

**INTERNATIONAL CENTRE
FOR SETTLEMENT OF
INVESTMENT DISPUTES
(ADDITIONAL FACILITY)**

STRABAG SE

Claimant

v.

LIBYA

Respondent

REQUEST FOR ARBITRATION

AND

**APPLICATION FOR ACCESS TO THE ICSID
ADDITIONAL FACILITY**

23 June 2015

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I. INTRODUCTION

1. Strabag SE (the “**Claimant**”) submits this Request for Arbitration (the “**Request**”) to the Secretary-General of the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) in accordance with Articles 2 and 4 of the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes (the “**Additional Facility Rules**”), Schedule C to the Additional Facility Rules (the “**Arbitration (Additional Facility) Rules**”), and Article 11(2)(c)(ii) of the Agreement between the Republic of Austria and Libya (formerly known as the Great Socialist People’s Libyan Arab Jamahiriya) for the Promotion and Protection of Investments (the “**BIT**”).¹
2. As described in further detail in Section IV below, the Claimant, through its subsidiaries, entered into a series of contracts with authorities of Libya (referred to in this Request as “**Libya**” or the “**Respondent**”) to design and/or construct five sections of highway in and around the Tripoli, Benghazi and Misrata areas, and to design and construct infrastructure in the city of Tajura.
3. The Respondent has failed to comply with its obligations under the BIT in respect of the Claimant and its investments in Libya, and these breaches of the BIT have caused loss and damage to the Claimant and its investment in Libya.
4. On 16 May 2014, the Claimant sent the Respondent a notice of dispute and request to settle its dispute with the Respondent amicably.² As of the date of this Request, the Respondent has not responded to the Claimant’s request for amicable settlement.
5. As discussed further in Section III, this dispute satisfies the jurisdictional requirements contained in Article 10 of the BIT, and the Claimant has complied with the requirements for submission of the dispute to the ICSID Additional Facility contained in Article 11 of the BIT.
6. Furthermore, the Request complies with the requirements of the Additional Facility Rules and the Arbitration (Additional Facility) Rules. In particular:
 - a. Section II designates the Parties to the dispute and states their addresses;
 - b. Section III sets forth the relevant provisions embodying the agreement of the Parties to submit the dispute to arbitration. Section III.A addresses the Respondent’s

¹ Exhibit 1. The BIT was signed on 18 June 2002 and entered into force on 1 January 2004. This information is taken from the Federal Ministry of Foreign Affairs and European Integration of the Republic of Austria, published on www.bmeia.gv.at (last accessed on 27 May 2015).

² Exhibit 2(a).

consent; Section III.B contains the Claimant's consent; Section III.C establishes the date of the Parties' consent; and Section III.D describes the Claimant's unsuccessful attempt to reach an amicable settlement of this dispute in accordance with Article 11(1) of the BIT;

- c. Section IV demonstrates that the ICSID Secretariat is authorised to administer this dispute under Article 2 of the Additional Facility Rules;
- d. Section V contains information concerning the issues in dispute;
- e. Section VI contains the Claimant's request that the Secretary-General of the Centre approves access to the Additional Facility;
- f. A statement that the Claimant has taken all necessary actions to authorise this Request is contained in Section VII.A. Section VII also contains other information relevant to this Request; and
- g. Section VIII contains the Claimant's submissions.

- 7. Supporting documents, including documents reflecting the internal actions taken by the Claimant to authorise this Request, are attached as exhibits to this Request. The Claimant has also provided the fee for lodging the Request, confirmation of which is at Exhibit 3.
- 8. The Claimant accordingly requests the Secretary-General of the Centre to approve the Parties' agreement providing for arbitration proceedings under the ICSID Additional Facility, register this Request in the Arbitration (Additional Facility) Register and notify the Parties of the registration as soon as possible.

