IN THE MATTER OF AN ARBITRATION
UNDER THE ARBITRATION RULES OF
THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW,
THE ENERGY CHARTER TREATY
AND THE FOREIGN INVESTMENT LAW OF MONGOLIA

BETWEEN:

KHAN RESOURCES INC., KHAN RESOURCES B.V.,
and
CAUC HOLDING COMPANY LTD.

Claimants

v.

THE GOVERNMENT OF MONGOLIA
and
MONATOM CO., LTD

Respondents

NOTICE OF ARBITRATION

TABLE OF CONTENTS

NOTICE OF ARBITRATION

A. INTRODUCTION

1. The Government of Mongolia, through the acts of its officials and agencies, has caused substantial loss and damage to Claimants and their investments through expropriatory, unlawful, unfair, and discriminatory treatment in relation to the uranium deposit located in the Dornod Aimag (*i.e.* Dornod Province) in north-eastern Mongolia, known as the Dornod Uranium Project (sometimes referred to as the "Project").

2. At the invitation and encouragement of the Government of Mongolia, supported by Mongolian law and Government resolutions, Claimants and their predecessors in interest have invested millions of dollars, substantial expertise and resources, other forms of intellectual property, and many years in exploring, developing, and preparing to mine the Dornod deposit in an economic and socially and environmentally sound manner.

3. Through this investment of time, money, and effort, Claimants have ascertained that the Dornod Project comprises one of the world's largest untapped uranium reserves and will produce an average of 3.0 million lbs of uranium ore "U_3O_8" per year over the projected fifteen (15) year life of the mine. Indeed, the projected revenue of the Project is US$ 2,943,111,000 and the Net Present Value of the Project has been conservatively estimated to be US$ 276 million.

4. Given the enormous value of this Project, the Government of Mongolia has made all attempts to push Claimants aside, illegally cancel the valid mining and exploration licenses held by Claimants and their subsidiaries, and reap the benefits of the deposit and the Claimants' investment for itself and a Russian partner. And rather than compensating

Claimants with a fair price in an open and transparent manner for their mining and exploration licenses and investment, Mongolia has used its sovereign authority to take measures stripping Claimants of their rights to exploit the deposit and their investments by making Claimants' ownership interests in the companies holding the licenses effectively worthless.

5. Mongolia has not even attempted to hide this unlawful conduct, but has openly made known its plans to develop the Dornod Project without Claimants. Thus, in January 2009 – while Claimants continued to work on and develop the Project, and with construction preparations for the mine scheduled to begin in October 2009 consistent with Claimants' Definitive Feasibility Study – the Governments of Mongolia and Russia publicly announced an agreement in principle to form a "Dornod Uranium joint venture." The objective of this new joint venture was to exploit the uranium deposits in the Dornod region of Mongolia on a shared basis between the two countries, apparently to the exclusion of Claimants.

6. On 25 August 2009, the Government of Mongolia entered into an intergovernmental agreement with the Russian government to jointly develop the uranium deposits in the Dornod region – again to the exclusion of Claimants. This intergovernmental agreement was then the subject of discussions at a 20 July 2010 meeting of the Russian-Mongolian Cooperation Commission. On 14 December 2010, Russian Prime Minister Vladimir Putin and Mongolian Prime Minister Sukhbaatar Batbold participated in meetings that resulted in the signing of the new joint venture, again named the Dornod Uranium Joint Venture, regarding uranium deposits in the Dornod region. There can be little doubt that this new joint venture effectively confirms the expropriation of Claimants' Dornod

Project, including the interests held by the Central Asian Uranium Company ("CAUC") (which is the original joint venture company including the interests of Claimants as well as of the Mongolian and Russian governments). Most recently, the head of Mongolia's Nuclear Energy Agency ("NEA"), Mr. S. Enkhbat, confirmed in a news interview that CAUC no longer possessed its mining licenses.

7. Mongolia's intent to completely deny to Claimants the benefit of their rights and investment had been earlier confirmed on 13 April 2010, when Claimants received notices from the NEA stating that the licenses related to the Dornod Project were invalidated, retroactive to 8 October 2009.

8. In response to these notices, Claimants filed separate lawsuits in the Mongolian domestic courts in respect of their mining and exploration licenses on 21 and 28 of April 2010 challenging the legality of the NEA's actions. In two decisions issued in, respectively, July and August 2010, Claimants' challenges succeeded and the Mongolian courts confirmed the illegality under Mongolian law of the purported decision by the NEA to invalidate the Dornod Uranium Project licenses. In mid-October 2010, the Mongolian Appellate Court confirmed that an official decision by the authorized authority had not been made in respect of CAUC's mining license invalidation in accordance with procedures stated in Mongolian law. The NEA did not appeal the decision in respect of the exploration license's attempted invalidation. Accordingly, both decisions stand – but have nonetheless been disregarded by the NEA.

9. Despite Claimants' repeated requests to the NEA to re-register the licenses as applied for in November 2009, the NEA published on 12 November 2010 in certain Mongolian

newspapers what it called an official notification that it did not intend to reissue the Dornod Uranium Project licenses. Again, on 17 November 2010, Claimants formally demanded by letter to receive the official decision of the NEA regarding the licenses. On 15 December 2010, Claimants received letters from the NEA responding to the 17 November 2010 letter from Claimants confirming its intention not to re-register the licenses. These letters again failed to provide the legal basis for the NEA's decisions and also failed to constitute the official notice required under Mongolian law.

10. In addition to instituting legal proceedings in the Mongolian courts, Claimants have made a number of good-faith efforts to amicably resolve this dispute over the Dornod Project. As set out in a Letter to the Prime Minister of Mongolia, dated 15 April 2010, Claimants have continued to seek an amicable resolution to the dispute but have received no response. Mongolia was put on notice in this letter that Claimants would next seek legal recourse to resolve the dispute, including international arbitration: "Given the extreme damage we have suffered due to the NEA's actions, however, we now have no choice but to seek all available legal recourse, including in the Canadian and Mongolian courts and in international arbitration."[1]

11. Mongolia, by contrast, has refused to reinstate and re-register the mining and exploration licenses and instead has continued to move forward with plans to develop and profit from the Dornod deposit without Claimants' participation – and without full compensation as required by the *Energy Charter Treaty* ("ECT" or "Treaty"), the *Foreign Investment Law*

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[1] *See* Letter to Prime Minister, 15 April 2010, page 4: http://www.khanresources.com/investors/news/100421.pdf.

of Mongolia ("Foreign Investment Law"), the applicable agreement, and general principles of international law and Mongolian law. Having attempted in good faith to reach an amicable resolution of this matter for over a year, Claimants have reluctantly been forced to commence this arbitration.

