International Chamber of Commerce (ICC)
International Court of Arbitration

GAMA GÜÇ SİSTEMLERİ MÜHENDİSLİK VE TAAHHÜT A.Ş.

Claimant

– and –

THE REPUBLIC OF NORTH MACEDONIA

Respondent

REQUEST FOR ARBITRATION

23 November 2021

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SECTION

1. INTRODUCTION

1.1 This Request for Arbitration, together with its Exhibits numbered C-001 to C-023 and CL-001, is submitted on behalf of GAMA Güç Sistemleri Mühendislik ve Taahhüt A.Ş. ("**Claimant**" or "**GAMA**") pursuant to Article 4 of the Rules of Arbitration of the International Chamber of Commerce in force as from 1 January 2021 (the "**ICC Rules**") and Article VII(2)(c) of the Agreement between the Republic of Turkey and the Republic of Macedonia concerning the reciprocal promotion and protection of investments[1] (the "**Treaty**"), against the Republic of North Macedonia ("**Respondent**" or "**North Macedonia**"). Claimant and Respondent will be hereinafter collectively referred to as the "**Parties**".

1.2 The dispute between Parties arises from the Respondent's breaches of the Treaty in connection with Claimant's investment in North Macedonia.

1.3 GAMA's investment in North Macedonia relates to claim to money arising from the construction of a power plant in Skopje. In 2007, an international consortium comprised out of GAMA, as consortium leader, and Alstom (Switzerland) Ltd., both as a contractor, and the Company for Production of Electricity and Heat TE-TO AD Skopje, whose registered office is at Gazi Baba 515 Street, No. 8, 1000 Skopje, North Macedonia ("**TE-TO**"), as owner, entered into an engineering, procurement and construction ("***EPC***") contract for the construction of a 220 MW combined cycle cogeneration power plant in Skopje. The scope of the works included procurement of all major equipment and other auxiliary equipment, conceptual and detail engineering of the plant, civil and electro-mechanical installation works, test and commissioning works and training of TE-TO's staff. The plant was commissioned in May 2011 and commenced commercial operation on 24 February 2012.

1.4 In February 2012, TE-TO unconditionally agreed to pay GAMA a net sum of EUR 5 million by 31 March 2012 in full and final settlement of all claims of GAMA and TE-TO arising out of the EPC contract. Since TE-TO did not pay GAMA the agreed sum within the agreed deadline, GAMA decided to commence local debt collection proceedings against TE-TO. Unexpectedly, TE-TO refused to pay the agreed sum to GAMA, which ensued in a dispute between GAMA and TE-TO under the EPC contract.

1.5 After six years of proceedings before the first instance Macedonian civil court in Skopje, which wrongfully assumed jurisdiction over the case, in May 2018, the claim of GAMA was denied with the reasoning that the GAMA's claim was conditional to certain obligations. This reasoning was flawed and in contradiction with the acts of TE-TO, which unconditionally recognised the claim in a separate set of proceedings described below. Following GAMA's appeal, in October 2019, the judgment of the Macedonian civil court in Skopje was upheld by the Macedonian appellate court in Skopje. However, in December 2020, the Macedonian Supreme Court, the highest judicial authority in North Macedonia, quashed both judgments and reverted the case

[1] Agreement between the Republic of Turkey and the Republic of Macedonia Concerning the Reciprocal Promotion and Protection of Investments, Official Journal of the Republic of Macedonia No. 05/1997 dated 14 July 1995 (**Exhibit CL-001**).

to the Macedonian civil court in Skopje. In its judgment, the Macedonian Supreme Court fully accepted GAMA's arguments set forth by GAMA during the first and second instance proceedings, i.e., that TE-TO's obligation for payment of the net sum of EUR 5 million to GAMA is unconditional. Nevertheless, in the meantime, the Macedonian courts have written off GAMA's claim in separate proceedings, as explained below. Therefore, the debt collection proceedings became obsolete.

1.6 In April 2018, shortly before the Macedonian civil court in Skopje reached a judgment in the debt collection case, TE-TO submitted to the Macedonian civil court in Skopje a proposal for commencement of judicial reorganisation proceedings by enclosing a reorganisation plan proposing a restructuring of TE-TO's debt by writing-off 90% of claims of unsecured creditors and suspension of the payment of the remaining 10% of the claims for ten years. In the proposed reorganisation plan, TE-TO fully acknowledged GAMA's claim of EUR 5 million, although persistently disputing the claim in the debt collection proceedings heard in parallel before the same court.

1.7 Despite that the conditions for commencement of judicial reorganisation of TE-TO were not met and the reorganisation plan proposed by TE-TO was abusive and in flagrant breach of Macedonian law, the Macedonian courts approved the write-off of 90% of the claims of unsecured creditors, including 90% of GAMA's claim or EUR 4.5 million and the suspension of the payment of the remaining 10% of GAMA's claim or EUR 500,000 after ten years.

