This case was elaborated by the Case Committee consisting of Nikita Kondrashov, Dimitriy Mednikov, Lucas de Medeiros Diniz and Tim Rauschning under the supervision of the FDI Moot’s Review and Advisory Boards.
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IN THE MATTER OF AN ARBITRATION
UNDER THE UNCITRAL RULES (2010)

BETWEEN:

Goliath National Bank JSC

Claimant

- and -

The Republic of Laoc

Respondent

NOTICE OF ARBITRATION
PURSUANT TO ARTICLE 3 OF
UNCITRAL ARBITRATION RULES (2010)

31 January 2019

Greene & Associates LLP
114564, 85 Grisham St.,
Juno, Mercuria
In accordance with Article 3 of the 2010 UNCITRAL Arbitration Rules, Goliath National Bank JSC (GNB or Claimant), a joint-stock company incorporated under the laws of the Republic of Mercuria, hereby submits its dispute (Dispute) with the Republic of Laoc (Respondent) to arbitration.

A. JURISDICTION

By submitting this Notice of Arbitration, Claimant accepts Respondent’s standing offer to arbitrate made in Article X of the Treaty concerning the Encouragement and Reciprocal Protection of Energy Investments in the ASNEC Region (ASNEC Energy Investment Treaty):

1. Disputes related to Investments, which concern an alleged breach of an obligation of a Contracting Party shall, if possible, be settled amicably.

2. If such disputes cannot be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may submit the dispute to an arbitral tribunal established in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules as in force at the commencement of the proceedings. The arbitration proceedings shall be administered by KCAB International, which shall also act as appointing authority.

3. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.

The Dispute was notified to Laoc on 7 October 2018. Despite GNB’s effort to resolve the Dispute amicably in accordance with Article X (1) of the ASNEC Energy Investment Treaty, negotiations between GNB and Laoc were futile. Thus, the requirement of this provision was fulfilled.

Respondent, therefore, has agreed to arbitrate this dispute and to the administration of KCAB International.

B. SUMMARY OF THE RELEVANT FACTS

The Dispute that Claimant submits to arbitration (Arbitration) through this Notice of Arbitration arises out of Respondent’s abrupt reversal of its energy policy.

Respondent’s economy has been relying on the coal sector for decades. Until this day, coal-related businesses, such as coal mines, processing facilities, and power plants, employ up to 15% of Laoc’s domestic workforce, while the coal sector itself is accountable for 20% of the Laocan GDP (Exhibit C-1).

In August 2009, considering the strong political support for coal-fired power plants in Laoc, the Mercuria-incorporated Mountaintop Investments LLC (Mountaintop) started to explore the possibility of constructing the highly efficient and state-of-the-art 850 MW coal-fired power plant Ticadia-1 (T1). As the construction of the power plant required capital expenditure of approximately USD 1 billion, Mountaintop needed substantial external financing. It, therefore,
approached the Mercurian First National Bank JSC (MFNB), Claimant’s predecessor in the Financing Agreement (Exhibit C-4). Given the large amount that needed to be financed and that MFNB would be the sole financing institution, MFNB cooperated very closely with Mountaintop, *inter alia*, accompanying them to all important meetings with Laocan authorities.

At the time, the Governor of Ticadia, Mr Ji-Yeong, made specific representations to Mountaintop and MFNB (Exhibit C-2), thereby actively encouraging them to invest in the construction of T1. In fact, it was later acknowledged by the Governor himself in an interview to Ticadian Weekly Journal, that, during Laoc’s negotiations with Mountaintop and MFNB, he actively sought to convince them to invest in the construction of T1 (Exhibit C-5) and that he ensured to maintain “favourable conditions for foreign investors”. In *verbatim*:

> “the construction of Ticadia-1 bears fundamental importance for the economic development of the region, which is why I am committed to doing everything in my power to ensure that the operation of the plant would benefit the interests of our nation. I am also committed to ensuring we maintain favourable conditions for foreign investors so that we can see more projects like Ticadia-1 in the future”. (emphasis added) (Exhibit C-5)

As if this was not enough, at a later date, Mr Ji-Yeong subsequently presented the T1 project as one of his key achievements as a governor during a subsequent re-election campaign.