B. DEMAND THAT THE DISPUTE BE REFERRED TO ARBITRATION

12. Accordingly, pursuant to Article 26 of the ECT, Article 25 of the Foreign Investment Law, Article XII of the *Founding Agreement for the Creation of a Company with Limited Liability*, dated 3 June 1995 (and amended several times thereafter) ("Founding Agreement"), and Article 3 of the *Arbitration Rules of the United Nations Commission on International Trade Law*, RESOLUTION 31/98 Adopted by the U.N. General Assembly on 15 December 1976, as revised in 2010 ("UNCITRAL Arbitration Rules"), Claimants hereby demand that the dispute between Claimants and Respondents be referred to arbitration under the UNCITRAL Arbitration Rules.

C. THE NAME AND CONTACT DETAILS OF THE PARTIES

(1) CLAIMANTS

Khan Resources Inc.
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1076 EE Amsterdam
The Netherlands

CAUC Holding Company Ltd.
AMS Financial Services Limited
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British Virgin Islands
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The Claimants are represented in this arbitration by:

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(2) **RESPONDENTS**

The Respondents are the Government of Mongolia ("Mongolia" or "Government") and MonAtom Co., LTD ("MonAtom"), a Mongolian state-owned company. Claimants serve this Notice of Arbitration on the following representatives of the Respondents:

The Honorable Tsakhia Elbegdorj
President of Mongolia
Government Building 12
Ulaanbataar, Mongolia

The Honorable Sukhbaatar Batbold
Prime Minister of Mongolia
Working Office of the Prime Minister, Government Secretariat
Government Building
Ulaanbataar, 14201 Mongolia

MonAtom Co., LTD
Custom's University Building, Room 201
Sukhbaatar District
Ulaanbataar, 14192 Mongolia

Nuclear Energy Agency
Regulatory Agency of the Government of Mongolia
Government Building 11
J. Sambuu Street 11
Chingeltei District
Ulaanbataar, 15140 Mongolia

Minerals Resources Authority of Mongolia
Government Building 12
Barilgachdyn Talbai 3
Chingeltei District
Ulaanbataar, 15170 Mongolia

State Property Committee
Government Building 4
Chingeltei District
Ulaanbaatar-11 Mongolia

The Honorable Tundedorj Zalaa-Uul
Ambassador of Mongolia to Canada
Embassy of Mongolia
151 Slater Street, Suite 503
Ottawa, ON. K1P 5H3 Canada

D. IDENTIFICATION OF THE ARBITRATION AGREEMENT THAT IS INVOKED

13. Khan Resources B.V. invokes Article 26 of the ECT and asserts claims under the substantive provisions of the ECT. Mongolia's consent to submit the present dispute to arbitration under the UNCITRAL Arbitration Rules is set out under Article 26(3)(a) of the ECT. Likewise, Khan Resources Inc. and its investment, CAUCHC, invoke Article XII of the Founding Agreement, which also provides for the resolution of disputes under the UNCITRAL Arbitration Rules. By invoking the ECT and the Founding Agreement, Claimants note that the dispute resolution provisions of these documents are expressly

accepted by Article 25 of Mongolia's Foreign Investment Law, which provides that the settlement of disputes may be resolved pursuant to the provisions of "international treaties to which Mongolia is a party or by any contract between the parties." Mongolia's Foreign Investment Law therefore provides an additional basis of consent, which Claimants hereby invoke. Claimants consent to submit the present dispute to arbitration under the UNCITRAL Arbitration Rules by serving this Notice of Arbitration.

E. REFERENCE TO THE LEGAL INSTRUMENTS IN RELATION TO WHICH THE DISPUTE ARISES

14. The dispute arises in part out of the Founding Agreement, the obligations of which Respondents have acceded to. Of relevance to this dispute, the Founding Agreement was executed by WM Mining Inc. ("WM Mining"), a corporation formed under the laws of the United States, and Mongol-Erdene ("Erdene"), a Mongolian state holding company, and Priargunsky Mining and Chemical Enterprise ("Priargunsky"), a Russian state holding company. As described below, these signatories are the predecessors in interest to the Parties to the present dispute, CAUCHC and Respondents, respectively. The dispute also arises out of the ECT, as well as Mongolia's Foreign Investment Law, which Mongolia breached by, *inter alia*, unlawfully expropriating without compensation Claimants' foreign investments within the territory of Mongolia.

F. BRIEF DESCRIPTION OF THE CLAIM AND THE AMOUNT INVOLVED

1. Historic Background of the Dornod Deposit

15. The end of the Cold War and the collapse of the Soviet Union signaled major changes in the political, social, and economic environment of Mongolia, a country that had been under Soviet domination for the better part of a century.

16. Following Mongolia's peaceful "Democratic Revolution" in 1990, a newly independent Mongolia sought to modernize its government and open its doors to foreign investment in the private sector as a means of stimulating the country's economic growth and development.

17. To encourage such growth and development, a number of initiatives were adopted to create a stable legal environment and promote foreign trade and foreign investment. For example, in 1991, Mongolia adopted the Foreign Investment Law, which promised to transform the anti-business environment of the Soviet era into an investor-friendly setting. Mongolia also adopted a new Constitution in 1992, in which it declared its adherence "to the universally recognized norms and principles of international law . . . ." In the following years, Mongolia acceded to the World Trade Organization ("WTO"), while entering into over 40 bilateral investment treaties ("BITs") and numerous multilateral international agreements, including the ECT.