1.8 The decisions of the Macedonian courts have been taken in breach of a number of Treaty obligations and customary international law**.** The claim of GAMA relates to acts of Respondent's courts which wrongfully assumed jurisdiction over the dispute and, after unreasonably protracted proceedings, first arbitrarily denied the well-grounded GAMA's claim against TE-TO and ultimately confirmed the writing-off the 90% of the GAMA's claim. As will be explained below, Respondent thereby expropriated GAMA's claim to money arising from the construction of the plant under the EPC Contract in breach of the Treaty and failed to accord to GAMA's investment the national and most-favoured-nation treatment, as well as the fair and equitable treatment, the non-impairment treatment and full protection and security.

1.9 Pursuant to Article 4 of the ICC Rules, this Request for Arbitration contains information concerning the following:

(i) the name, description, address and other contact details of each of the parties and of persons representing Claimant (**Section 2**)

(ii) a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made (**Section 3**)

(iii) observations on jurisdiction and procedural matters (arbitration agreement, jurisdiction, governing law, language of proceedings, place of the arbitration and constitution of the arbitral tribunal (**Section 4**)

(iv) Claimant's damages (**Section 5**)

(v) payment of the filing fee (**Section 6**)

(vi) request for relief (**Section 7**)

2. THE PARTIES

A. CLAIMANT

2.1 Claimant is Gama Güç Sistemleri Mühendislik ve Taahhüt A.Ş., a joint stock company organized under the laws of the Republic of Turkey, with its registered office located at GAMA Binası, Nergiz Sokak No: 9, Beştepe, Yenimahalle 06560 Ankara, Turkey. Claimant specialises in engineering, procurement, and construction (EPC) Projects and is a leading global EPC contractor, especially in power generation projects. Claimant holds a number of investments in third countries, including in North Macedonia.

2.2 Claimant's contact details are as follows:

Gama Güç Sistemleri Mühendislik ve Taahhüt A.Ş.
GAMA Binası, Nergiz Sokak No: 9, Beştepe, Yenimahalle 06560 Ankara,
Turkey

2.3 Claimant is represented in this arbitration by ODI LLP, Georgievski Law Firm Skopje and Claimant's In-House Counsel with contact details as follows:

Law Firm Ilić & Partners LLP (ODI LLP)
Mr Anže Arko
Mr Matjaž Jan
Mr Branko Ilić
Davčna ulica 1,1000 Ljubljana
Slovenia
Tel.: +386 (0) 590 86600
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-and-

Georgievski Law Firm Skopje
Mr Gjorgji Georgievski
Ms Ana Stojanovska
Pirinska 25/1-2, 1000 Skopje
North Macedonia
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-and-

Claimant's In-House Counsel
Mr Bora Kaya
Ms Esra Berktaş
T: (90-312) 248 43 00
F: (90-312) 248 43 01
bora.kaya@gama.com.tr
esra.berktas@gama.com.tr

2.4 The Power of Attorney is attached.[2] All correspondence and communications intended for Claimant should be addressed directly to its counsel of record.

B. RESPONDENT

2.5 Respondent is the Republic of North Macedonia. The Republic of North Macedonia is a sovereign State and party to the Treaty. The Republic of North Macedonia's President is H.E. Mr Stevo Pendarovski, and its current Prime Minister is H.E. Mr Zoran Zaev.

2.6 To the best of Claimant's knowledge, this Request for Arbitration should be served to:

H.E. Mr. Stevo Pendarovski
President of the Republic of North Macedonia
Aco Karamanov Str. No. 33A, 1000 Skopje
Republic of North Macedonia
Tel.: +389 2 3253 124
contact@president.mk

H.E. Mr Zoran Zaev
Prime Minister of the Republic of North Macedonia
Blvd. Ilinden No. 2, 1000 Skopje
Republic of North Macedonia
Tel.: +389 2 3118 022
info@vlada.gov.mk

H.E. Mr Fatmir Bytyqi
Deputy Prime Minister in charge of Economic Affairs, Coordination of Economic Departments and Investments
Blvd. Ilinden No. 2, 1000 Skopje
Republic of North Macedonia
Tel.: +389 2 3118 022
info@vlada.gov.mk

[2] Power of Attorney dated 15 September 2021 (**Exhibit C-001**).

H.E. Mr Fatmir Besimi
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Dame Gruev Str. No. 12, 1000 Skopje
Republic of North Macedonia
Tel.: +389 2 3255 300
finance@finance.gov.mk

H.E. Mr Kreshnik Bekteshi
Minister of Economy
Jurij Gagarin Str. No. 15, 1000 Skopje
Republic of North Macedonia
Tel.: +389 2 3085 347
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H.E. Mr Fehmi Stafa
State Attorney of the Republic of North Macedonia
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Republic of North Macedonia
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dpskopje@dprsm.gov.mk

3. THE NATURE AND CIRCUMSTANCES OF THE PARTIES' DISPUTE

A. FACTUAL BACKGROUND

3.1 On 11 May 2007, an international consortium comprised out of GAMA, as consortium leader, and Alstom (Switzerland) Ltd., both as contractor and TE-TO, as owner, entered into an engineering, procurement and construction (EPC) Contract Agreement no. 4-01-4, as amended and restated[3] ("**EPC Contract**"), for the construction of a 220 MW combined cycle cogeneration power plant in Skopje ("**Power Plant**"). The EPC Contract's scope covered procurement of all major equipment and other auxiliary equipment, conceptual and detail engineering of the Power Plant, civil and electro-mechanical installation works, test and commissioning works, and training TE-TO's staff. The Power Plant was commissioned in May 2011 and commenced commercial operation on 24 February 2012.[4]