Against this background, MFNB decided to proceed with the construction of the coal-fired power plant in Ticadia (Exhibit C-3) and, on 1 December 2010, MFNB and Ticadia-1 LLC, Mountaintop’s Laocan subsidiary, entered into the Financing Agreement No 0940394 (Financing Agreement, Exhibit C-4). Under the Financing Agreement, MFNB granted a loan of USD 600,000,000 (six hundred million dollars) for the construction of T1 to Ticadia-1 LLC. The Financing Agreement was secured by a pledge of the power plant, by a mortgage on the land on which T1 was to be built, by a pledge of the shares in Ticadia-1 LLC, a Laocan SPV owned by Mountaintop, as well as by Mountaintop’s personal guarantee. On 15 December 2010, Ticadia-1 LLC, *relying on MFNB’s loan*, bought a plot of land, obtained a construction permit, and began to build the power plant (Exhibit C-5).

On 25 September 2014, Respondent officially authorised commercial operation of the plant, and T1 had its start-up and commenced commercial operations. To this date, T1 remains the most advanced coal-fired power plant in Laoc and the only power plant in Ticadia. The expected useful economic lifetime of T1 at the time of the construction was 40 operational years.

After decades of profiting from the coal industry as a backbone of the Laocan economy and after only 2 years of operation of T1, Respondent suddenly fundamentally changed this approach to domestic regulation of the coal sector by adopting the Law 66/2016 “on the Phase-out of Coal Energy on the Territory of the Republic of Laoc” on 6 July 2016 (Law 66/2016, Exhibit C-8), forcing T1 to shut down 26 years before the end of its expected 40-year lifetime. By Respondent’s actions, T1 turned from one of the most modern coal plants in the world and a profitable investment into an economic burden for its owner. Because of that, T1 became unable
to repay the loan under the Financing Agreement, inflicting considerable losses on the institution that provided financing for the loan. Hence, within the blink of an eye, the profitable high-end power plant T1 was turned into a distressed asset with a shallow level of liquidity.

Therefore, through its actions, Respondent has fundamentally changed the legal framework under which the investment in T1 had been made and treated MFNB and Ticadia-1 LLC unfairly and inequitably.

Moreover, after the enactment of Law 66/2016, the Laocan government saw an opportunity to financially profit from the phase-out of coal installations on its territory and enacted Law 72/2016 “on Energy Transition” on 5 December 2016 (Law 72/2016, Exhibit C-9). Law 72/2016 established a feed-in tariff scheme for the renewables sector. However, in order to benefit from this scheme, Claimant would have to commit a further substantial amount of capital to construct renewable energy generating installations. Moreover, Law 72/2016 envisaged the creation of the Laocan Renewables Company (“LRC”), owned and funded by the government and tasked with headlining the development of the Laocan renewables sector and building a number of large-scale renewable facilities in all regions of Laoc. Given that all LRC’s installations would benefit from the feed-in tariff scheme, Law 72/2016 was nothing more than the Laocan government’s attempt to take over the renewable energy market – and the energy market in general – in the wake of shutting down all coal-fired power plants.

On 1 July 2017, MFBN and Claimant executed the Assignment Agreement assigning Claimant all rights arising out of and in connection with the financing of Ticadia-1 LLC in exchange for the payment of USD 150,000,000. Claimant is, from that moment on, to be considered the legal successor to MFNB in all matters covered by the Assignment Agreement (Exhibit C-12).

