all

inputs to produce aluminium, securing an electricity supply was critical to KAP's success.

23. After acquiring KAP and RBN, CEAC began to fulfil its investment obligations in earnest. In the first half of 2006, however, it became clear that the Government had made material misrepresentations to CEAC during the course of the tender process in relation to the financial status of KAP and RBN. In particular, it became apparent that the financial records provided to CEAC were inaccurate in material respects, thereby distorting the true nature of the companies' financial standing. For example, KAP's accounts overstated the company's fixed assets, and therefore its net equity, by substantial amounts. Likewise, the State did not provide an accurate depiction of the Companies' environmental liabilities. As reported by Deloitte, KAP had concealed debts and obligations to the tune of tens of millions of euros.

24. The State's lack of transparency in relation to the sale of the Companies was particularly devastating given the context of the acquisitions; substantial risks are involved in acquiring a loss-making enterprise such as KAP in a foreign jurisdiction and, as a result, it was imperative that CEAC had a clear and accurate understanding of the current state of affairs of KAP and RBN. Unfortunately, however, the Government was not transparent in relation to the privatisation of those companies. Rather, robust warranty and representation clauses were provided in the SPAs, only to be breached thereafter. Had CEAC understood the true state of affairs of KAP and RBN at the time it decided to invest in the companies, it either would not have undertaken to invest in KAP or RBN at all, or it would have offered considerably less for their purchase price and changed the structure of the deal accordingly.

25. To make matters worse, in June 2006, the Montenegrin Parliament recommended that the privatisation of TE Pljevlja and Rudnik Uglja — which were to comprise KAP's dedicated electricity source — be stopped based on the dubious reasoning that the "sales strategy was wrong". This was in blatant disregard of CEAC's success in the tender process. The consequence of the State's conduct was that KAP was left without a long-term supply of competitively-priced electricity — an outcome that substantially and adversely impacted CEAC's ability to transform KAP into a

profitable enterprise. As discussed below, prices for electricity supplied to KAP by the state-owned power producer EPCG skyrocketed, escalating from 20 euro to nearly 60 euro per megawatt-hour. As expected, the results on the Government's interference with KAP's ability to secure a long-term solution for its electricity supplies were devastating and monumental.

26. In light of these changed circumstances, CEAC submitted a proposal to the Government in an attempt to reach an amicable solution. However, the parties were unable to reach any agreement, and as a result, on 27 November 2007, CEAC initiated arbitration against the Sellers and the Government pursuant to the SPAs.

27. Thereafter, the global financial crisis unfolded in 2008, with serious implications for KAP. In particular, the cost of producing aluminium at KAP reached USD 3,500 per metric tonne, in contrast to an incredibly low LME price of USD 1,800 per metric tonne. The extremely high production costs were the result of escalating electricity prices, overstaffing and excessive KAP employee salaries (which far exceeded the average Montenegrin salary). The Government's sea change in relation to the privatisation of TE Pljevlja and Rudnik Uglja — which would have provided KAP with stable electricity prices — and its refusal to allow CEAC to reduce KAP's staff or cut wages, placed KAP in a precarious position. Rather than allow CEAC to take the actions necessary to make KAP a profitable enterprise, the Government sabotaged its efforts at every step.

28. In light of the forgoing, CEAC commenced negotiations in an effort to keep its investment afloat in spite of these adverse circumstances. Ultimately, the parties reached an agreement, which was embodied in a settlement agreement dated 16 November 2009 between the Sellers and the Government, on the one hand, and CEAC and En+, KAP and RBN on the other (the "**Settlement Agreement**").[17] The Settlement Agreement called for CEAC to transfer 50% of its shares in KAP and RBN (the "**Companies**") to the Government in exchange for a number of guarantees with respect to state subsidies and security for KAP's lenders. The goal of the Settlement

[17] **C-9**.