II. THE PARTIES

- 9. As required by Article 3(1)(a) of the Arbitration (Additional Facility) Rules, the Claimant has designated below the Parties to the dispute and stated their addresses.
- 10. The Claimant is Strabag SE, a publicly listed company incorporated under the laws of Austria.³ It is registered in the commercial register (*Firmenbuch*) of the Klagenfurt Commercial Court with the registration FN 88983 h and listed on the Vienna Stock Exchange

³ Exhibit 4.

under International Securities Identification Number AT000000STR1.⁴ The Claimant is represented by its board of directors (*Vorstand*). Its seat is:

Triglavstr. 9
9500 Villach
Austria

11. The Claimant's business address is:

Strabag SE
Donau-City-Str. 9
1220 Vienna
Austria

12. The Respondent is Libya. Its address is:

H.E. Abdullah Al-Thinni, Prime Minister
H.E. Mohammed Al-Dairi, Minister of Foreign Affairs and International Cooperation
H.E. Muneer Ali Assr, Minister of Economy and Industry
H.E. Kamal Al-Hassi, Minister of Finance and Planning

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III. THE PARTIES HAVE CONSENTED TO SUBMIT DISPUTES TO THE CENTRE FOR ARBITRATION UNDER THE ADDITIONAL FACILITY RULES

A. The Respondent's Consent

13. The Respondent has consented in writing to submit investment disputes to the Centre for arbitration in accordance with the Additional Facility Rules.

(i) The relevant provisions of the BIT

14. The Respondent's consent is contained in Article 12(1) of the BIT, which provides:

“Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with [Chapter Two: Dispute Settlement, Part I: Settlement of Disputes between an Investor and a Contracting Party].”

⁴ The Claimant's listing information is available at <http://en.wienerborse.at/quote/?ISIN=AT000000STR1&TYPE=P> (last accessed 27 May 2015).

15. The relevant part of Article 11 of the BIT provides:

“(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation under this Agreement consultation shall take place between the parties concerned.

(2) If these consultations do not result in a solution within three months from the date of request for consultations, the investor may submit the dispute:

[...]

(c) in accordance with this Article to:

[...]

(i) the [Centre], established pursuant to the [ICSID] Convention, if the Contracting Party of the investor and the Contracting Party, Party to the dispute, are both parties to the ICSID Convention.

(ii) the Centre under the [Additional Facility Rules], if the Contracting Party of the investor or the Contracting Party, party to the dispute, but not both, is a party to the ICSID Convention.”

16. Article 10 of the BIT provides that Chapter Two of Part One of the BIT (i.e., the investor-State dispute settlement provisions):

“... applies to disputes between a Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under the [BIT] which causes loss or damage to the investor or his investment.”

(ii) The Claimant is an “investor of the other Contracting Party”

17. Article 1(1)(b) of the BIT defines an “investor of a Contracting Party” to include:

“an enterprise constituted or organised under the applicable law of a Contracting Party [...] making or having made an investment in the other Contracting Party’s territory.”⁵

18. The Claimant is a company constituted under the laws of Austria that has (as explained in sub-Section (iii) below) made an investment in Libya, and consequently satisfies this definition.

(iii) The Claimant has made an “investment” in the territory of Libya

19. Article 1(2) of the BIT defines an “investment by an investor of a Contracting Party” as:

⁵ Article 1(3) of the BIT defines an “enterprise” as “a legal person or any entity constituted or organised under the applicable law of a Contracting Party and whether private or government owned or controlled, including a corporation, trust, partnership, sole proprietorship, branch, joint venture or association.”

“every kind of asset in the territory of one Contracting Party, owned or controlled, directly or indirectly, by an investor of the other Contracting Party, including:

(a) an enterprise constituted or organised under the applicable law of the first Contracting Party;

(b) shares, stocks and other forms of equity participation in an enterprise as referred to in subparagraph (a), and rights derived therefrom;

[...]

(d) any right whether conferred by law or contract, including turnkey contracts, concessions, licences, authorisations or permits to undertake an economic activity;

(e) claims to money and claims to performance pursuant to a contract having an economic value;

[...]