C. NOMINATION OF THE ARBITRATOR

In accordance with Article 9 of the UNCITRAL Rules, Claimant hereby nominates Perry Mason, whose Curriculum Vitae may be found attached to this submission [OMITTED].
D. PRAYERS FOR RELIEF

17 In light of the above, Claimant hereby respectfully requests the Arbitral Tribunal to:

a. DECLARE that Respondent treated the investment unfairly and inequitably and, thereby, breached Article II of the ASNEC Energy Investment Treaty;

b. ORDER Respondent to pay to Claimant compensation amounting to no less than USD 450,000,000 (four hundred fifty million dollars) plus interest as of the date of the violation;

c. ORDER Respondent to compensate Claimant for all of their costs in this Arbitration and to bear alone the costs of the Tribunal and of KCAB International.

Pending a more thorough evaluation of the quantum of its claims, Claimant reserves its right to adjust its prayers for relief.

Respectfully submitted,

For and on behalf of Claimant
C. Greene,
Greene & Associates LLP
Laoc has long relied on its substantial domestic coal mining and generation capacities. The total share of the coal sector (including mining, generation and other coal-related business) in the Laocan economy is estimated to be as large as 20% of its total GDP. The coal industry employs millions of people both in blue-collar and white-collar segments of the labour market. Experts estimate that the coal industry employs up to 15% of Laocan domestic workforce.

Despite the growing global trend for the transition into green energy actively supported by some ASNEC countries neighbouring Laoc, the domestic coal mining and coal generation sectors remain highly stable.

There is no doubt that such stability can at least partially be explained by a favourable attitude of the Laocan authorities towards the coal industry, which may stem from the fact that the coal sector employs a substantial part of the Laocan electorate.

Recently, after a small group of members of the Parliament submitted draft laws in support of the transition into green energy, most of their colleagues, including influential Laocan politicians, have blocked the initiative. Commenting on the situation, the current speaker of the Laocan Parliament, Frank Underwood stated that he “sees no reason to fix something that is clearly not broken and regularly contributes to our economy”. Very likely, this is precisely the reason why Laocan regulation in the area of coal mining and coal generation has not changed over the past 25 years apart from continuous updates concerning the requirements to meet the best available techniques (BAT).
MINUTES OF THE MEETING BETWEEN THE REPRESENTATIVES OF TICADIAN MUNICIPAL GOVERNMENT, MFNB AND MOUNTAINTOP

ISSUE 1 — Investment into the construction of Ticadia-1 in Ticadia, Laoc

SUMMARY OF THE DELIBERATIONS FOR MFNB BOARD OF DIRECTORS

During the meeting, the Governor of Ticadia (“Governor”) confirmed that the competent agencies of the government completed the evaluation of the plans for the construction of Ticadia-1. The responsible Laocan authorities are expected to grant all essential permits necessary for its construction and operation in the upcoming months.

The Governor also promised to ensure that all relevant government officials will, within the scope of the competence conferred on them by the Laocan law, be instructed to cooperate with Mountaintop to the fullest extent possible not only during the construction process but also after the launch of Ticadia-1.

The Governor stressed that the construction of Ticadia-1 bears fundamental importance for the economic development of the region, which is why he is committed to do everything in his power to ensure that operation of the plant would be economically beneficial both for Ticadia and Mountaintop.

[OMITTED]

SIGNATURES OF THE PARTICIPANTS:

J. H.
Ji-Yeong, Huan
Governor of Ticadia

Nergis, Natalia
Executive Director
MERCURIAN FIRST NATIONAL BANK JSC

A. M.
Aquila, Mayamiko
CEO
Mountaintop Investments LLC
Internal reference number: XIGSID848

Date: 19 November 2010

EXTRACT FROM THE MINUTES OF THE BOARD MEETING

OMITTED

ISSUE 2 — Investment into the construction of Ticadia-1 in Ticadia, Laoc

SUMMARY OF THE DELIBERATIONS

The Directors have discussed various materials (including regulatory due diligence, financial projections prepared by external consultants as well as minutes of the meeting with the Ticadian Governor dated 19 August 2009) related to the construction of an 850 MW coal-fired power plant in Ticadia, Laoc by Mountaintop Investments LLC.