[3] Contract Agreement no. 4-01-4, as amended and restated, by Supplement no. 1 dated 10 July 2007, Supplement no. 2 dated 09 November 2007, Supplement no. 3 dated 17 December 2007, Supplement no. 4 dated 17 July 2008, Supplement no. 5 dated 25 September 2008, Supplement no. 6 dated 20 March 2009, Supplement no. 7 dated 15 December 2009, Supplement no. 8 dated 07 April 2011 and Supplement no. 9 and Settlement Agreement dated 24 February 2012, entered into between GAMA, ALSTOM and TE-TO (**Exhibit C-002**)

[4] GAMA Holding, 220 MW Skopje Combined Cycle Power Plant, https://holding.gama.com.tr/en/projects/gama-power/220-mw-skopje-combined-cycle-cogeneration-power-plant/ (**Exhibit C-003**).

3.2 On 14 February 2012, GAMA and TE-TO entered into Supplement no. 9 and Settlement Agreement to the EPC Contract[5] ("**Settlement Agreement**") to settle all claims between them arising out of the construction of the plant under the EPC Contract. In accordance with the Settlement Agreement, TE-TO unconditionally agreed to pay GAMA a net sum of EUR 5 million by 31 March 2012**.**

3.3 On 30 March 2012, GAMA issued to TE-TO an invoice no. A028 dated 30 March 2012 amounting to EUR 5 million in accordance with the provisions of the Settlement Agreement.[6]

3.4 On 3 December 2012, following the refusal of TE-TO to pay the outstanding debt arising from the construction of the plant according to the Settlement Agreement, GAMA commenced debt collection proceedings based on the overdue invoice for EUR 5 million against TE-TO before a public notary in Skopje under the Macedonian Law of Enforcement.

(a) *Dispute between GAMA and TE-TO*

3.5 On 4 December 2012, the public notary passed a decision ordering TE-TO to pay GAMA EUR 5 million with default interest from 1 April 2012.[7] However, surprisingly and despite the assumed obligation under the Settlement Agreement, TE-TO objected to this decision, and, therefore, the public notary referred the case to the First Instance Civil Court Skopje ("**Civil Court Skopje**").

3.6 GAMA objected to the Civil Court Skopje's jurisdiction based on the arbitration clause in the EPC Contract and the reference to the same in Article 4.2 of the Settlement Agreement, which stipulated that all disputes arising out of or in connection with the EPC Contract shall be referred to international arbitration under the ICC Rules. However, on 7 March 2014, the Civil Court Skopje reached a decision rejecting GAMA's jurisdictional objection and decided that the dispute was to be heard by the Macedonian courts. [8] GAMA appealed the decision of the Civil Court Skopje. Nonetheless, on 15 December 2014, the Macedonian appellate court in Skopje ("**Appellate Court Skopje**") denied GAMA's appeal[9] and upheld the Civil Court Skopje's wrongful decision on jurisdiction.

3.7 Immediately after the Macedonian courts' unlawfully established jurisdiction to hear the case, on 19 March 2015, TE-TO submitted a counter lawsuit against GAMA for alleged damages of EUR 5,069,649.12 before the Civil Court Skopje and demanded this counter lawsuit to be joined with GAMA's lawsuit against TE-TO. In 2019, the counter lawsuit was eventually dismissed for lack of jurisdiction due to the arbitration clause in the EPC Contract.

[5] Supplement no. 9 and Settlement Agreement to the EPC Contract entered into between GAMA and TE-TO dated 24 February 2012 (**Exhibit C-004**).

[6] Invoice no. A028 dated 30 March 2012 (**Exhibit C-005**).

[7] Decision of Notary Snezana Vidovska from Skopje UPDR no. 2806/12 dated 4 December 2012 (**Exhibit C-006**).

[8] Decision of the First Instance Civil Court Skopje No. PL1-286/13 dated 7 March 2014 (**Exhibit C-007**).

[9] Decision of the Appellate Court Skopje TSZ-1482/14 dated 15 December 2014 (**Exhibit C-008**).

3.8 After almost six years, and despite TE-TO's explicit acknowledgement of its debt to GAMA through a Letter of Acknowledgement of Debt dated 17 March 2015[10] and in judicial reorganisation proceedings as described below, on 4 May 2018, the Civil Court Skopje decided in favour of TE-TO and abolished the notary's payment order.[11]

3.9 On 25 September 2018, GAMA appealed the judgment of the Civil Court Skopje. Still, on 18 October 2019, the Appellate Court in Skopje denied the appeal and upheld the judgment of the Civil Court Skopje.[12] The Civil Court Skopje and the Appellate Court Skopje made the decisions entirely arbitrarily and in breach of Claimant's due process right, right to be heard and right to a fair trial. Both courts failed to consider GAMA's arguments and evidence, the unconditional obligation of TE-TO to pay GAMA the net sum of EUR 5 million and TE-TO's explicit and unconditional acceptance of this debt, did not consider that the EPC Contract was governed by English law and did not provide any substantiated reasoning in support of their decisions.