(g) any other tangible or intangible, movable or immovable property, or any related property rights, such as leases, mortgages, liens, pledges or usufructs.”

20. The Claimant, through its subsidiaries, including its wholly-owned German subsidiary Strabag International GmbH (“**Strabag International**”), contributed to the capital of and owns 60% of the shares in Al Hani General Construction Co. (“**Al Hani**”),⁶ a joint venture company incorporated in Libya with its head office in Tripoli. The remaining shares of Al Hani are owned by the Libyan Investment and Development Company (“**LIDCO**”).
21. The Claimant’s equity participation in Al Hani constitutes an investment within the meaning of the *chapeau* of Article 1(2) of the BIT in general, and Articles 1(2)(a) and (b) of the BIT in particular.
22. Al Hani is party to the following contracts entered into with the Respondent’s authorities (together the “**Contracts**”):

- (1) The “**Benghazi Contract**”: A contract for the maintenance of the coastal road between Ajdabiyah and Al Marj entered into between the Claimant’s subsidiary, Strabag International and the Roads and Bridges Authority (the “**R&B**”) on 18

⁶ The Claimant owns 99.99% of ILBAU Liegenschaftsverwaltung GmbH (“**ILBAU**”), a company incorporated in Germany (Exhibits 5 and 6). ILBAU owns 100% of the shares in Strabag International GmbH, a company incorporated in Germany (Exhibits 7 and 8), which in turn owns 60% of the shares in Al Hani. The Extract of the Commercial Register dated 23 November 2009 at Exhibit 9 shows that Al Hani was incorporated in Libya on 25 July 2007. Due to the prevailing circumstances in Libya, the Claimant has been unable to obtain a more recent extract from the Commercial Register. Al Hani’s Articles of Association (as amended on 27 October 2009) demonstrate at p. 3 that Strabag International holds 60% and LIDCO holds 40% of the shares in Al Hani (Exhibit 10).

October 2006. Strabag International assigned its rights under the contract to Al Hani on 27 October 2009.⁷

- (2) The “**Misrata Contract**”: A contract for the maintenance of the coastal road between Misrata and Sirte entered into between, on the one hand Strabag International and LIDCO, and on the other hand the R&B, on 19 April 2007. Strabag International and LIDCO assigned their rights under the Misrata Contract to Al Hani on 18 June 2009.⁸
- (3) The “**Tajura Infrastructure Contract**”: A contract to construct “integrated utilities” for the city of Tajura (including water and sewage pipelines, storm water drainage, pumping sewage collection reservoirs, filtration reservoirs, road networks and street lighting) entered into between Al Hani and the Organisation of Housing and Utilities on 18 May 2008.⁹
- (4) The “**TIAR Contract**”: A contract for the reconstruction and upgrading of the Tripoli international airport road entered into between Al Hani and the R&B on 2 November 2008.¹⁰
- (5) The “**TIAR-NE Contract**”: A contract to provide technical studies and engineering designs for the northern extension of the new Tripoli international airport road entered into between Al Hani and the R&B on 4 August 2009.¹¹
- (6) The “**Garaboulli Contract**”: A contract for the maintenance of the coastal road between Ras Ejdair and Garaboulli and the development and upgrading of the “Tripoli Western Access Road” entered into between Al Hani and the Implementing Board of Communications Projects on 24 August 2010.¹²

23. The Contracts furthermore constitute an investment within the meaning of the *chapeau* of Article 1(2) of the BIT in general, and Articles 1(2)(d) and (e) of the BIT in particular.

⁷ The Benghazi Contract and its Addendum No. 2, by virtue which the rights and obligations under contract were transferred to Al Hani, are at Exhibit 11.

⁸ The Misrata Contract its Annex No. 2, by virtue which the rights and obligations under contract were transferred to Al Hani, are at Exhibit 12.

⁹ Exhibit 13.

¹⁰ Exhibit 14.