18. Mongolia also sought to utilize the country's extensive – and largely untapped – mineral resources by expanding foreign investment in its mining sector. In March 1994, the Government of Mongolia established the Ministry of Energy, Geology, and Natural Resources to manage and administer the country's mineral and other natural resources. Mongolia also enacted a new Minerals Law in 1995, which was modified in 1997 and 2006. The Minerals Law of Mongolia provided a licensing system intended to facilitate and encourage foreign investment in the mining sector.

19. Among the mineral projects that Mongolia sought to develop with the aid of foreign investors was the Dornod uranium deposit. The Dornod deposit was first discovered in

1972 pursuant to a Mongolian-Russian intergovernmental exploration agreement. Under an agreement executed between Mongolia and the Soviet Union, from 1988 to 1995, Russian interests were permitted to mine and export uranium ore by rail to Russia for final processing.

20. At least part of the Dornod site had been the subject of substantial development and production. Specifically, the Dornod No. 2 Deposit had been developed by Priargunsky, which was, at the time, a division of the Soviet Ministry of Atomic Energy ("Minatom"), and now falls under the auspices of the Russian State Atomic Energy Corporation ("Rosatom"). Priargunsky is presently a subsidiary of JSC Atomredmetzoloto ("ARMZ") which, in turn, is controlled by Rosatom. ARMZ is currently responsible for all Russian uranium mine assets and holds Russia's shares in foreign joint ventures.

2. Acquisition and Development of the Dornod Uranium Project

21. Following the passage of the Minerals Law in 1995, Mongolia reached an agreement to create a joint venture with Claimants' predecessors in interest, as well as with Priargunsky, to renew development of the Dornod deposit. The Founding Agreement of 3 June 1995, which created CAUC, was executed by (1) WM Mining Company ("WM Mining"), a corporation existing under the laws of the United States of America (Claimants' predecessor in interest); (2) Priargunsky; and (3) Erdene, described in the Founding Agreement as "the Mongolian state holding company," and whose address is given as "c/o Ministry of Energy, Geology and Natural Resources of Mongolia."

22. The initial share of each participant in the joint venture was 33 ⅓ per cent. However, on 12 December 1996, following the infusion of additional capital into the Project by WM

Mining, the participants agreed to change their respective share allocations, so that WM Mining held a 58% interest and Priargunsky and Erdene each held a 21% interest. The Mongolian National Security Council approved this share redistribution on 27 February 1997.

23. In the ensuing years, Mongolia changed its representative in the joint venture on several occasions. For example, by Order No. 128 dated 27 September 2001, Erdene's authority to represent Mongolia at CAUC shareholder meetings was terminated, and given instead to the Minerals Resources Authority of Mongolia ("MRAM"). Later, on 28 March 2005, this authority was transferred again, this time to the State Property Committee ("SPC"). In February 2009, the Government of Mongolia created MonAtom to undertake uranium exploration and mining on its behalf and to represent Mongolia's equity interests in all uranium and nuclear ventures. MonAtom falls under the authority and control of the NEA and the SPC of Mongolia. As of May 2009, MonAtom has represented Mongolia's interests in the CAUC joint venture.

24. In 1997, Mr. Wallace M. Mays ("Mays"), the then owner of WM Mining, transferred WM Mining's shares to World Wide Mongolia Mining Inc. ("WWM"), a company organized under the laws of the British Virgin Islands. WWM was wholly owned by Khan Resources Bermuda Ltd. ("Khan Bermuda"), a company organized under the laws of Bermuda. Erdene and Priargunsky affirmed this transfer on 23 July 1997.

25. In 2003, Khan Resources Inc., a company organized under the laws of Canada (and listed since 2006 on the Toronto Stock Exchange ("TSX")), entered into discussions with Mr. Mays to acquire Khan Bermuda. Khan Resources Inc. acquired Khan Bermuda pursuant

to a Share Exchange Agreement dated 31 July 2003. In 2004, following the acquisition, WWM was renamed to CAUC Holding Company Ltd. ("CAUCHC"), which remained a corporation organized under the laws of the British Virgin Islands.

26. Khan Resources Inc.'s and CAUCHC's acquisition of WM Mining's shares in CAUC was confirmed pursuant to the agreement of the joint venture partners on 31 October 2005 when the following shareholder resolution was adopted:

> RESOLVED, that the number of Shares of CAUC held by each of the respective Shareholders are as follows:
>
> | | |
> |---|---|
> | Mongolia (the State) (through the SPC) | - 2100 Shares |
> | Priargunsky | - 2100 Shares |
> | CAUC Holding Company Ltd. | - 5800 Shares |

27. The 2005 resolution confirmed CAUC's status as a limited liability company existing under the laws of Mongolia and as a joint venture among Claimant CAUCHC of the British Virgin Islands, Priargunsky of Russia, and the Government of Mongolia (which, at that time, held its interest in CAUC through the SPC). Several additional Management Committee meetings since that time, including representation from each party, support the continuing lawful existence and activity of CAUC and the Dornod Project.

28. CAUC is the holder of Mining License 237A (the "Mining License"), which covers the uranium development property consisting of approximately 261 hectares of land in the Dashbalbar Soum of the Dornod Aimag of Mongolia (the "Main Dornod Property"). The Main Dornod Property consists of an open pit mine (Dornod Deposit No. 2) and approximately two-thirds of an underground deposit (Dornod Deposit No. 7).

29. Although the Main Dornod Property contains substantial amounts of uranium ore, the surface rights area covered by the Mining License are insufficient to conduct all of the necessary mining operations in the most economically feasible manner. Therefore, with the Mongolian Government's knowledge and approval, Claimants acquired the rights in a property contiguous to the Main Dornod Property. This property, which is essential to the success of the Project, is known as the "Additional Dornod Property" and consists of approximately 243 hectares of land, including the remaining portion of highly valuable Dornod Deposit No. 7. Acquisition of the Additional Dornod Property enabled Claimants to access, via existing production and service shafts, and through the development of new access ramps and openings, the bulk of the Dornod Deposit No. 7. Moreover, the Additional Dornod Property contains the Tailings Management Area for the entire Project, as well as the space needed for the construction of the mine offices, camp and clinic for mine workers, crushing facilities and tankage, and processing facilities for the Dornod Project.