3.10 On 23 December 2020, the Macedonian Supreme Court, the highest judicial authority in North Macedonia, passed a decision[13] quashing the judgments of the Civil Court Skopje and the Appellate Court Skopje and reverted the case to the Civil Court Skopje. In its judgment, the Macedonian Supreme Court fully accepted GAMA's arguments set forth by GAMA's legal counsel during the first and second instance proceedings, i.e., that TE-TO's obligation to pay the net sum of EUR 5 million to GAMA is unconditional. Nevertheless, in the meantime, the Macedonian courts have effectively expropriated GAMA's claim in separate proceedings, as will be explained below. Therefore, these court proceedings became obsolete.

(b) *The write-off of Claimant's claim by Macedonian courts*

3.11 On 26 April 2018, TE-TO submitted to the Civil Court Skopje a proposal for commencement of insolvency together with a reorganisation plan dated 4 April 2018[14] ("**Reorganisation Plan dated 4 April 2018**"). On 2 May 2018, the Court decided to initiate a preliminary procedure against TE-TO to determine the conditions for opening insolvency and reorganisation in accordance with the Reorganisation Plan dated 4 April 2018. On 6 June 2018, TE-TO submitted a new reorganisation plan named a consolidated text of the Reorganisation Plan ("**Reorganisation Plan dated 6 June 2018**").[15]

3.12 The Civil Court Skopje approved the Reorganisation Plan dated 6 June 2018 with a decision of 14 June 2018, as amended by a decision of 17 July 2018 of the Civil Court Skopje (Case file

[10] Letter of acknowledgment of debt from TE-TO to GAMA dated 17 March 2015 (**Exhibit C-009**).

[11] Judgment of the First Instance Civil Court in Skopje No. PL1-286/13, dated 4 May 2018 (**Exhibit C-010**)

[12] Judgment of the Appellate Court in Skopje no. TSZ-2278/18, dated 18 October 2019 (**Exhibit C-011**).

[13] Decision of the Supreme Court of the Republic of North Macedonia Rev1 no. 49/2020 dated 23 December 2020 **Exhibit C-12**).

[14] Reorganization Plan of TE-TO AD Skopje no. 0302 - 439 dated 4 April 2018 (**Exhibit C-013**).

[15] Consolidated version of the Reorganization Plan of TE-TO AD Skopje no. 0302 - 685 dated 06 June 2018 (**Exhibit C-014**).

no. 3 ST-124/18 and 160/18)7.[16] GAMA appealed this decision, but the Decision of 14 June 2018 was upheld by a decision of 30 August 2018 of the Appellate Court Skopje,[17] rejecting the appeals of GAMA and other affected creditors without any further recourse available to the affected creditors. As a result, 90% of claims of unsecured creditors of TE-TO, including GAMA's claim of EUR 4.5 million and the accrued default interest thereof was written-off, and the payment of the remaining 10% of claims of unsecured creditors, including GAMA's remaining claim of EUR 500,000 was postponed to 2028.

3.13 The whole purpose of these proceedings, approved by decisions of Macedonian courts in breach of the Macedonian Law on Insolvency,[18] was to create reasons for purported threatening insolvency artificially and thereby prevent creditors of TE-TO, and specifically Claimant, to collect their claims from TE-TO.

3.14 The reason for TE-TO's proposal for commencement of insolvency, as stated in the proposal for insolvency and the Reorganisation Plan dated 4 April 2018, was "*imminent insolvency*" of TE-TO in the sense of the Law on Insolvency. TE-TO explained that its debt to its indirect 90% majority shareholder Bitar Holdings (Cyprus) Limited of EUR 112 million suddenly became due and that this debt will cause TE-TO to become insolvent.

3.15 The Reorganisation Plan dated 4 April 2018 proposed by TE-TO grouped TE-TO's creditors into three classes: (i) secured creditors with claims to be paid 100% as they become due; (ii) creditors with claims which are not important for the daily operation of TE-TO and whose claims were related to the construction of the Power Plant, which were to be paid only 10% after 2028; and (iii) creditors whose claims were related to the daily operation of TE-TO, which would be paid 100% as they become due.

3.16 GAMA, who built the Power Plant, was listed in a class of creditors who were not important for the daily operation of TE-TO and included only shareholders and related parties of TE-TO, whose claims were based on loans granted to TE-TO. The Reorganisation Plan envisaged the write-off of 90% of the creditors' receivables in this class and payment of the residual 10% of the receivables after ten years in 2028. It was shocking under any international standards and also against the Macedonian rules on judicial reorganisation to propose such a classification of creditors and include GAMA, a creditor that built the Power Plant, in the same class with the shareholders and related parties of TE-TO whose claims in insolvency are subordinated to claims of other creditors by operation of the Macedonian insolvency law.

3.17 Under the Macedonian rules on judicial reorganisation, the Civil Court Skopje was required to scrutinise and subsequently reject the Reorganisation Plan dated 4 April 2018 due to improper classification of creditors. The Civil Court must have established that the classes of creditors in the Reorganisation Plan dated 4 April 2018 were not legally and well defined. The claim of

[16] Decision of the First Instance Civil Court in Skopje dated 14 June 2018 (**Exhibit C-015**), as amended by decision of the First Instance Civil Court in Skopje (Case file no. 3 ST-124/18 and 160/18), dated 17 July 2018 (**Exhibit C-016**).