¹¹ Exhibit 15.

¹² Exhibit 16.

24. The Claimant through its subsidiaries, including Strabag International, further invested significant resources in Libya and acquired plant, machinery and equipment in connection with the performance of the Contracts. These assets constitute an investment within the meaning of the *chapeau* of Article 1(2) of the BIT in general, and Article 1(2)(g) of the BIT in particular.
25. Accordingly, the Claimant has made an “investment” in Libya and is an “investor of a Contracting Party” as defined in Article 1(1)(b) of the BIT.
- (iv) There is a dispute concerning “an alleged breach of an obligation of [a Contracting Party] under [the BIT] which cause[d] loss or damage to the investor or his investment”
26. As noted above, Article 10 of the BIT provides that Part One of Chapter Two of the BIT (the investor-State dispute resolution provisions) applies to “disputes between a Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under the [BIT] which causes loss or damage to the investor or his investment.”
27. As discussed below, there is a dispute between the Claimant and the Respondent which concerns the Respondent’s failure to comply with its obligations under the BIT, and the Respondent’s breaches of the BIT have caused loss and damage to the Claimant and its investment. The term “dispute” is not defined in the BIT. However, it is uncontroversial in public international law that “[a] dispute is a disagreement on a point of law or fact, a conflict of legal view or of interests between two persons”.¹³
28. As is discussed at Section V below, there is a dispute between the Parties in respect of the Respondent’s failure to comply with its obligations under the BIT. This follows in particular from the Respondent’s failure to pay sums owing under the Contracts in breach of Article 8(1) of the BIT, the Respondent’s failure to pay restitution or compensation to the Claimant for machinery and equipment requisitioned or destroyed by the Respondent’s armed forces or authorities in breach of Article 5(2) of the BIT, and the Respondent’s failure to provide full protection and security and fair and equitable treatment to the Claimant and its investment in breach of Article 3(1) of the BIT. These breaches have caused loss and damage to the Claimant and its investment.
29. The Respondent has accordingly consented to submit this dispute to international arbitration in accordance with Article 11 of the BIT.

¹³ See, for example, *The Mavrommatis Palestine Concession*, P.C.I.J., Series A No. 2, p. 11.

B. The Claimant's Consent

30. The Claimant hereby consents to submit the dispute to the Centre for arbitration in accordance with the Additional Facility Rules and its Schedule C (the Arbitration (Additional Facility) Rules), and the BIT.

C. The Date of the Parties' Consent

31. The Respondent's consent to arbitration became effective on 1 January 2004 when the BIT entered into force. The Claimant consented to submit this dispute to the Centre for arbitration under the Additional Facility Rules on the date of this Request. The date of consent to arbitration is therefore the date of this Request.

D. The Claimant has Requested Amicable Settlement of the Dispute with the Respondent to No Avail

32. On 16 May 2014, the Claimant sent a letter to H.E. Mohammed Imhammed Abdulaziz, the Minister of Foreign Affairs and International Cooperation, copied to the Prime Minister, the Deputy Minister of Economy and Trade, the Minister of Finance, the Minister of Transport, the Acting Minister of Housing and Utilities and the Libyan Ambassador to Austria, to notify formally the Respondent that a dispute had arisen between the Claimant and the Respondent in respect of the Respondent's violations of the BIT.¹⁴

33. In that letter, the Claimant stated that it considered that the Parties could "resolve this dispute in an amicable and constructive manner" and requested "consultations in accordance with Article 11(1) of the [BIT], and propose[d] that representatives of Strabag and representatives of the Government of Libya meet at the earliest opportunity to discuss this matter further".

34. As of the date of this Request, the Respondent has failed to respond to the Claimant's letter.

35. The Claimant has waited until beyond the expiry of the three month waiting period referenced in Article 11(2) of the BIT and is accordingly entitled to submit this dispute to arbitration under the Additional Facility Rules.