30. Claimants acquired the rights for the Additional Dornod Property from Western Prospector Group Ltd. ("Western Prospector"), which also held a valid exploration license – Exploration License 9282X (the "Exploration License"). On 5 April 2005, Western Prospector completed a valid transfer of the Exploration License to Khan Resources LLC ("Khan Mongolia"), a Mongolian company duly formed on 27 March 2003 and existing under the laws of Mongolia. Khan Mongolia is 75% owned by Claimant Khan Resources B.V., a limited liability company organized under the laws of the Netherlands. Claimant Khan Resources B.V. is 100% owned by Claimant Khan

Resources Inc. Khan Bermuda owns the remaining 25% ownership interest in Khan Mongolia.

31. Claimants' negotiations for and ultimate acquisition of the 58% share in CAUC (which, as stated above, holds Mining License 237A) and the 100% share in Khan Mongolia (which, as stated above, holds Exploration License 9282X), were conducted in order to ensure that Claimants had the necessary land, legal rights, and infrastructure for the development and exploitation of the Dornod Uranium Project.

3. Investment and Exploration Activities at the Dornod Uranium Project

32. After Claimants had acquired the necessary mining and exploration licenses and properties, the exploration, development, and preparations for the production of uranium ore at the Dornod Uranium Project began in earnest. In addition to significant financial capital, Claimants brought extensive expertise, experience, and skill – along with state-of-the-art techniques and technologies – to the Project, which enabled the development and design of the Project by Claimants to its maximize efficiency and profitability for the benefit of the entire joint venture, as well as to minimize any adverse environmental and social impact.

33. Thus, Claimants have conducted and funded extensive exploration and development activities for the Project. They have also hired, at their own expense, expert consultants to conduct independent data verification and other test work and to prepare various technical reports in compliance with applicable laws. For example, in 2007, Claimants conducted a combined ground magnetometer and gravity survey over the entire Dornod Project in order to identify geophysical characteristics of the mineral deposits and detect

then-untested target areas. An extensive program of confirmation drilling and metallurgical testing of both Deposit No. 2 and Deposit No. 7 has also been conducted in order to confirm the nature and extent of the deposits.

34. In addition to the funding of the necessary exploration activities, Claimants developed an extensive Environmental Protection Plan, which sets forth the detailed steps to be implemented at the Dornod Project to minimize any negative environmental impact as a result of mining activities there. In conjunction with this Plan, Claimants have prepared and submitted yearly Environmental Monitoring Plans concerning their activities at the Project. Claimants have also consulted with, retained, and funded expert firms to prepare an extensive Environmental and Social Impact Assessment ("ESIA"), which includes a detailed evaluation of the potential environmental and social impacts of the activities underway and proposed at the Dornod Project in accordance with international standards. The ESIA also includes a comprehensive Environmental and Social Management Program ("ESMP"), which provides extensive information on the policies, practices, and procedures that will be implemented at the Dornod Project to comply with Mongolian regulatory requirements, as well as international guidelines and standards.

35. In addition to conducting the necessary environmental analyses and developing the project infrastructure, Claimants have completed the economic and technical assessments necessary to ascertain the viability of the Project. A Pre-Feasibility Study for the Dornod Uranium Project was completed in August 2007 and a Definitive Feasibility Study ("Feasibility Study") was finalized and made public in April 2009.

36. The Feasibility Study confirmed that the Dornod Project would generate enormous economic benefits for all of the joint venture partners (including the Mongolian Government and Russia's Priargunsky), as well as for Mongolia as a whole. Assuming a long-term uranium price of US$ 65 per pound of mineral ore and a 15-year mine life, the Net Present Value of the project was conservatively estimated in 2009 to be US$ 276 million. Additionally, the Feasibility Study found that the Project – which will operate in a region of Mongolia that experiences a high unemployment rate – is projected to employ nearly a thousand persons during the peak of the 15-year mine life, with Mongolian nationals comprising an average of 97.5% of the employees.

4. Mongolia's Unlawful Invalidation of the Mining and Exploration Licenses and Expropriation of Claimants' Rights and Investments in the Dornod Project

37. In 2009, Claimants were in the process of finishing the substantial exploration and preparation work they had devoted to the Project for a number of years, with the legitimate expectation that they would soon commence extraction. Claimants looked forward to moving closer to the point at which the Project would begin to return the investment made by them and start to yield profits – for them as well as for their joint venture partners, the Government of Mongolia and Priargunsky.

38. Respondents, however, had their own plans for the Dornod Uranium Project. Specifically, the Government of Mongolia intended to sweep Claimants aside, so that it and its Russian partner could reap the benefits of the Project and Claimants' investments for themselves.

39. Indeed, Mongolia has done little to hide its unlawful intentions. In January 2009, while Claimants continued to work on and develop the Project and continued to hold the Mining and Exploration Licenses, the Governments of Mongolia and Russia publicly announced an agreement in principle to form their own Dornod Uranium joint venture (the "Mongolia-Russia Joint Venture"). This agreement was formalized on 25 August 2009, when Mongolia and Russia entered into a formal intergovernmental agreement to establish the Mongolia-Russia Joint Venture. As publicly announced, the Mongolia-Russia Joint Venture would purportedly develop the uranium resources in the entire Dornod region of Mongolia, including Claimants' Dornod Project, on a shared basis between the two countries and to the exclusion of the Claimants. Mongolia proceeded to participate in this joint announcement even though Claimants and their local subsidiaries were still working diligently and in good faith on the Project, were still pouring capital into the Project, and still held registered licenses over the Project.

40. Indeed, those licenses – the Mining License for the Main Dornod Property, and the Exploration License for the Additional Dornod Property – provided Claimants and their local subsidiaries with exclusive mining and exploration rights for the Project. Accordingly, the Government began to take steps to deprive Claimants and their subsidiaries of their licenses and to otherwise diminish and destroy their investments.