Agreement was to restructure KAP (and its substantial debt) to ensure its future viability:

> *The Parties are aware that the Companies* [KAP and RBN] *have certain liquidity problems, that the Companies need to be restructured and that their accrued debts must be rescheduled. The Parties expect these problems to be resolved within two years from the Closing Date, particularly due to the assistance of the SoM* [Montenegro]. *The SoM's primary goal is to support the financial recovery of the Companies so that they can once again fulfil their important role within the Montenegrin economy, the obligation to EPCG, other suppliers, banks and institutions and their employees as well as their environmental obligations timely and regularly*.[18]

29. Pursuant to the Settlement Agreement, CEAC sold and transferred 50% of its shares in KAP and RBN to the Government pursuant to two shareholders' agreements (although CEAC retained the right to repurchase those shares).[19] The transfer resulted in the Government having an equal stake in KAP equivalent to 29.365%, as well as acquiring a seat on KAP's Board of Directors. It also agreed to terminate the arbitration initiated by CEAC in relation to Montenegro's misrepresentations of the Companies' financial positions.[20]

30. In exchange, Montenegro undertook a number of critical obligations, including the obligation: (1) to subsidise KAP's electricity supply (KAP's most expensive input), including through the establishment of an electricity price formula for KAP linked to the LME;[21] and (2) to issue state guarantees to KAP in the aggregate amount of €135,000,000.[22] The guarantees were to be employed to raise funds to repay KAP's substantial debt to its lenders, to raise the Plant's capital, and to finance social

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18 *Id*., at Recital D at p. 8.

19 *Id*., at Recital L at p. 9. *See* also Appendix 3 to the Settlement Agreement entitled KAP Shareholders' Agreement **[C-10]** and Appendix 4 to the Settlement Agreement entitled RBN Shareholders' Agreement **[C-11]**.

20 **C-9**, at Part E, Art. 26 at p. 32.

21 *Id*., at Part C, Art. 11 at pp. 18-19.

22 *Id*., at Recital J at p. 9.

programmes for approximately 2,300 KAP and RBN employees. The parties also renegotiated KAP's investment programme.[23]

31. As a result of KAP's restructuring and modernisation efforts by CEAC, KAP was transformed from a loss-making entity to a profit-making one by January 2012. However, the lack of a long-term affordable electricity supply continued to threaten KAP's viability. In light of this fact, in mid-2011, CEAC proposed an alternative restructuring plan to secure KAP's viability going forward. That plan envisaged signing a long-term electricity supply contract with EPCG, and converting KAP's debts – including those contracted to CEAC – into KAP equity. The aim of this plan was to reduce KAP's debt to an acceptable level in order to enable the Plant to obtain development loans. By that stage, KAP's debt to CEAC and En+ cumulatively totalled approximately €86 million. To ensure KAP's viability, both CEAC and En+ committed to fully convert that debt into equity, provided that the Government agree to a similar conversion of an equal part of KAP's debt to other lenders. The plan likewise stipulated a further reduction of KAP's workforce to no more than 700, thereby bringing it in line with industry standards, and making it more competitive.

32. Unfortunately, CEAC'a good faith and earnest attempts to restructure KAP were ultimately thwarted by the Government. In particular, the Government refused to provide KAP with its full entitlement to electricity subsidies, in breach of its obligations under the Settlement Agreement. Further, in August 2012, state-owned EPCG, with the implicit approval of the Government, cut KAP's electricity supply in half, resulting in a corresponding reduction in KAP's production volumes by an equivalent 50 percent. Such actions exacerbated the situation by drastically reducing KAP's revenues.

33. Thereafter, in September 2012, EPCG demanded an exorbitant price increase for electricity supplied to the Plant — from 20 euro to nearly 60 euro per megawatt-hour. When CEAC refused to agree to EPCG's extortive tactics, EPCG terminated KAP's electricity contract altogether, leaving KAP without any supplier for its main production input. In short, without the full subsidies the Government was obligated

[23] *Id.*, at Part D, Art. 18 at pp. 25-26.

to provide, and without a long-term contract linked to aluminium market prices in place (which is standard industry practice for aluminium smelters worldwide), KAP was unable to purchase electricity, a critical input of the production process.