IV. ARTICLE 2 OF THE ADDITIONAL FACILITY RULES IS SATISFIED

36. Article 2 of the Additional Facility Rules provides:

"The Secretariat of the Centre is hereby authorized to administer, subject to and in accordance with these Rules, proceedings between a State (or a constituent subdivision or agency of a State) and a national of another State, falling within the following categories:

¹⁴ Exhibit 2(a). Confirmations that the letter was delivered by email, facsimile and courier to these recipients are at Exhibits 2(b) to (d).

(a) conciliation and arbitration proceedings for the settlement of legal disputes arising directly out of an investment which are not within the jurisdiction of the Centre because either the State party to the dispute or the State whose national is a party to the dispute is not a Contracting State [...]"

37. The Additional Facility Rules do not define the expression "legal dispute". The Report of the Executive Directors on the ICSID Convention provides the following explanation in respect of the meaning of a "legal dispute" in the context of its Article 25 (which concerns the jurisdiction of the Centre and applies *mutatis mutandis* to Article 2(a) of the Additional Facility Rules):

"The expression 'legal dispute' has been used to make clear that while conflicts of rights are within the jurisdiction of the Centre, mere conflicts of interests are not. The dispute must concern the existence or scope of a legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation."¹⁵

38. The dispute in this case concerns the violations by the Respondent of its obligations under the BIT and the Claimant's corresponding rights, including the Claimant's rights in public international law to compensation for the loss and damages that the Claimant has suffered as a result of the Respondent's violations of the BIT. Accordingly, there is a legal dispute between the Parties.
39. Likewise, the Additional Facility Rules do not define the term "investment". As discussed at paragraphs 19 to 25, above, the Claimant has clearly made an investment in Libya that satisfies the definition of the term contained in the BIT. Moreover, it is well-established in the context of arbitrations brought under the ICSID Convention that civil engineering and infrastructure construction projects qualify as investments for purposes of Article 25 of the ICSID Convention.¹⁶ Accordingly, on any reasonable interpretation of the term "investment", the legal dispute between the Parties which is the subject of this Request is one that has arisen directly out of an investment.
40. The Claimant is a company incorporated under the laws of Austria. Austria signed the ICSID Convention on 17 May 1966, deposited its instrument of ratification on 25 May 1971, and the ICSID Convention entered into force for Austria on 24 June 1971.¹⁷ The Claimant is

¹⁵ Para. 26.

¹⁶ See e.g. *Pantehniki S.A. Contractors & Engineers v. Republic of Albania*, ICSID Case No. ARB/07/21, Award, 30 July 2009; *Consortium R.F.C.C. v. Kingdom of Morocco*, ICSID Case No. ARB/00/6, Decision on Jurisdiction, 16 July 2001; *Salini Costruttori SPA v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001; *Autopista Cesionada de Venezuela CA v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/00/5, Decision on Jurisdiction, 23 September 2003; and *Bayindir Insaat Turizm Ticaret ve Sanayi AS v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005.

¹⁷ This information is taken from the Database of ICSID Member States.

accordingly a “national of a another State” for the purposes of Article 2 of the Additional Facility Rules.

41. Although the Claimant is a national of a Contracting State to the ICSID Convention (Austria), the Respondent is not a Contracting State Party. The dispute is accordingly between a non-Contracting State and a national of a State Party for the purposes of Article 2 of the Additional Facility Rules, and these arbitration proceedings do not fall within the jurisdiction of the Centre for that reason. The requirements of Article 2(a) of the Additional Facility Rules are accordingly satisfied and the Centre is authorised to administer this dispute.

V. THE DISPUTE BETWEEN THE PARTIES

42. The Claimant has set out below information regarding the issues in dispute. This summary is provided for purposes of Article 3(1)(d) of the Arbitration (Additional Facility) Rules and is without prejudice to the Claimant’s right to set out its claim in full, with supporting documentary, witness and expert evidence, at the appropriate stage of this arbitration.