Several directors openly endorsed the investment and acknowledged Mountaintop is undoubtededly the best partner for such an investment.

Three directors openly criticised the proposal stating that high-value investments in highly regulated markets, such as coal generation, should be cautiously approached. Some directors also considered that the scope of the guarantee offered by Mountaintop is insufficient. Some directors generally endorsed the idea of the investment into the construction of the plant but argued in favour of significantly reducing the amount of the loan.

Other directors disagreed, pointing to the high return of investment figures and the fact that Laoc has a coal-oriented economy.

VOTING

THOSE IN FAVOR — 7

THOSE AGAINST — 5

DECIDED: To instruct N. Nergis to enter into the loan agreement with Mountaintop Investments LLC (and/or any of its subsidiaries). The amount of the loan shall not exceed USD 600 million.

Secretary of the meeting

N. Nergis
FINANCING AGREEMENT N. 0940394

1 December 2010

TICADIA-1 LLC, 84JH, 1 Powerplant Street, Ticadia, Laoc, further referred to as “the Borrower”, represented by its Chief Operating Officer, Nerida Borna,

MERCURIAN FIRST NATIONAL BANK JSC, 112741, 1 Money Lane, Juno, Mercuria, further referred to as “the Lender”, represented by its Executive Director Natalia Nergis, and

MOUNTAINTOP INVESTMENTS LLC, 112741, 78 Brick Wall Street, Juno, Mercuria, further referred to as “the Guarantor”, represented by its Chief Operating Officer, Aquila Mayamiko,

HAVE ENTERED INTO THE FOLLOWING FINANCING AGREEMENT

1. DEFINITIONS

2. THE LOAN AMOUNT AND THE INTEREST

2.1. The Lender shall grant financing in the amount of USD 600,000,000.00 (six hundred million US dollars) to the Borrower (the “Loan Amount”) for the construction of the 850 MW coal-fired power plant Ticadia-1 Power Plant in Ticadia, Laoc (the “Loan”).

2.2. The Loan Amount shall be made available immediately upon fulfilment of the conditions laid out in Schedule 3 hereto.

2.3. Subject to Clause 3.1 hereof, the Borrower shall annually pay the Lender an interest on the total outstanding Loan Amount. The annual interest rate is determined in accordance with the following formula: LIBOR interest rate plus 2 (two) per cent p.a.

2.4. The interest is to be paid in accordance with the provisions of Schedule 4 attached hereto.

3. TERMS OF REPAYMENT

3.1. The Loan Amount and accruing interest are to be repaid by the Borrower within 20 (twenty) years from the date of commissioning of Ticadia-1 Power Plant.

3.2. The schedule of repayment and sanctions for late payments is set out in Schedule 4 hereto. The Borrower hereby unequivocally agrees to the provisions of Schedule 4.

4. REPRESENTATIONS AND WARRANTIES

[OMITTED]

5. SECURITY AND COVENANTS

5.1. All assets of Ticadia-1 LLC, including Ticadia-1 Power Plant, the land plot as well as shares in Ticadia-1 LLC owned by the Guarantor shall be used as a security for this Loan (the “Pledged Assets”).

5.2. The Guarantor unequivocally agrees to guarantee the repayment of the Loan. Save for force majeure, should the Borrower at any point be unable to repay the Loan in accordance with Clause 3 hereof, the Guarantor becomes personally obligated to perform on Borrower’s behalf.
5.3. Ticadia-1 LLC and the Guarantor shall at all times during the duration of this Agreement meet specific requirements to the structure of capital and value of cash flows as set out in Schedule 6 hereto.

5.4. If, at any point in time, the value of assets of Ticadia-1 LLC drops by more than 25%, the Lender shall be entitled to ask for additional security to be provided within 30 days. If the Borrower or the Guarantor provides no such additional security, the Lender shall have the right to demand immediate repayment of the Loan Amount subject to the provisions of Clause 5.2 above.