34. In furtherance of its pursuit to seize CEAC's investment unlawfully, the Government employed obstructive measures, through its representation on KAP's Board of Directors, which ultimately led Deutsche Bank, a significant KAP creditor, to call on its €22 million loan. The Government likewise initiated insolvency proceedings against KAP and thereafter engaged another state-owned company – Montenegro Bonus – to step into CEAC's shoes and manage KAP. With management control over KAP, the State was then able to unjustly reap the rewards of CEAC's investments by controlling the benefits associated with KAP's sale of aluminium. Finally, and in a hostile attempt to intimidate CEAC, the Government instituted bogus criminal proceedings against a member of KAP's management, Mr Dmitry Potrubach, for alleged unlawful activities that could only have been committed by the State itself. These actions, when viewed collectively, unquestionably violate the Treaty and, as a result, CEAC is entitled to compensation for such wrongs.

A. The Government Caused KAP to Default on Its Payment Obligations

35. As explained above, the Government took a number of actions collectively aimed at causing KAP to default on its payment obligations which in turn enabled the Government to seize control over CEAC's investment. These actions include the following:

35.1 The Government refused to provide KAP with its full entitlement of €60 million in electricity subsidies. KAP was entitled to, and in desperate need of, those subsidies, which were critical to maintain its production levels and revenue streams.

35.2 Despite repeated assurances that it would assist CEAC in obtaining a long-term electricity supply contract, the Government and its wholly-owned EPCG allowed KAP's electricity supply to be cut by 50 percent, with corresponding production and revenue decreases. By failing to make good on its promises

to secure a long-term electricity supply contract for KAP, the Government placed the viability of CEAC's investment in jeopardy.

35.3 The Government employed obstructive measures through its representation on KAP's Board of Directors, which ultimately led Deutsche Bank, a significant KAP creditor, to call on its €22 million loan.[24] In particular:

35.3.1 the Government's representative on the KAP Board of Directors refused to approve KAP's 2010 audited financial statements, which KAP was required to provide to Deutsche Bank pursuant to the parties' loan agreement.[25] This refusal resulted in KAP's breach of its loan agreement with Deutsche Bank.

35.3.2 the Government's representative on the KAP Board of Directors refused to approve KAP's business plan. The provision of such plan to Deutsche Bank was a condition of its loan agreement with KAP.[26]

35.3.3 the Government refused to provide its written consent as guarantor under the Deutsche Bank agreement regarding nearly €12 million in loans to KAP from CEAC and En+ during the period from June 2010 to January 2011.[27]

35.3.4 The Government did not co-operate in good faith with regard to KAP's insolvency and restructuring covenants under the Deutsche bank loan agreement.[28]

36. As a result of the foregoing actions by the Government, Montenegro caused KAP to default on its debt to Deutsche Bank.[29] The Government subsequently paid Deutsche Bank when it called on the loan, and that payment thereafter formed part

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24 **C-12**.
25 *Id.,* at Clauses 18.1, 18.3.
26 *Id.,* at Clause 18.4.
27 *Id.,* at Clause 19.18.
28 *Id.,* at Clauses 21.6, 21.17.
29 *Id.,* at Clauses 21.13, 21.16.

of the basis for the Government's commencement of insolvency proceedings against KAP, in which the State itself was the largest creditor.

B. The Government Instituted Insolvency Proceedings Against in KAP in an Effort to Permanently Deprive CEAC of Its Investments

37. On 14 June 2013, the Government, through the Ministry of Finance, initiated insolvency proceedings in relation to KAP in the Commercial Court of Podgorica (the "**Court**") and appointed Mr Veselin Perisic as an interim insolvency manager of KAP, ordering KAP's management to seek prior consent from the insolvency manager for all their actions. On 8 July 2013, the Court conclusively ousted KAP's management from running the Plant and thereafter formalised KAP's insolvency on 9 October 2013.[30]

38. On 9 July 2013, KAP through its insolvency manager, entered into a "co-operation agreement" with another state-owned entity, Montenegro Bonus LLC[31] ("**Montenegro Bonus**"), pursuant to which Montenegro Bonus "*under its name and for its account undertakes management of KAP business during bankruptcy.*"[32] This decision had the effect of ensuring that the Government's state-owned oil-trading entity would unlawfully and unjustifiably take control of KAP's management, allowing the Government to reap the benefits of CEAC's investment by receiving all funds attributable to KAP's production of aluminium.