[17] Decision of the Appellate Court in Skopje (Case file TSZ-1548/18), dated 30 August 2018 (**Exhibit C-017**).

[18] Law on Insolvency (Official Journal of Republic of Macedonia, No. 34/06, as amended).

GAMA was substantially different from both a legal and economic standpoint compared to claims of the shareholders and related parties of TE-TO. This put GAMA in a tremendously disadvantageous position in comparison to all other creditors of TE-TO.

3.18 GAMA and other creditors objected to the unlawful and discriminative Reorganisation Plan dated 4 April 2018 to the Civil Court Skopje. A voting session was scheduled for 5 June 2018, but it was postponed[19] because the Reorganisation Plan dated 4 April 2018 had so many critical flaws acknowledged by TE-TO and the presiding judge that it was impossible to vote on. Although in such cases, that is, when the debtor's reorganisation plan is substantially in breach of the Macedonian insolvency law, the judge must reject the debtor's proposal for commencement of insolvency and the debtor's reorganisation plan, the judge, in breach of the Macedonian insolvency law, allowed TE-TO to submit a new reorganisation plan, naming it as "*consolidated text of the plan*".

3.19 Thus, TE-TO prepared the Reorganisation Plan dated 6 June 2018, which this time, classified creditors into two different classes as follows:

	Creditors' class	**Proposed amendment of debt**
1.	**Secured creditors** (Komercijalna Banka AD Skopje and Landesbank Berlin AG)	No amendment
2.	**Unsecured creditors** (Shareholders and related parties of TE-TO, including Bitar Holdings (Cyprus) Limited, Project Management Consulting, Cardicor Investments Ltd, Sintez Green Energy Groups, Toplifikacija AD Skopje, all other creditors including GAMA)	Write-off of 90% of their claims and interest and suspension of payment of the residual amount for ten years until 2028

3.20 The Reorganisation Plan dated 6 June 2018 envisaged a write-off of 90% of the claims of all unsecured creditors of TE-TO (including GAMA's claim) and the default interest on the claims. Based on this new plan, even unsecured creditors whose claims in the Reorganisation Plan dated 4 April 2018 were to be settled 100% would now receive only 10% of their claims without interest after 2028. The presiding judge skipped all procedural steps and deadlines, did not

[19] Minutes of the hearing before the Civil Court Skopje, dated 5 June 2018 (**Exhibit C-018**)

make a public announcement of the submission of the reorganisation plan and scheduled a vote on 14 June 2018.

3.21 At the hearing held on 14 June 2018, outraged by the unlawful conduct of the presiding judge, GAMA requested the judge to be recused. The presiding judge adjourned the hearing for an hour, returned to the courtroom, and said that the request for recusal had been denied and allowed creditors to vote on the Reorganisation Plan dated 6 June 2018. A written decision for rejection of the request for recusal was never served to Claimant, as required under the Macedonian law.

3.22 After the resumption of the hearing, the majority indirect shareholder Bitar Holdings (Cyprus) Limited and related parties which are the creditors of circa. 90% of the total debts of TE-TO outvoted all other creditors in the class of unsecured creditors, who voted against the plan, including GAMA. The Civil Court Skopje subsequently approved the reorganisation plan by way of the decision of 14 June 2018, and this decision was upheld by a decision of 30 August 2018 of the Appellate Court Skopje, rejecting the appeals of GAMA and other affected creditors.

3.23 The decisions of the Macedonian courts purported to be justified on several grounds, none of which is even faintly sufficient to approve the write-off of 90% of the unsecured creditors' claims under the Macedonian law. The Macedonian courts took the decisions based on cursory written evidence, without even an attempt to remedy the procedural errors and substantially analyse the Reorganisation Plan dated 6 June 2018 and the arguments set forth by unsecured creditors.

3.24 In particular, the Macedonian courts failed to investigate and consider whether TE-TO had the authority to propose judicial reorganisation, whether the conditions for the commencement of insolvency over TE-TO were met, wrongfully classified creditors in a way where the shareholders and related parties of TE-TO were classified together with Claimant, and unlawfully approved a repayment period longer than the statutory time limit.

3.25 However, it was all but certain that TE-TO was never in a position to declare insolvency. Against the above backdrop, in 2019, the Finance Police Administration of the Republic of North Macedonia filed criminal charges against (i) the President of the Management Board of TE-TO, (ii) the insolvency judge who approved the Reorganisation Plan; (iii) the notary who certified the annexes to the loan agreements and the settlement agreement entered into between the majority shareholder Bitar Holdings (Cyprus) Limited and TE-TO and (iv) the attorney at law who prepared the annexes to these loan agreements and the settlement agreements, which provided grounds for the purported insolvency of TE-TO.[20] The criminal charges were based on a well-founded suspicion that the accused have committed the criminal acts of "*False Insolvency*", "*Abuse of official position*", and "*Money laundering*".