41. On 15 July 2009, following the announcement of the Mongolian and Russian Governments' intention to form a Mongolia-Russia Joint Venture, and apparently to develop the Dornod uranium deposit without Claimants, MRAM served a license

suspension notice on CAUC (the "July 2009 Notice").[2] The July 2009 Notice stated that CAUC's Mining License had been temporarily suspended by MRAM due to alleged violations cited by inspectors from Mongolia's State Specialized Inspection Agency ("SSIA") arising from an audit of the Dornod Project in April 2009. Amongst a number of allegations, MRAM alleged that CAUC had not registered its deposit reserves with the State Integrated Registry for approval by the Minerals Professional Council. CAUC acted immediately and demonstrated that each and every allegation made by Respondent was wrong. The SSIA inspector further recommended that Khan Mongolia's exploration license be revoked, but MRAM denied this request answering to the SSIA by official letter that there were insufficient grounds to revoke Khan Mongolia's exploration license and that Khan Mongolia's license should remain valid.

42. In fact, with respect to the main allegation, that CAUC had not registered its deposit reserves, Claimants had submitted the deposit reserve and resource calculation for registration in 2007, and again in 2008. An Expert Commission was appointed by the Ministry of Mining and Energy to review the Dornod deposit reserves and resources calculation in July 2009. After reviewing the submission, the Expert Commission completed its review and approved the calculation for review by the Minerals Professional Council in December 2009. Although the Minerals Professional Council was called to meet in January 2010, the meeting was never (and still has not been) held to

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[2] As stated above, MRAM had once held the position as Mongolian's representative in CAUC, but was later replaced by the SPC. MonAtom currently holds that position. MRAM was the agency formerly responsible for issuing, suspending and revoking all mineral licenses, including uranium licenses, until the new Nuclear Energy Law was passed in July 2009. Since August 2009, all uranium and radioactive minerals licenses have been handled by the Nuclear Energy Agency (NEA).

consider the calculation and prepare the final report approving the reserve estimates. In reality, the Dornod uranium deposit had been previously included on a list of strategic deposits in 2007 by the Government; the Government knew full well that there were substantial reserves in the Claimants' Dornod Project, which it decided to take for itself and its Russian partner.

43. In January 2010, CAUC and MRAM reached a "settlement," whereby MRAM terminated the temporary suspension. As described below, however, this settlement was upended by the unlawful revocation of Claimants' licenses by the NEA on 13 April 2010, as well as other illegal steps taken by Mongolia against Claimants' investments.

44. On the day following receipt of the July 2009 Notice, 16 July 2009, Mongolia passed the Nuclear Energy Law ("NEL"), which came into effect 15 August 2009. The provisions of the NEL entitled Mongolia to take ownership, without compensation, of not less than 51% of the shares of a project or joint venture if uranium resources were developed with any State funds, or not less than 34% if the resources were developed without funding from the State. The new law also gave the Government of Mongolia the right to revoke outstanding licenses if the license holders did not agree to abide by the NEL and submit applications to re-register their existing licenses in accordance with the new law by 15 November 2009.

45. On 8 October 2009, the NEA issued Notices to CAUC and Khan Mongolia suspending their licenses and instructing them to suspend all activities with respect to the Project until new licenses were obtained from the NEA under the terms of the NEL. In response to inquiries, the Government stated that all uranium licenses, and not merely those of

Claimants, had been temporarily suspended in October 2009, pending re-registration of such licenses under the NEL. Accordingly, Claimants were led to believe that the 8 October 2009 Notices represented the implementation of the NEL – which would take some, but not all of Claimants' investment – and not a permanent revocation of their Dornod Project licenses.

5. Mongolia Rejects Claimants' Good Faith Efforts to Comply with the Nuclear Energy Law

46. On the one hand, Claimants recognized that the NEL implemented a partial expropriation of their rights to exploit the deposit and their investments without compensation. On the other hand, Claimants did not want to lose the rest of their substantial rights and investment in the Dornod Project. Accordingly, Claimants had no choice but to agree to comply with the new law. On 9 November 2009, Claimants and their subsidiaries submitted comprehensive and detailed Re-Registration Applications, seeking the re-registration of their licenses under the terms of the NEL. The applications included all of the required information and enclosed all of the supporting documentation required under the NEL and related re-registration procedures. One of the conditions to re-registration of any licenses under the NEL was that the license holders accept the Mongolian Government's rights to ownership of the shares of the license holders' companies under the NEL. In the absence of any choice but to accede to this requirement in order to have the Re-Registration Applications considered and the licenses re-registered under the NEL, the applications included the required statement that CAUC and Khan Mongolia, as the license-holders, approved of the Government's rights of ownership of a certain portion of shares of CAUC and Khan Mongolia as determined under and subject to the NEL. In Claimants' ongoing efforts to cooperate with Mongolia, and pursuant to the

NEL requirement, Claimants took the necessary steps with MonAtom, intending to increase MonAtom's share in CAUC from 21% to the required 51% ownership interest, pursuant to the NEL.

47. In January 2010, Claimants received a Notice from the SPC requiring CAUC to submit a resolution to its shareholders approving an increase in MonAtom's interest in CAUC from 21% to 51%. Claimants complied, and the resolution was passed by a 79% majority, with CAUCHC and MonAtom voting in favor of the resolution. Priargunsky refused to vote one way or the other. The Government, however, never followed up on legal steps necessary to effectuate the increase of MonAtoms' interest in CAUC to 51%. As far as Claimants are aware, under Mongolian law, CAUCHC continues to own 58% of CAUC.

48. Also in January 2010, Claimants entered into a non-binding Memorandum of Understanding ("MOU") with MonAtom to resolve all of the regulatory and ownership issues surrounding the Dornod Project to the mutual benefit of Claimants and the Government of Mongolia. The MOU was the result of extensive negotiations with senior members of MonAtom – with the approval of senior members of the Government of Mongolia – and was designed to be fully compliant with the NEL. A key condition to the MOU was that the mining and exploration licenses would be re-registered under the NEL no later than 29 January 2010, and that Exploration License 9282X would be approved as a full mining license.

49. However, the NEA subsequently opposed the MOU and publicly stated that the MOU was invalid and contrary to Mongolian law. Accordingly, the MOU was not

implemented by MonAtom. The NEA then proceeded to engage in a negative public relations campaign against Claimants, which included, *inter alia*, sending a defamatory letter to the TSX on 30 March 2010, alleging that Claimants had violated various unspecified Mongolian laws, and that Claimants' licenses had been suspended because of Claimants' failures and misdeeds. (The TSX is the stock exchange regulator of Khan Resources Inc., which is a public company listed on that exchange.)