39. This dubious "arrangement" was crafted by the Government (which, due to its actions detailed above, now owns and controls both KAP and Montenegro Bonus) in order to deprive CEAC of the value and enjoyment of its investment. Indeed, the express terms of the cooperation agreement confirm that Montenegro sanctioned the arrangement, noting that the agreement "comes into force by the day it is confirmed by Government of Montenegro."[33]

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30 **C-13**.

31 **C-14**.

32 *Id*., at Clause 2.

33 *Id*., at Clause 11.

40. It is clear that Montenegro Bonus — a state-owned oil trader with no experience whatsoever in the aluminium business[34] — merely is being used as a pawn by the State in a ploy to exact control over KAP and reap the benefits of its sale proceeds following the significant investments made by CEAC to modernise the Plant and to improve environmental standards. Just as it cancelled the tender won by CEAC for its state-owned electricity plant TE Pljevlja and the adjacent State-owned coal mine Rudnik Uglja, the Government arbitrarily and capriciously decided – after CEAC had sunk millions of euros into the investment – that it wanted to take back its industrial powerhouse KAP for its own bidding.

41. At the same time, the insolvency manager convened the Board of Creditors of KAP, which is authorised to render major decisions in bankruptcy proceedings, in an irregular manner that was not in accordance with the law. Specifically, in accordance with Montenegrin bankruptcy law, the Board of Creditors should include representatives from the Government, EPCG, CEAC, En+ Group, and VTB Bank (Austria) AG as those entities are KAP's largest creditors. In blatant disregard of this legal requirement, and to prevent the formation of the Board comprised of a majority of independent creditors, the insolvency manager organised an illegal vote among KAP's employees. This resulted in a decision to form the Board of Creditors consisting of only three members, without the participation of CEAC and/or VTB Bank (Austria) AG. Given the fact that the Government owns more than half of the shares of EPCG, it is clear that the purpose of this breach of statutory procedure was to ensure the Government's absolute control over KAP during the course of the bankruptcy proceedings.

42. On 6 December 2013, the insolvency manager announced a tender for the sale of all KAP's assets. He did so without seeking the approval of the Board of Creditors. Furthermore, the manager quoted the estimated value of the property at 52 million

[34] According to Montenegro Bonus's website, its principal activities lie in the area of "*oil and petroleum products with the goal of maximum satisfaction of customer needs through their derivatives with the improvement of quality storage products, transportation and retail network development*." *See* http://montenegrobonus.me/e/) **[C-2]**. Montenegro Bonus's website makes no mention of aluminium or metals. This naturally begs the obvious question of what a state-owned oil trader could possibly have to do with insolvency proceedings of a local aluminium smelter.

euros, a figure which is significantly lower than the Plant's actual market value. In fact, even the carrying value of the property during the most current accounting period was more than 150 million euros. Furthermore, the terms of the tender contained a stipulation that the tender committee, formed by the insolvency manager, is entitled to reject any bid without explanation, even if the proposal meets the conditions of the tender. This fact indicates the intention to sell the property at a lower cost for the purpose of further resale.

43. All of the numerous complaints and appeals concerning the actions of the trustee violating the rights of creditors, filed promptly and in full compliance with local laws, have been unjustly dismissed by the courts in Montenegro without exception.

44. The Government's aforementioned actions caused CEAC to suffer substantial economic harm, with a devastating impact on the value of CEAC's investment. The Government's inappropriate use of the insolvency proceedings to expropriate CEAC's investment without compensation violates the Treaty.