3.26 However, according to publicly available information, the Macedonian Public Prosecutor's Office rejected the criminal charges and refused to raise indictments against the suspects by official duty, despite the overwhelming evidence of wrongdoings in the reorganisation process.

[20] Announcement to media of the Finance Police Administration of the Republic of North Macedonia no. 0306 – 1902/1 dated 21 June 2019 (**Exhibit C-019**).

3.27 The unlawful reorganisation of TE-TO and the privileged treatment it received from Respondent is also evident from the fact that Respondent provided state aid to TE-TO shortly after the restructuring of its debt was approved by Macedonian courts. Since TE-TO was unable to pay its tax liabilities resulting from the writing-off of claims of unsecured creditors, Respondent decided to grant TE-TO suspension of its tax debt of EUR 16 million. To that end, on 28 October 2019, Respondent and TE-TO entered into an Agreement for Granting of State Aid no. 08-2909/12 ("**State Aid Agreement**"). The Respondent eventually terminated the State Aid Agreement in December 2020, shortly after the State Commission for the Prevention of Corruption of the Republic of North Macedonia ("**Anticorruption Commission**") found that the state aid was illegal.[21]

B. RESPONDENT'S VIOLATIONS OF THE TREATY

3.28 Article II(3) of the Treaty requires North Macedonia to accord to Claimant's investment treatment no less favourable than that accorded in similar situations to investments of its investors (the "***national treatment***" clause) or to investments of investors of any third country (the "***MFN***" clause):

"*Each Party shall accord to these investments, once established, treatment no less favourable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favourable*."

3.29 North Macedonia has breached Article II(3) of the Treaty by providing Claimant and its investment treatment that is less favourable than treatment it has accorded to investments of comparable investors, both Macedonian and of third countries. Specifically, the decisions of Macedonian courts which approved the write-off of 90% of the GAMA's claim and accrued interest in favour of TE-TO, treated GAMA less favourably in comparison to, *inter alia*:

(i) the shareholders and related parties of TE-TO, which have been put in the same class of creditors as GAMA, although shareholders' claims in insolvency are subordinated to claims of all other creditors and are repaid only after the repayment of all creditors;

(ii) Macedonian or foreign parties in similar reorganisation proceedings in North Macedonia;

3.30 Moreover, it is well established and has been repeatedly affirmed in case law that an MFN clause, such as the one contained in Article II(3) of the Treaty, entitles a claimant's investment to benefit from substantive guarantees contained in other investment protection treaties concluded by North Macedonia.[22] The MFN provision in the Treaty entitles Claimant to rely upon the substantive protections accorded to the investments of third State nationals under other North Macedonia's BITs currently in force, including the duty (i) to accord fair and

[21] Decision of the State Commission for the Prevention of Corruption no. 12-120/33 dated 27 November 2020 (**Exhibit C-020**).

[22] *See,* e.g., *Bayindir Insaat Turizm Ticaret Ve Sanayi A.Ş. v. Islamic Republic of Pakistan* ICSID Case No ARB/03/29, Decision on Jurisdiction, 14 November 2005, ¶¶ 231-232.

equitable treatment (e.g., pursuant to Article 3(1) of the Lithuania-Macedonia BIT,[23] Article 3(1) of the Austria-Macedonia BIT[24] and Article 2(2) of the Slovakia-Macedonia BIT[25]); to accord full protection and security (e.g. pursuant to Article 3(1) of the Lithuania-Macedonia BIT and Article 3(1) of the Austria-Macedonia BIT) and (iii) not to impair by arbitrary, unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments (e.g., pursuant to Article 3(2) of the Lithuania-Macedonia BIT and Article 3(2) of the Spain-Macedonia BIT[26]).

3.31 Throughout the acts described above, the Respondent has breached its obligation to provide fair and equitable treatment, which applies by virtue of the MFN clause in the Treaty, to Claimant's investment, including through:

(i) the arbitrary decisions of the Macedonian courts, which wrongly assumed jurisdiction over the dispute, entailed serious procedural defects and entirely denied GAMA's claim against TE-TO;

(ii) the excessive duration of the debt collection court proceedings in violation of Claimant's right to a speedy trial, until they became obsolete due to the write-off of the GAMA's claim;

(iii) the endorsement by Macedonian courts of abusive tactics employed by TE-TO and its majority shareholder Bitar Holdings (Cyprus) Limited, which based on unlawful acts, artificially created the *"imminent insolvency*" of TE-TO only to release TE-TO from creditors' claims, including that of Claimant;

(iv) the wrongful refusal of the judge of the Civil Court Skopje to reject the debtor's proposal for commencement of insolvency and its reorganisation plan;

(v) the failure of the Civil Court Skopje to review and decide upon the Claimant's request for recusal of the judge in flagrant breach of Claimant's due process rights;

(vi) the decision of the Macedonian courts approving the proposed debt restructuring of TE-TO resulting in the unlawful writing-off of 90% of the GAMA's claim and accrued interest against TE-TO, involving serious procedural defects, breach of Claimant's due process rights and abusive outcome;

(vii) unjustified discrimination of GAMA in civil court proceedings and reorganisation proceedings against TE-TO, as compared to treatment

[23] Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Lithuania on the Promotion and Protection of Investments dated 7 March 2011.