50. On 13 April 2010, Claimants received separate notices from the NEA that their mining and exploration licenses – which up until that point had simply been under general temporary invalidation pending mandatory re-registration under the terms of the NEL – were being invalidated in their entirety, retroactive to 8 October 2009. Notwithstanding the agreement that Claimants and MRAM had reached in January 2010, the NEA falsely asserted that CAUC had failed to resolve the previously-described (and plainly pretextual) allegations stemming from the July 2009 SSIA inspection of the Dornod Project site. The NEA's decision to invalidate Claimants' licenses was wholly lacking in legal foundation. It can be explained only by the Mongolia's unlawful scheme to transfer all of the mineral rights and interests in the entire Dornod uranium region to the newly created Joint Venture that the Government was seeking to establish between itself and the Russian Government.

6. Mongolian Courts Confirm Illegality of License Invalidation Under Mongolian Law

51. In response to the NEA's improper and illegal actions, CAUC and Khan Mongolia filed separate cases in the Mongolian Capital City Administrative Court, challenging the legal basis for the Notices purporting to invalidate the licenses. The court applications

asserted, among other things, that the NEA had no legal authority to make the decision to invalidate the mining and exploration licenses and that its purported decisions to do so violated Mongolian law. In each case, CAUC and Khan Mongolia sought a declaration of the Court that the NEA's purported action to invalidate the mining licenses was itself invalid.

52. On 19 July 2010, the Court ruled in favor of CAUC's application and declared that the previous decision by the NEA to invalidate Claimant's Mining License 237A was itself invalid and illegal. On 2 August 2010, the Court similarly ruled in favor of Khan Mongolia's application and declared the decision of the NEA to invalidate Exploration License 9282X was invalid and illegal. The NEA appealed the decision of the Court in respect of CAUC's application, but elected not to bring any appeal in respect of Khan Mongolia's claim. A favorable decision concerning the appeal by the NEA of the Court's decision concerning CAUC's application was rendered on 13 October 2010, effectively re-confirming that the earlier actions and related notice to CAUC was itself illegal and invalid. The Mongolian Appellate Court stated that an official decision by the NEA had not been made in respect of CAUC's mining license in accordance with procedures stated in Mongolian law.

53. Following these decisions, Claimants again requested that the NEA re-register the licenses under the NEL as applied for in November 2009. Pursuant to the terms of the NEL, the re-registrations regarding the exploration license and mining license should have been decided within six (6) months and one (1) year, respectively, following the Re-Registration Applications made by Claimants on 9 November 2009. On 12 November 2010, the NEA published in certain Mongolian newspapers what it called an official

notification that it did not intend to reissue the Dornod Project licenses. The newspaper notice did not constitute an official decision under Mongolian law, which must include the legal reasons for making the decision. Again, on 17 November 2010, Claimants formally demanded by letter to receive the official decision of the NEA regarding the licenses. On 15 December 2010, Claimants received letters from the NEA responding to the 17 November 2010 letter from Claimants. However, these letters only stated that the licenses had not been reinstated on the basis that the license holders had "not satisfied the conditions and requirements of the law and ... not pursued relevant laws and regulations in your operation." Again, the NEA failed to provide the legal basis for its actions, and, accordingly, failed to give Claimants the required official notice of its decision.

54. Finally, on 14 December 2010, Russian Prime Minister Vladimir Putin and his Mongolian counterpart Prime Minister Sukhbaatar Batbold met in Moscow to participate in the signing of a range of inter-governmental agreements, including a Joint Venture on the Dornod uranium deposit. In light of reports concerning the new Mongolian-Russian Joint Venture, Mongolia plainly intends to proceed with its plans to develop the Dornod uranium deposit with its Russian partners – effectively taking Claimants' rights and investment in the Dornod Project for its own benefit.

7. The Legal Basis for the Energy Charter Treaty Claims

55. Khan Resources B.V. asserts claims pursuant to the ECT, which was signed in December 1994 and has been in force since April 1998. Mongolia and the Kingdom of the Netherlands ("Netherlands") are Contracting Parties that have consented to be bound by the ECT. The Netherlands deposited its notice of ratification of the ECT with the Energy

Charter Secretariat on 16 December 1997. Mongolia followed with its notice of ratification on 19 November 1999.

56. The ECT provides investment protection for "investments" of nationals of the Contracting Parties to the ECT. Each Contracting Party has agreed to observe certain obligations in its territory with respect to Investments made by "investors" of other Contracting Parties. Mongolia, therefore, has obligations as a Contracting Party to the ECT for any investments made by companies, such as Khan Resources B.V., which are organized in accordance with the laws of other Contracting Parties.

57. Article 26 of the ECT provides dispute resolution mechanisms to investors from one Contracting Party against another Contracting Party in which their investment is made ("the host State") when the host State is alleged to have breached its obligations to promote and protect investments made by nationals of another such Contracting Party within the host State's "Area."[3] If consultations between an investor and the host State do not lead to a resolution of the dispute, an *ad hoc* Tribunal may be established under the UNCITRAL Arbitration Rules.[4]

58. Pursuant to Article 1(2) of the ECT, the term "Contracting Party" means a State or Regional Economic Integration Organization which has consented to be bound by the ECT and for which the ECT is in force. Mongolia and Netherlands are Contracting Parties to the ECT.

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[3] "Area" is defined in the ECT as including, with respect to a Contracting Party, "the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea . . . ." ECT Article I(10).

[4] ECT Article 26(4)(b).

59. Khan Resources B.V. is an "Investor" that is protected under the ECT. ECT Article 1(7)(a)(ii) defines an "Investor" as a company or other organization organized in accordance with the law applicable to the Contracting Party of which it is claiming to be a national. Pursuant to Article 1(6), the term "Investment" encompasses every kind of asset owned or controlled directly or indirectly by an Investor and includes, among other things, a company or shares; stock or other forms of equity participation in a company; claims to money or performance pursuant to a contract having economic value; and any rights conferred by law or contract or by Economic Activity in the Energy Sector. Khan Resources B.V. holds "Investments" in Mongolia, including its investments in the Dornod Project, which have been expropriated without compensation by Mongolia's unlawful actions and subjected to measures that have breached Mongolia's obligations under the ECT causing loss and damages.