C. The Government Initiated Bogus Criminal Proceedings Against the Investor's Management

45. As mentioned previously, in September 2012, EPCG terminated KAP's electricity contract, which left KAP without a contracted electricity supply beyond the end of 2012. However, beyond that period and into 2013, electricity continued to be provided to the Plant. KAP officially requested the relevant Montenegrin authorities to clarify the identity of KAP's supplier, but received no answer. KAP continued to operate until June 2013 without knowing the identity of its energy supplier.

46. Thereafter, the European Energy Commission discovered the unauthorised drawing of electricity by the Montenegrin state-owned utility CGES from interconnectors in the Balkan States. Once this was revealed, the Montenegrin government demanded that KAP make payment for this energy consumption, an impossible request in light of the fact that KAP did not have any contract with CGES to provide electricity. To be clear, KAP does not now nor did it ever have a direct connection to the regional interconnector and therefore it could not have consumed electricity without

authorisation from the state-owned CGES and key Montenegrin government officials.

47. In order to deflect attention from the fact that the Government itself had been unlawfully stealing energy, it instituted bogus criminal proceedings against a Russian member of KAP's management, Mr Dmitry Potrubach. Mr Potrubach had served as the CFO of both CEAC and KAP, although his employment had been terminated by KAP upon the commencement of the insolvency proceedings. Mr Potrubach was detained for allegedly "stealing electricity from the European grid" via the regional interconnector. Following an initial refusal to allow bail, Mr Potrubach eventually was released from custody after positing €100,000, although he was required to remain in Podgorica. The charges against Mr Potrubach were absurd and unfounded. As mentioned, KAP does not now nor did it ever have a direct connection to the regional interconnector and therefore it could not have consumed electricity without authorisation from the state-owned CGES and key Montenegrin government officials. Furthermore, Mr Potrubach as CFO had no decision-making authority in relation to electricity supply issues; that power resided with the Board of Directors. Mr Potrubach's arrest and detention was, therefore, merely another act of interference with CEAC's investment by the State.

48. Given his detainment in Montenegro and his unfair treatment by the Government, Mr Potrubach lodged a complaint with the European Court of Human Rights against his unacceptable treatment at the hands of Montenegro. Thereafter, and in recognition that its allegations against Mr Potrubach were ludicrous and unsubstantiated, Montenegro dismissed the case against Mr Potrubach with prejudice.

IV. MONTENEGRO HAS VIOLATED THE BIT

49. The BIT imposes certain legally-binding obligations and standards of conduct on Montenegro. Montenegro's acts and omissions, the acts of its instrumentalities and organs, all of for whom Montenegro's internationally responsible, violate the BIT.

50. The facts described above constitute a violation the BIT, including but not limited to the following obligations:

50.1 to "encourage and create stable, equitable, favourable and transparent conditions for investors of [Cyprus] to make investments in its territory" (Art. 2.1 of the BIT);

50.2 to provide fair and equitable treatment and full protection and security to CEAC's investments (Art. 2.2 of the BIT);

50.3 to provide national and most-favoured-nation treatment including with respect to the "management, maintenance, use, enjoyment, expansion or disposal" of the CEAC's investments (Art. 3 of the BIT);

50.4 to ensure that CEAC's investments are not "nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation" except in cases in which such measures are taken in the public interest, observing due process of law, are not discriminatory, and are accompanied by adequate compensation effected without delay (Art. 5 of the BIT); and

50.5 to "guarantee . . . free transfers of payments" related to CEAC's investments (Art. 6 of the BIT).

V. RESOLUTION OF THE DISPUTE

A. The Claimant Meets the BIT's Jurisdictional Requirements

51. Article 9 of the Treaty provides that any dispute arising between Montenegro and any investor from Cyprus in respect of an investment made within the territory of Montenegro shall be referred to any one of three arbitral bodies, including ICSID, at the election of the investor.[35] Article 9 of the BIT states as follows:

> *1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with*

[35] **CLA-1**, at Article 9(1).

regard to an investment in the sense of the present Agreement, shall be notified in writing, including detailed information, by the investor to the former Contracting Party. As far as possible, the parties concerned shall endeavor to settle these disputes amicably.