A. The Facts giving rise to the Dispute

43. As is well known, in February 2011, an armed conflict broke out in Libya between forces loyal to Colonel Gaddafi and those seeking to oust his government. On 3 March 2011, *force majeure* was declared under five of the Contracts (excluding the TIAR-NE Contract) referencing the unrest in Libya starting on 20 February 2011. Work under the Contracts ceased on or around that date. The armed conflict continued until the Libyan National Transitional Council declared an official end to the war on 23 October 2011.
44. Prior to the outbreak of the 2011 conflict, Al Hani had performed substantial works pursuant to the Contracts, which were at various stages of completion. At this time, the Respondent’s authorities owed substantial sums to Al Hani for the work that had been performed under the Contracts prior to the conflict.
45. Despite attempts made by Al Hani and the Claimant, the Respondent’s authorities have failed to comply with their obligations under the Contracts to make payments to Al Hani for the works performed.

46. Moreover, the Contracts contain provisions which oblige the Respondent's authorities to provide compensation for losses caused by exceptional and unforeseeable conditions which fall outside the control of the contractor (i.e., *force majeure* events).¹⁸
47. Al Hani and the Claimant have incurred significant costs as a result of the *force majeure* conditions that existed in 2011, including without limitation, the costs of: (1) immobilising machinery and equipment allocated to the projects; (2) cancelling sub-contracts and purchase orders; (3) keeping in place performance and other guarantees pursuant to the Contracts; (4) evacuating its personnel from Libya; and (5) hiring additional security personnel in Libya.
48. The Respondent's authorities have failed to comply with their obligations to provide compensation for the losses that Al Hani incurred during the 2011 conflict, despite the fact that the Respondent's authorities are obliged to do so under the relevant contractual provisions.
49. In addition, during the 2011 conflict, the Libyan armed forces occupied certain Al Hani project sites, and requisitioned and destroyed property belonging to the Claimant and / or Al Hani.
50. For example, in early 2011, the Libyan Armed Forces occupied the Al Hani offices and mobilisation yards at Tweisha, Tajura and Tawarga. The Libyan armed forces requisitioned significant amounts of property, including vehicles and equipment from the mobilisation yard at Tweisha on at least 29 occasions between 7 April 2011 and 4 August 2011.
51. The Respondent has since neither returned this property nor paid compensation to the Claimant or Al Hani for these requisitions.
52. During this period, the Libyan armed forces also damaged or destroyed property belonging to the Claimant and / or Al Hani. For example, the Libyan armed forces occupied the Tajura and Tawarga sites and property located at these sites was damaged during the occupation of these sites by the Libyan armed forces.
53. The Respondent has since provided no compensation to the Claimant or Al Hani for the destruction of or damage to this property.
54. After the Libyan armed forces left the mobilisation yards at Tweisha, Tajura and Tawarga, the yards were looted and badly damaged by third parties. The mobilisation yard at Benghazi was similarly looted and damaged by third parties.

¹⁸ These provisions are contained in Article 35 of the Misrata Contract and Article 36 of the Benghazi, TIAR, Garaboulli and Tajura Contracts.

55. In early 2014, the political and security situation in Libya degenerated. In light of the failure of the Libyan authorities to provide adequate protection and security to Al Hani's equipment and property and the employees of Al Hani and Strabag International in Libya, along with the substantial outstanding amounts owed to Al Hani, Al Hani wrote to the relevant authorities of the Respondent on 27 February 2014 notifying them that it was not possible to continue to perform works in Libya.¹⁹ These letters also requested the Respondent's authorities to confirm when the outstanding payments would be settled, and the arrangements that the Respondent's authorities would put in place in order to provide adequate security for Al Hani's operations in Libya.
56. The Claimant has not received a response to these letters.
57. In an effort to preserve and protect its assets, the Claimant / Al Hani arranged for the remainder of the machinery and equipment belonging to the Claimant / Al Hani to be moved to Al Hani's mobilisation yard in Tweisha. However, subsequent to the submission of the Claimant's letter to the Minister of Foreign Affairs and International Cooperation and others on 16 May 2014, the Claimant discovered via satellite images that the machinery and equipment that had been located at the Tweisha mobilisation yard had been removed.
58. On 22 December 2014, the Claimant wrote to the Respondent requesting the Respondent's authorities to investigate this matter and arrange for the return of this machinery and equipment.²⁰ The Respondent has not responded to this letter and, to the Claimant's knowledge, the Respondent has taken no action as requested by the Claimant.