60. Article 10 of the ECT provides in relevant part:

> (1) Each Contracting Party shall, in accordance with the provisions of this Treaty, encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in its Area. Such conditions shall include a commitment to accord at all times to Investments of Investors of other Contracting Parties fair and equitable treatment. Such Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less favourable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party.
>
> (2) Each Contracting Party shall endeavour to accord to Investors of other Contracting Parties, as regards the Making of Investments in its Area, the Treatment described in paragraph (3).

(3) For the purposes of this Article, "Treatment" means treatment accorded by a Contracting Party which is no less favourable than that which it accords to its own Investors or to Investors of any other Contracting Party or any third state, whichever is the most favourable.

[* * *]

(4) Each Contracting Party shall accord to Investments in its Area of Investors of other Contracting Parties, and their related activities including management, maintenance, use, enjoyment or disposal, treatment no less favourable than that which it accords to Investments of its own Investors or of the Investors of any other Contracting Party or any third state and their related activities including management, maintenance, use, enjoyment or disposal, whichever is the most favourable.

61. Article 13 of the ECT provides in relevant part:

(1) Investments of Investors of a Contracting Party in the Area of any other Contracting Party shall not be nationalized, expropriated or subjected to a measure or measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "Expropriation") except where such Expropriation is :

(a) for a purpose which is in the public interest;

(b) not discriminatory;

(c) carried out under due process of the law; and

(d) accompanied by the payment of prompt, adequate and effective compensation.

Such compensation shall amount to fair market value of the Investment expropriated at the time immediately before the Expropriation or impending expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as the "Valuation Date").

[* * *]

(3) For the avoidance of doubt, Expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise in its Area in which an Investor of any other Contracting Party has an Investment including through the ownership of shares.

8. The Legal Basis for the Claims under the Foreign Investment Law, Founding Agreement, and under Mongolian Law

(i) The Foreign Investment Law

62. Article 3(1) of the Foreign Investment Law provides that "'Foreign investment' means every type of tangible and intangible property which is invested in Mongolia by a foreign investor for the purpose of establishing a business entity within the territory of Mongolia or cooperating with a Mongolian business entity."

63. Article 3(2) provides: "'Foreign investor' means a foreign legal entity or individual (a foreign citizen or stateless person, not residing permanently in Mongolia or a citizen of Mongolia permanently residing abroad) who invests in Mongolia."

64. Article 5 provides that "[a] foreign investor may invest in the following ways:

a. freely convertible currencies and income yielded by investments in tugriks;

b. moveable and immovable property and relevant property rights;

c. intellectual and industrial property rights."

65. Article 6 provides in relevant part: "Foreign investment shall be made in the following ways within the territory of Mongolia":

[* * *]

d. buying stocks, shares and other securities of Mongolian business entities under the legislation of Mongolia;

e. acquiring rights under the laws, concession and product sharing contract to exploit and process natural resources.

66. Article 7 provides that "Foreign investors may purchase shares or other securities of any business entity which is operating within the territory of Mongolia in accordance with the laws of Mongolia."

67. And, Article 25 provides that:

> Disputes between foreign investors and Mongolian investors as well as between foreign investors and Mongolian legal or natural persons on the matters relating to foreign investment and the operations of the foreign invested business entity shall be resolved in the Courts of Mongolia unless provided otherwise by international treaties to which Mongolia is a party or by any contract between the parties.

68. Claimants' investments in Mongolia include, without limitation: the 58% interest acquired in CAUC and CAUC's holding of Mining License 237A; the ownership and control acquired in Khan Mongolia and its holding of Exploration License 9282X; and Claimants' financial and other investments in the Dornod Project.

69. Article 8 of the Foreign Investment Law provides:

> 1. Foreign investment within the territory of Mongolia shall enjoy the legal protection guaranteed by the Constitution, this law and other legislation, consistent with those laws and international treaties to which Mongolia is a party.
>
> 2. Foreign investment within the territory of Mongolia shall not be unlawfully expropriated.
>
> 3. Investments of foreign investors may be expropriated only for public purposes or interests and only in accordance with due process of law on a non-discriminatory basis and on payment of full compensation.
>
> 4. Unless provided otherwise in any international treaties to which Mongolia is a party, the amount of compensation shall be determined by the value of the expropriated assets at the time of expropriation or public notice of

expropriation. Such compensation shall be paid without delay.

70. Article 9 of the Foreign Investment Law requires that Mongolia provide national treatment to foreign investors: "Mongolia shall accord to foreign investors favorable conditions not less than those accorded to Mongolian investors, in respect of the possession, use, and disposal of their investments."

(ii) The Founding Agreement

71. In entering the Founding Agreement, Mongolia also undertook obligations to Claimants in its capacity as the State party to a joint venture designed to develop the State's natural resources. Article 3.6 of the Founding Agreement specifically provides that "Property of the Company [*i.e.*, CAUC] will not be subject to requisition or confiscation."

72. Moreover, Mongolia, as a party to the Founding Agreement (currently through its representative, MonAtom) breached its fiduciary obligations to the joint venture and its partner CAUCHC under Mongolian law. Under Mongolian law, joint venture partners are fiduciaries to one another. Respondents were required to act in good faith and owed a duty to act in the best interests of CAUC. In addition, under Article 82 of the *Company Law* of Mongolia, a duty is imposed upon a "governing party" of a company to act in good faith and in the best interests of the company. A "governing party" includes any shareholder who holds more than 20% of the shares of a limited liability company and, therefore, includes the Mongolian Government as a 21% shareholder in CAUC. Any governing party who breaches this duty is liable to the company itself and to any shareholder holding more than 1% of the company's shares (such as CAUCHC) for damages caused by the breach. Furthermore, Article 497.1 of the *Civil Code* of Mongolia

provides that a person or company is liable where it has caused damage to another person's rights, life, health, dignity, business reputation or property deliberately or due to negligent action.