2. *If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to:*

   - *the competent court of the Contracting Party in whose territory the investment was made, or*

   - *an ad hoc arbitral tribunal according to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or*

   - *the Arbitral Tribunal of the International Chamber of Commerce in Paris; or*

   - *the International Centre for Settlement of Investments Disputes (ICSID) established by the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States*

3. *In the case that the investor decides to submit the dispute to international arbitration, each Contracting Party hereby consents to the submission of such dispute to international arbitration.*

52. Thus, to satisfy the jurisdictional requirements of Article 9: (1) Montenegro must be a Contracting Party to the BIT; (2) CEAC must be a qualified "investor" and (3) have a dispute with Montenegro in connection with its "investment" in that country; (4) CEAC must give written notice of the dispute to Montenegro; and (5) the dispute must not be resolved by amicable negotiations within a six-month period after he notice of the dispute was given. All of these requirements are met in this case.

(1) Montenegro Is a Contracting Party to the Treaty

53. The Cyprus – Serbia & Montenegro BIT was concluded on 21 June 2005, and entered into force on 23 December 2005.[36] While the BIT was concluded prior to Montenegro's declaration of independence, Montenegro expressly agreed to be

[36] **C-4**.

bound by certain international treaties that were concluded by Serbia and Montenegro. Thus, in *The Decision on Proclamation of Independence of the Republic of Montenegro* dated 3 July 2006 (the "**Independence Proclamation**"), Montenegro's Parliament adopted a decision requiring that "*Montenegro shall apply and adhere to International treaties and agreements that the state union of Serbia and Montenegro was party to and that relate to the Republic of Montenegro and are in conformity with its legal order*".[37] Further and critically, Montenegro has confirmed that the BIT comprises an international treaty obligation of the State.[38] Montenegro is therefore unquestionably a Contracting Party to the Treaty.

(2) Claimant Is an Investor for the Purposes of the BIT

54. BIT Article 1(3)(b) defines "investor" as including "*a legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its seat in the territory of that Contracting Party and making investments in the territory of the other Contracting Party*". CEAC, as a legal entity incorporated in Cyprus, qualifies as an investor for the purposes of the Treaty.[39]

(3) CEAC Made an Investment in Montenegro

55. CEAC has a dispute in respect of its "investments" in Montenegro, which Article 1(1) of the Treaty defines as broadly as possible:

> *For the purposes of this Agreement:*
>
> *The term "investment" shall mean every kind of asset invested by an investor of one Contracting Party in the territory of the other*

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37 The Decision on Proclamation of Independence of the Republic of Montenegro, at ¶ 3 (unofficial translation), available at http://www.osce.org/montenegro/19733?download=true.

38 *See* excerpts from "*Questionnaire: Information requested by the European Commission to the Government of Montenegro for the preparation of the Opinion on the application of Montenegro for membership in of the European Union*", available at http://www.questionnaire.gov.me/, where the BIT has been listed under Section 258(B) of Annex 31, entitled "*Bilateral Treaties Concluded Between Montenegro and Other States*". The Questionnaire further provides that Montenegro has "accepted the succession of the treaties valid from the former state union of Serbia and Montenegro in relation to Montenegro" **[C-3]**.

39 **C-6**.

Contracting Party in accordance with the laws and regulation of the latter and in particular, though not exclusively, shall include:

(a) movable and immovable property and any other rights in rem such as mortgages, liens or pledges;

(b) shares, bonds and other kinds of securities;

(c) claims to money or other claims under contract having an economic value.

. . . .

(e) concessions in accordance with the laws and regulations of the Contracting Party in the territory whereof the investment is being made, including concessions to explore, extract and exploit natural resources."

56. This broad definition unquestionably encompasses CEAC's investments in Montenegro, including its shares in KAP and RBN, and its claims having economic value, including those asserted in this arbitration.