B. The Respondent has failed to comply with its Obligations under the BIT

59. The Respondent's conduct regarding the Claimant and Al Hani, including but not limited to the acts and omissions summarised at paragraphs 43 to 58 above, constitute clear violations of the BIT, including as summarised below.
60. Article 8(1) of the BIT provides that "Each Contracting Party shall observe any obligation it may have entered into with regard to specific investment by investors of the other Contracting Party".
61. The Respondent's authorities entered into obligations with regard to the Claimant's investments in Libya when they entered into the Contracts. The failure by the Respondent's authorities to observe their obligations under the Contracts, including by failing to pay for

¹⁹ Exhibits 17 and 18.

²⁰ Exhibit 19.

work performed under the Contracts, or to comply with the Respondent's obligations to provide compensation for costs incurred as a result of *force majeure* conditions, is in violation of Article 8(1) of the BIT.

62. Article 5(2) of the BIT provides in relevant part:

“An investor of a Contracting Party who in any of the events referred to in paragraph (1) [*i.e. armed conflict, state or emergency, revolution, insurrection, civil disturbance, or any other similar event, of acts of God of force majeure*] suffers loss resulting from:

(a) requisitioning of its investment or part thereof by the forces or authorities of the other Contracting Party, or

(b) destruction of its investment or part thereof by the forces or authorities of the other Contracting Party, which was not required by the necessity of the situation,

shall in any case be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective [...]”.

63. Accordingly, the Respondent is obliged to accord to the Claimant restitution or compensation for losses suffered as a result of (a) the requisitioning by the Respondent's armed forces of Al Hani's sites and property belonging to Al Hani / the Claimant during the 2011 conflict, and (b) the destruction by the Respondent's armed forces of Al Hani's sites and property belonging to Al Hani / the Claimant during the 2011 conflict.

64. Article 3(1) of the BIT requires the Respondent to “accord investments by investors of the other Contracting Party fair and equitable treatment and full and constant protection and security”.

65. The Respondent failed to provide protection and security to property belonging to Al Hani / the Claimant and to employees of Al Hani and Strabag International working in Libya, with the result that property belonging to Al Hani / the Claimant was destroyed, damaged or taken. In particular, significant amounts of vehicles, equipment and machinery has been removed from the mobilisation yard at Tweisha despite the Claimant's request that the Respondent's authorities provide protection and security in respect of these vehicles, equipment and machinery. To the best of the Claimant's knowledge, the Respondent's authorities have failed to investigate these events, or to take any steps to recover Al Hani's property or punish those responsible for the removal and damage.

66. Moreover, the Respondent has failed to provide to the Claimant and its investment in Libya fair and equitable treatment, including in its dealings with the Claimant and Al Hani subsequent to the 2011 conflict and by failing to provide to Al Hani / the Claimant the

substantial amounts to which Al Hani / the Claimant is entitled and which would be required for completion of the Contracts.

67. The Claimant has estimated on a provisional basis that the losses that it has suffered exceed EUR 80 million. The Claimant reserves its right to state its claim in full at the appropriate juncture of the proceeding, including a full quantification of its damages, with evidentiary and expert support.