[24] Agreement between the Republic of Austria and the Republic of Macedonia on the Promotion and Protection of Investments dated 28 March 2001.

[25] Agreement between the Slovak Republic and the Republic of Macedonia on the Promotion and Reciprocal Protection of Investments dated 25 June 2009.

[26] Agreement between the Macedonian Government and the Spanish Government on the Promotion and Reciprocal Protection of Investments dated 20 June 2005.

received by TE-TO and its shareholders, and to treatment of other domestic and foreign investors in similar reorganisation proceedings;

(viii) a denial of justice by Macedonian courts through acts described above;

(ix) the wrongful refusal by the Macedonian Prosecution to take any actions in respect of the criminal charges filed by the Finance Police Administration of the Republic of North Macedonia against individuals, including the insolvency judge, who were involved in preparing grounds for the reorganisation of TE-TO and writing-off of the GAMA's claim.

3.32 The same acts also constitute the breach of the Respondent's duty to accord full protection and security and not to impair by arbitrary, unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investment, which apply by virtue of the MFN clause also to Claimant's investment.

3.33 These violations have caused significant damage to the value of Claimant's investment and have also violated Respondent's obligation under Article III of the Treaty, which protects Claimant's investment against the illegal expropriation:

"*1. Investments shall not be expropriated, nationalised or subject, directly or indirectly, to-measures of similar effects except for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article II of this Agreement.*

2. Compensation shall be equivalent to the market value of the expropriated investment before the expropriatory action was taken or became known. Compensation shall be paid without unreasonable delay and be freely transferable as described in paragraph 2 Article IV.

3. Investors of either Party whose investments suffer losses in the territory of the other Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by such other Party treatment no less favourable than that accorded to its own investors or to investors of any third country, whichever is the most favourable treatment, as regards any measures it adopts in relation to such losses."

3.34 The decisions of the Macedonian courts, which unlawfully and discriminatorily confirmed the writing-off of 90% of Claimant's claim against TE-TO, with the remaining part to be repaid only after the five years' statutory deadline for the repayment of claim, constitute an expropriation of Claimant's investment.

3.35 The actions of the Respondent's state organs described above also constitute the breach of the customary international law, encompassing the prohibition of the denial of justice.

4. PROCEDURAL MATTERS AND JURISDICTION

A. THE PARTIES HAVE CONSENTED TO ICC ARBITRATION

4.1 Article VII(2) of the Treaty grants Claimant the option of submitting his dispute in connection with his investment to arbitration pursuant to the ICC Rules, if the dispute cannot be settled through negotiations within six months following the date of the written notification of the dispute to the Respondent:

> "*ARTICLE VII*
> *Settlement of Disputes Between One Party and Investors of the Other Party*
> *1. Disputes between one of the Parties and an investor of the other Party, in connection with his investment, shall be notified in writing, including a detailed information, by the investor to the recipient Party of the investment. As far as possible, the investor and the concerned Party shall endeavour to settle these disputes by consultations and negotiations in good faith.*
> *2. If these disputes cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to:*
> *(a) the International Center for settlement of Investment Disputes (ICSID) set up by the " Convention on Settlement of Investment Disputes Between States and Nationals of other states",*
> *(b) an ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL),*
> *(c) the Court of Arbitration of the Paris International Chamber of Commerce,*
> *(d) the courts of justice of the hosting Party that is a party to the dispute. However, the investor who has brought the dispute before the said courts can only apply to one of the dispute settlement procedures under (a), (b) or (c) of this Article, if a final award has not been rendered within one year.*
> *3. The arbitration awards shall be final and binding for all parties in dispute. Each Party commits itself to execute the award according to its national law.*"

4.2 Claimant attempted on several occasions, to no avail, to settle the dispute amicably with Respondent, including by way of letters sent to Respondent on 11 November 2019 and 22 January 2020.

4.3 On 11 November 2019,[27] Claimant delivered a Notice of Dispute to the Republic of North Macedonia under the Treaty. On 25 November 2019, Claimant's legal counsel received a letter from the Chief of the Cabinet of the Prime Minister of the Republic of North Macedonia underlining that the Cabinet has carefully reviewed the Notice of Dispute and that they have forwarded it to H.E. Mr Kocho Angjushev, Vice Prime Minister in charge of Economy Matters

[27] Notice of Dispute dated 11 November 2019 (**Exhibit C-021**).

and Coordination of Economy Resorts.[28] Following this letter, however, Respondent did not display any intention to engage in discussions towards an amicable settlement of the dispute.

4.4 On 22 January 2020,[29] Claimant sent another letter in reference to the Notice of Dispute reiterating its consent to submit the present dispute to arbitration, but Respondent never replied.

4.5 The Respondent failed to engage in consultations and negotiations to settle the dispute amicably within six months as of the date it has been notified about the dispute. Claimant accepts the offer to arbitrate contained in Article VII(2)(c) of the Treaty, pursuant to the Rules of Arbitration of the International Chamber of Commerce in force as from 1 January 2021 (the "**ICC Rules**").

B. JURISDICTION

4.6 Claimant is a protected investor under the Treaty. Article I(2)(b) of the Treaty defines an investor, in relevant part, as "*corporations, firms or business associations incorporated or constituted under the law in force of either of the Parties and having their headquarters in the territory of that Party*."