(4) CEAC Provided Montenegro with Written Notice of the Dispute

57. On 23 August 2013, CEAC tendered a written notice of the dispute under the BIT to the Montenegro, providing, among other things, detailed information regarding the dispute. A true copy of the notice is attached to the Request.[40]

(5) The Six-Month Waiting Period Under the BIT Has Been Met

58. The six-month waiting period triggered by CEAC's 23 August 2013 letter lapsed on or about 26 February 2014. Montenegro did not even acknowledge the letter, let alone respond to it or make any other effort to resolve the dispute amicably. Thus, CEAC has complied with all prerequisites in the BIT to submitting this dispute to ICSID arbitration.

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[40] **C-15**.

B. All Requirements for the Submission of the Dispute to ICSID Have Been Met

59. Article 25 of the ICSID Convention specifies that "jurisdiction of the Centre shall extend to any legal dispute arising out an investment, between a Contracting State … and a national of another contracting State, which the parties to the dispute consent in writing to submit to the Centre."[41] Accordingly, the preconditions of Article 25(1) for establishing ICSID jurisdiction are that (1) the dispute in question must be a legal dispute; (2) the dispute must arise out of an investment; (3) The dispute must be between a contracting State and a national of another Contracting State; and (4) the parties must have consented in writing to ICSID jurisdiction. Each of these requirements is met.

(1) Claimant and Respondent Have a Legal Dispute

60. The issues in dispute involve whether Montenegro has violated its obligations under the BIT, and the amount of reparations due as a result. They involve a conflict of legal rights and entail legal remedies. This is a classic legal dispute.

(2) The Dispute Arises Directly Out of Claimant's Investment

61. CEAC and its related companies have invested approximately €143 million in Montenegro,[42] including in relation to the investment and modernisation program for KAP's production facilities. This unquestionably constitutes an investment within the meaning of the ICSID Convention and the BIT. The dispute described in this Request arises directly from, and is directly related to, CEAC's investment in Montenegro.

62. CEAC's investments fall squarely within the broad definition of "investment" contained within the BIT, to which Montenegro has agreed. The BIT defines the term "investment" to include "every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party"[43] and in particular

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41 ICSID Convention, at Article 25(1).

42 In addition to these amounts, CEAC waived €40 million in loans to KAP pursuant to the Settlement Agreement. In total, therefore, CEAC and its affiliated companies invested approximately €183 million in KAP.

43 **CLA-1**, at Article I(1).

"shares, bonds and other kinds of securities" and "claims to money or other claims under contract having an economic value."[44]

(3) The Dispute Is Between a Contracting State and a National of Another Contracting State

63. Montenegro is a Contracting Party to the ICSID Convention. Montenegro signed the ICSID Convention on 19 July 2012, and deposited an Instrument of Ratification of the Convention with the World Bank on 10 April 2013. Pursuant to Article 68(2), the ICSID Convention entered into force for Montenegro on 10 May 2013.[45]

64. CEAC is a legal entity incorporated in Cyprus. Cyprus is a Contracting Party to the ICSID Convention. Cyprus signed the ICSID Convention on 9 March 1966, and deposited its ratification of the Convention on 25 November 1966. The ICSID Convention entered into force for Cyprus on 25 December 25 1966.[46]

65. Thus, the dispute Claimant hereby submits to ICSID is between a Contracting State and a National of Another Contracting State in accordance with Article 25(1) of the ICSID Convention.

(4) The Parties Have Consented to the Arbitration of this Dispute

66. Claimant and Respondent have expressed their consent in writing to submit this dispute to arbitration.

67. Montenegro consented to ICSID jurisdiction when it signed and ratified the BIT containing its Article 9(3), by which it gave its consent to ICSID arbitration.[47] Article 9(3) constitutes an unequivocal statement of consent and offer to arbitrate a potential legal dispute with a qualified investor.

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44 *Id*., at Article (1)(b)-(c).

45 List of Contracting States and Other Signatories of the Convention (1 November 2013) **[C-16]**.

46 *Id*.