VI. APPROVAL FOR ACCESS TO THE ADDITIONAL FACILITY

68. Pursuant to Article 4 of the Additional Facility Rules, access to the Additional Facility in respect of arbitration proceedings is subject to the approval of the Secretary-General of the Centre. Article 4(2) specifies that in the case of an application based on Article 2(a), such as this Request, the Secretary-General shall give her approval if two conditions are met.
69. First, she must be satisfied that the conditions of Article 2(a) of the Additional Facility Rules are fulfilled at the time. The Claimant has demonstrated that this Request concerns a request for arbitration proceedings for the settlement of legal disputes arising directly out of an investment which is not within the jurisdiction of the Centre because the State Party to the dispute is not a Contracting State of the ICSID Convention, in accordance with Article 2(a) of the Additional Facility Rules. The Secretariat of the Centre is accordingly authorised to administer this dispute, subject to and in accordance with the Additional Facility Rules.
70. Second, both parties must give their consent to the jurisdiction of the Centre under Article 25 of the ICSID Convention in the event that the jurisdictional requirements *ratione personae* of that Article have been met at the time when proceedings are instituted. The Respondent has given its consent in Article 11(2)(c)(i) of the BIT to the jurisdiction of the Centre under Article 25 of the ICSID Convention (in lieu of the Additional Facility) in the event that the jurisdictional requirements *ratione personae* of that Article shall have been met at the time when proceedings are instituted.
71. Pursuant to Article 4(2) of the Additional Facility Rules, the Claimant hereby consents to submit the dispute to the jurisdiction of the Centre under Article 25 of the ICSID Convention (in lieu of the Additional Facility) in the event that the jurisdictional requirements *ratione personae* of that Article shall have been met at the time when proceedings are instituted.
72. The Claimant accordingly respectfully requests that the Secretary-General approve the agreement of the Parties to arbitrate this dispute under the Additional Facility Rules and approve access to the Additional Facility.

VII. OTHER INFORMATION

A. Authorisation of the Request

73. The Claimant has taken all necessary internal actions to authorise this Request, including the request to the Secretary-General to approve access to the Additional Facility. Supporting documentation is at Exhibit 20.

B. Appointment of Counsel

74. The Claimant hereby appoints as Counsel with full powers of representation in connection with the Request and the ensuing arbitration proceedings:

Charles Claypoole (charles.claypoole@lw.com)
Catriona Paterson (catriona.paterson@lw.com)
Sebastian Seelmann-Eggebert (sebastian.seelmann@lw.com)

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75. A Power of Attorney of the Claimant confirming Latham & Watkins' appointment as counsel in this matter is at Exhibit 21.

76. The Claimant requests that all communications should be addressed to the above counsel.

C. The Constitution of the Tribunal

77. The Parties have not agreed on the number of arbitrators or the method of their appointment.
78. In accordance with Article 3(2) of the Additional Facility Rules, the Claimant hereby proposes to the Respondent that the Arbitral Tribunal be composed of three arbitrators, one arbitrator to be appointed by each of the Parties and the third arbitrator, who shall be President of the Tribunal, to be appointed by agreement of the Parties.
79. In accordance with Article 9 of the Arbitration (Additional Facility) Rules, if the Parties have not agreed upon the number of arbitrators and the method of their appointment within 60 days after the registration of this Request by the Secretary-General, the method of constituting the Tribunal as set out in Article 9 shall apply.

D. Payment

80. This Request is accompanied by proof of payment of the prescribed lodging fee at Exhibit 3.

E. Supporting Documentation

81. This Request is accompanied by Exhibits 1 to 21, listed in the attached Index of Exhibits.

VIII. SUBMISSIONS

82. On the basis of the above information, the Claimant requests the Secretary-General of the Centre to:

- (a) acknowledge receipt of this Request;
- (b) approve the agreement of the Parties to arbitrate this dispute under the Additional Facility Rules and approve access to the Additional Facility; and
- (c) proceed to register the Request as soon as possible in the Arbitration Register and immediately thereafter notify the Parties of the registration.

Signed:

Latham & Watkins

Latham & Watkins

Counsel for the Claimant

Date: 23 June 2015