6. GOVERNING LAW

6.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of Laos.

7. MISCELLANEOUS

7.1. The Lender may assign all rights under this agreement to any third party at any point in time after this agreement is executed and the Loan has been made available to the Borrower. No consent from the Borrower or the Guarantor shall be necessary for such an assignment.

8. LIST OF SCHEDULES

Schedule-1 — List of Construction Works [OMITTED]
Schedule-2 — Essential Characteristics of the Power Plant [OMITTED]
Schedule 3 — Conditions of the access to the Loan Amount [OMITTED]
Schedule 4 — Schedule of Payments [OMITTED]
Schedule 5 — Detailed Description of the Pledged Assets [OMITTED]
Schedule 6 — Detailed Covenants [OMITTED]

IN WITNESS WHEREOF

Borna, Nerida
CEO
Ticadia-1 LLC

Nergis, Natalia
Executive Director
MERCURIAN FIRST NATIONAL BANK JSC

Aquila, Mayamiko
CEO
Mountaintop Investments LLC
Construction of Ticadia-1 finally kicks off

19 December 2010

As has been recently announced by the representatives of the prominent coal investor Mountaintop Investments LLC, the shareholder of Ticadia-1 LLC, Mercurian First National Bank JSC, and Ticadian Municipality officials, the financing for the construction of the state of the art coal plant Ticadia-1 has been secured and all relevant permits have been obtained. Construction works, which began on 15 December 2010, are expected to be concluded by the mid-2014.

The Governor of Ticadia stated last year that the municipal authorities are happy that Mountaintop has chosen Ticadia among other Laocan municipalities and that he looks forward to welcoming the investor and its associates in Ticadia. "During our negotiations with Mountaintop and MFNB we strived to convince our partners that from an economic perspective, Ticadia would be the best place in Laoc to build a power plant. We are glad that our efforts to promote Ticadia as the best place for the future plant have been successful". He continued, "the construction of Ticadia-1 bears fundamental importance for the economic development of the region, which is why I am committed to doing everything in my power to ensure that the operation of the plant would benefit the interests of our nation. I am also committed to ensuring we maintain favourable conditions for foreign investors so that we can see more projects like Ticadia-1 in the future".

This statement drew the line under a long list of efforts that he made in order to solicit investment into the development of Ticadian coal industry. Over the past 2 years, he has made numerous official and unofficial visits to institutional investors and banks in most ASNEC countries neighbouring Laoc, advertising coal-friendly policies of Laoc and stable investment climate in the region.

Experts say that, if everything goes as planned, the median electricity bill in Laoc should immediately decrease by 15% once Ticadia-1 starts operating. Stay tuned for further updates on the construction.
Renewables in ASNEC are booming as their supporters receive even more seats in national legislatures

23 February 2013

The renewables sector in the Association of Sovereign Nations for Economic Cooperation (ASNEC) region has been developing over the past decade resulting in a 300% increase in the amount of electricity generated from renewable sources. Market experts expect further rapid growth.

Several reasons explain such fast development. The main reason for that, though, is that political parties pursuing a green agenda have been steadily gaining widespread support in the ASNEC region since the mid-2000s. For instance, “the greens” are generally expected to win the March elections to the Mercurian Parliament by a landslide.