47 Article 9(3) provides: "*In the case that the investor decides to submit the dispute to international arbitration, each Contracting Party hereby consents to the submission of such dispute to international arbitration*." Article 9(2) further provides for ICSID arbitration at the election of the investor.

68. CEAC gave its consent to ICSID arbitration in its notice letter of 23 August 2013. In addition, CEAC hereby again accepts Montenegro's offer and consents to ICSID arbitration by requesting registration of this Request for Arbitration with ICSID.

69. Finally, the Contracting Parties require no exhaustion of domestic administrative or judicial remedies as a condition of their consent to arbitration under ICSID. Thus, the jurisdictional requirements of the ICSID Convention have been met.

C. Proposed Procedure for the Arbitration

70. The parties have not agreed to the method for constitution of the Arbitral Tribunal or the number of arbitrators. Accordingly, for the purposes of Rule 2 of the ICSID Rules of Procedure for Arbitration Proceedings (the **"ICSID Arbitration Rules"**), Clamant suggest that a three-member Arbitral Tribunal be appointed and the 20-day time limit run from the date of registration of this Request in accordance with Rule 2(l)(b).[48]

71. Claimant further proposes that the Arbitral Tribunal be appointed following this procedure:[49]

71.1 Claimant hereby nominates Professor William W. Park at Boston University School of Law as its party-appointed arbitrator;

71.2 within 30 days of the registration of this Request for Arbitration, Respondent shall appoint its arbitrator;

71.3 the two arbitrators so appointed shall, within 30 days of the appointment of Respondent's arbitrator and in consultation with the parties, jointly select a third arbitrator to serve as President of the Arbitral Tribunal; and

71.4 in the event that a party fails to appoint its arbitrator or that the two party appointed arbitrators are unable to reach agreement on the identity of the President of the Arbitral Tribunal within the time limits specified above, the

[48] Rule 2(1)(b) of the ICSID Arbitration Rules.

[49] Claimant respectfully requests that the foregoing be taken as Claimant's proposal for the purposes of Rule 2(1)(a) of the ICSID Arbitration Rules.

Chairman of the ICSID Administrative Council shall appoint the arbitrator or arbitrators not yet appointed and shall designate the President of the Arbitral Tribunal.

72. Claimant further proposes that Paris, France, be the place of the proceedings pursuant to Article 62 of the ICSID Convention, and that the language of the arbitration be English pursuant to Rule 22(1) of the ICSID Rules of Procedure for Arbitration Proceedings.

VI. REQUEST FOR RELIEF

73. Reserving its rights to supplement or otherwise amend their claims and relief requested in connection therewith, Claimant requests an award granting them the following relief:

73.1 a declaration that Montenegro has violated the BIT;

73.2 compensation to Claimant for all damages and loss it has sustained, to be developed and quantified in the course of this proceeding but likely to include, by way of example without limitation, compensation for the wrongful expropriation of Claimant's investment, and direct and consequential damages for Respondent's unfair and inequitable treatment of Claimant's investment;

73.3 all costs of these proceedings, including attorneys' fees and expenses;

73.4 pre- and post-award compound interest until the effective date of Respondent's full and final satisfaction of the award; and

73.5 such other relief as the Arbitral Tribunal may deem appropriate in the circumstances.

74. Claimant's request for relief is necessarily preliminary at this stage of the proceeding. CEAC expressly reserves its right to amend its request for relief during the course of this proceeding in any manner it deems appropriate, including seeking relief on additional grounds. Moreover, as the damages caused by Montenegro's unlawful

conduct will likely continue to accrue throughout the course of this proceeding, Claimant expressly reserve the right to update its damages claims and calculations accordingly.

VII. CONCLUSION

75. For the reasons set forth above, Claimant respectfully requests that the Secretary General of the Centre register this arbitration against Montenegro in accordance with Article 36(1) and (3) of the ICSID Convention.

Dated: 7 March 2014

Respectfully submitted,

KING & SPALDING INTERNATIONAL LLP

King & Spalding International LLP