4.7 Claimant is a joint stock company incorporated under the laws of the Republic of Turkey and with headquarters in Ankara, Turkey.

4.8 Claimant has also made a protected investment in the territory of the Respondent. Article I(1) of the Treaty defines an investment as "*every kind of asset*" and lists examples of a protected investment, including, *inter alia*, "*returns reinvested, claims to money or any other rights to legitimate performance having financial value related to an investment*". Claimant was involved in the construction of the 220 MW combined cycle cogeneration power plant in Skopje based on an EPC turnkey contract with a total value of EUR 135,800,000.00. The contract involved significant contribution in terms of construction operations, know-how, equipment, and qualified personnel over 5 years. The outstanding claim of GAMA under the EPC Contract, which was subject to treatment in breach of the Treaty and customary international law, constitutes a claim for money under the Treaty.

4.9 Claimant is, therefore, a protected investor that has made protected investment, as defined in the Treaty, within North Macedonia.

C. GOVERNING LAW

4.10 The law applicable to the dispute is the Treaty and other relevant rules of public international law.

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[28] Letter from the Chief of the Cabinet of the Prime Minister of the Republic of North Macedonia no. 08-3513/2 (**Exhibit C-022**)

[29] Letter in reference to the Notice of dispute of 11 November 2019 dated 22 January 2020 (**Exhibit C-023**).

D. LANGUAGE OF THE PROCEEDINGS

4.11 Article 20 of the ICC Rules provides that, in the absence of agreement by the parties, the Tribunal shall determine the language of the arbitration. As the Treaty does not specify the language of the arbitration, Claimant proposes that English be the language of the proceedings. English language is also the equally authentic language of the Treaty.

E. PLACE OF THE ARBITRATION

4.12 Article 18(1) of the ICC Rules provides that "[*t]he place of the arbitration shall be fixed by the Court, unless agreed upon by the parties.*" The Treaty does not specify the place of the arbitration.

4.13 Claimant proposes that the place of arbitration be fixed in a neutral place that will guarantee that the ensuing award be enforceable as required by Article 42 of the ICC Rules.

4.14 Claimant proposes Paris, France as the seat of arbitration.

F. CONSTITUTION OF THE ARBITRAL TRIBUNAL

4.15 The Treaty does not specify the number of arbitrators and their choice.

4.16 Pursuant to Article 12(2) of the ICC Rules, where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators.

4.17 Claimant considers that the complexity of the dispute requires the appointment of three arbitrators.

4.18 If Respondent fails to comment or rejects the proposal of Claimant, Claimant proposes that the Court pursuant to Article 12(2) of the ICC Rules decides that the case be resolved by three arbitrators and invites Claimant and Respondent to nominate an arbitrator within 15 days from receipt of the notification of the decision of the Court.

5. CLAIMANT'S DAMAGES

5.1 Claimant requests the payment of compensation for damages suffered by Claimant as a result of the breaches of the Treaty and customary international law by the Respondent.

5.2 Claimant's total damages are currently estimated at **EUR 5 million** due to breaches of the Treaty and customary international law by the Respondent with respect to Claimant's claim for money described above **and EUR 11,959.00** as legal representation costs Claimant has

incurred so far because of the legal proceedings through which the Respondent unlawfully interfered with the Claimant's investment.

6. PAYMENT OF THE FILING FEE

6.1 Pursuant to Appendix III, Article 1(1) of the ICC Rules, Claimant is sending an advance payment of US$ 5,000.00 with the Request for Arbitration. Claimant acknowledges that this payment is non-refundable and shall be credited to its portion of the advance on costs.

7. REQUEST FOR RELIEF

7.1 For these reasons, Claimant respectfully requests the Arbitral Tribunal to issue an award:

(i) declaring that Respondent breached its obligations under the Treaty and customary international law; and

(ii) ordering Respondent to compensate in full Claimant for the damages and losses suffered as a result of Respondent's breaches under the Treaty and customary international law, currently estimated to be in the amount of EUR 5 million with interest at one monthly rate of EURIBOR for euros for each semi-annual period based on the rate applicable on the last day of the semi-annual period preceding the current semi-annual period, increased for 10% from 1 April 2012, and EUR 11,959.00;

(iii) ordering Respondent to pay any further applicable interest on any amount awarded until Respondent complies with such award, and

(iv) ordering Respondent to pay all arbitration costs, including but not limited to compensation for all arbitrators', experts' & witnesses' fees and costs, legal representation fees and expenses, ICC Secretariat's fees and costs, and other administrative costs such as costs related with the hearing etc. incurred by Claimant in connection with the present dispute.

7.2 For the avoidance of doubt, Claimant reserves its right to raise any and all further claims arising out of or in connection with the disputed matters described in this Request or otherwise arising between the Parties, amend and/or supplement the relief sought herein, produce such factual or legal arguments or evidence (including witness testimony, expert testimony and other documents) as may be necessary to, present its case or rebut any case which may be put forward by Respondent and seek interim and provisional measures before this Arbitral Tribunal or any competent national court.

* * *

Respectfully submitted,

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