73. Article 12.2 of the Founding Agreement provides:

> Disputes between the parties arising out of, or in connection with, any provisions of this agreement or the interpretation thereof shall be settled in the first instance by good faith negotiation. If amicable settlement cannot be reached within 90 days of the notice by the party claiming the existence of a dispute, the matter under dispute will be referred to binding arbitration in accordance with UNCITRAL arbitration rules, before a board of Arbitration consisting of three arbitrators, one selected by the party(s) seeking the arbitration, one selected by the party(s) responding to the arbitration, and the third selected by the first two arbitrators. The arbitration will be conducted in the English language and take place under the auspices of the Australian Chamber of Commerce in Sydney, Australia. The Board of Arbitration will decide by majority vote on points of substance, law and otherwise. All decisions of the Board of Arbitration shall be final and binding on the parties and may be entered against them in a court of competent jurisdiction. The Board of Arbitration will determine the costs of arbitration in its award and such costs shall be borne by the parties as determined by the Board of Arbitration.

9. Mongolia's Breach of the Energy Charter Treaty, the Foreign Investment Law, the Founding Agreement and Mongolian Law

74. Mongolia has breached its obligations under Articles 10 and 13 of the ECT, under Articles 8 and 9 of the Foreign Investment Law, and under the Founding Agreement, causing Claimants substantial loss and damages. Specifically, Respondent's acts and omissions breaching these obligations include (but are not limited to): the illegal invalidation of the mining and exploration licenses; the passage of the Nuclear Energy Law that provides, *inter alia*, for the taking of the ownership interest in CAUC and Khan Mongolia without compensation; Mongolia's refusal to re-register the licenses under the

NEL pursuant to the 9 November 2009 Re-registration Applications; making unfounded public statements alleging that the Claimants were in breach of Mongolian law; and, the repeated actions intended to undermine Claimants' reputation in Mongolia and abroad. These acts and omissions have subjected Claimants' investments to arbitrary and discriminatory measures tantamount to expropriation without compensation. Such measures were substantial and permanent, and unlawful on the grounds that the measures were not for a purpose in the public interest; were discriminatory; were not carried out in accordance with due process; and were not accompanied by the payment of prompt, adequate, and effective compensation. Moreover, these acts and omissions are antithetical to the ECT and its encouragement and creation of stable, equitable, favorable and transparent conditions for investors and their investments in Mongolia, including the commitment by Mongolia to provide fair and equitable treatment and full protection and security to Claimants and their investments.

75. Finally, by taking steps and participating in the deprivation of Claimants' rights and interests, through CAUC and CAUCHC, Khan Resources B.V. and Khan Mongolia, in the Main Dornod Property, the Additional Property, and the licenses, for the purpose of causing those properties and interests to be damaged and expropriated as a result of the Mongolian-Russian joint venture and other acts and omissions described above, Respondents breached the Foreign Investment Law, the Founding Agreement, and the fiduciary duties and other obligations owed to CAUC under Mongolian law, including the duty to act in good faith and in the interests of CAUC, thus causing loss and damages to the Claimants. Respondents' unlawful conduct was done with the intent of injuring

Claimants and their business, reputation, property interests and rights, and was and continues to be an unlawful interference with Claimants' economic interests.

10. The Amounts Sought

76. Since the illegal suspension and subsequent revocation of Claimants' mining and exploration licenses and through the date of this Notice, Claimants have suffered the loss of their investment (including lost profits and other damages). Those damages continue to accrue. As set forth below, Claimants seek full, fair, and immediate compensation through the payment of damages, up to and including the date of the Award, **in an amount not less than US$ 200 million (Two hundred million U.S. dollars)** (plus interest and the payment of all fees and expenses).

G. RELIEF OR REMEDY SOUGHT

77. Without prejudice to its rights to amend, supplement or restate the relief to be requested in the arbitration, Claimants request the Tribunal to:

(1) Declare that Respondents have respectively breached the terms of the ECT and international law, the Foreign Investment Law, the Founding Agreement, and Mongolian law;

(2) Award Claimants monetary damages of not less than **US$ 200 million (Two hundred million U.S. dollars)** in compensation for all of their losses sustained as a result of being deprived of their rights under the ECT and international law, the Foreign Investment Law, under the Founding Agreement and Mongolian law, including, *inter alia*, reasonable lost profits, direct and indirect losses (including, without limitation, loss of

reputation and goodwill) and losses of all tangible and intangible property caused by Respondents;

(3) Award all costs (including, without limitation, attorneys' and all other professional fees) associated with any and all proceedings undertaken in connection with this arbitration, including all such costs undertaken to investigate this matter and prepare this Notice of Arbitration, and all such costs expended by Claimants in attempting to resolve this matter amicably with Respondents before serving this Notice of Arbitration;

(4) Award pre-and post-judgment interest at a rate to be fixed by the Tribunal; and

(5) Grant such other relief as counsel may advise or the Tribunal may deem appropriate.

H. NOTIFICATION OF APPOINTMENT OF ARBITRATOR

78. In accordance with Article 12.2 of the Founding Agreement and Article 9 of the UNCITRAL Arbitration Rules, Claimants observe that the Tribunal to be appointed in this case should be comprised of three arbitrators, one arbitrator to be appointed by Claimants, one to be appointment by Respondents, and the President selected by the first two arbitrators (or by an appointing authority designated by the Secretary-General of the Permanent Court of Arbitration if, within thirty days after the appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the presiding arbitrator). Pursuant to Article 12.2 of the Founding Agreement, and Articles 3(4)(c) and 9 of the UNCITRAL Arbitration Rules, Claimants hereby appoint Mr. L. Yves Fortier, a national

of Canada, to serve as arbitrator in this arbitration. Mr. Fortier has confirmed to counsel that he is and shall remain impartial and independent of the parties during the pendency of the arbitration.

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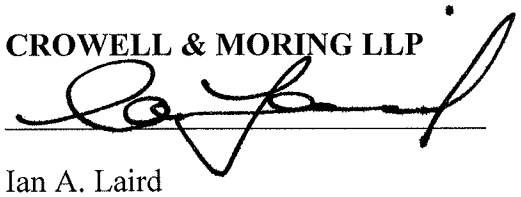
CROWELL & MORING LLP

By: 

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