Laoc remains the only ASNEC state where renewables have stayed in a nascent state. This, however, may change soon. The Laocan Environmental Union (LEU), which is the recently formed Laocan green party, is rapidly gaining popularity amongst Laocans. Although the LEU currently holds only 3 seats in the Laocan Parliament, experts say that it has a significant chance to improve its position in the 2015 elections if it manages to keep its ratings high. LEU representatives have already confirmed that they will include the development of renewables into their political agenda.
DIRECTIVE (ASNEC) 2016/87 OF THE COUNCIL
of 17 February 2016
on the renewable sources of energy

THE COUNCIL OF THE ASSOCIATION OF SOVEREIGN NATIONS FOR ECONOMIC
COOPERATION

Having regard to the Founding Charter of the Association of Sovereign Nations for Economic
Cooperation ("ASNEC" or "Association") and in particular Article 75(2) thereof,

WHEREAS:

(1) Under Article 75(1) of the Founding Charter of the Association of Sovereign Nations for
Economic Cooperation ("ASNEC Charter"), promoting renewable forms of energy is one of the
goals of the ASNEC energy policy. That goal ("Goal") is pursued by this Directive.

(2) The increased use of energy from renewable sources constitutes an important part of the
package of measures needed to reduce greenhouse gas emissions and to comply with the
Association’s commitment under the 2015 Seoul Agreement on Climate Change ("Seoul
Agreement"), and with the Nationally Determined Contribution of the Association and Member
States to cut emissions by at least 50% below 2012 levels by 2030.

(3) It is thus appropriate to establish a binding 2030 Association target of a share of at least 75%
of renewable energy in order to achieve and even go beyond the goal set in the Nationally
Determined Contribution.

(4) Continued reliance of Member States on energy produced by coal-fired power plants
represents a serious threat to achieving the ambitious renewable energy and greenhouse gas
emissions reduction targets referred to in paragraphs 2 and 3 above,

HAVE, BY MAJORITY, ADOPTED THIS DIRECTIVE:

[OMITTED]

Article 2

Binding overall Association target for 2030

In order to achieve the Goal, ASNEC Member States shall collectively ensure that the share of energy
from renewable sources in the Association’s gross final consumption of energy in 2030 is at least
75%.

Article 3

Support schemes for energy from renewable sources

In order to reach or exceed the Association target set in Article 2, and each Member State’s
contribution to that target set at a national level for the deployment of energy from renewable sources,
Member States may apply support schemes to provide incentives for the integration of electricity from
such sources in the electricity market.

[OMITTED]
Article 7

Restriction of the consumption of energy produced by coal-fired power plants

1. In order to reach or exceed the Association target set in Article 2, each Member State shall reduce the percentage of its final gross production of energy from coal-fired power plants to 0 by 31 December 2028.

2. The Member States, considering their specific circumstances, are encouraged to gradually reduce their final gross production of energy from coal-fired power plants before 31 December 2028.

3. The Member States shall pay no compensation to owners and/or operators of coal-fired power plants subject to measures adopted by the Member States under Article 7(1).

4. Notwithstanding Article 7(3), Member States may apply support schemes to provide incentives for the integration of electricity from renewable sources in the electricity market.

[OMITTED]

Article 18

Transposition

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 3 and 7 by 1 June 2019.

Article 19

Entry into force

This Directive shall enter into force on the third day following its adoption.

Article 20

Addressees

This Directive is addressed to the Member States.

Done at Incheon, 17 February 2016.

For the Council

LYOU BYUNG-HWA

LYOU BYUNG-HWA
THE PARLIAMENT OF THE REPUBLIC OF LAOC

LAW 66/2016 of 6 July 2016

“ON THE PHASE-OUT OF COAL ENERGY
ON THE TERRITORY OF THE REPUBLIC OF LAOC”

Preamble

Following the enactment of ASNEC Directive 2016/87 of the Council of 17 February 2016 on renewable sources of energy and recognizing the importance of the compliance of the Republic of Laoc with its international obligations under ASNEC legal framework, having carefully assessed the economic conditions of the operation of coal-fired power plants in the Republic of Laoc, this law provides as follows:

Article 1

All coal-fired power plants on the territory of Laoc shall be phased out by 31 December 2028.

Article 2

This law shall enter into force on the day following that of its promulgation.

Speaker of the Parliament

MOTOO OGISO
Preamble
Following the enactment of ASNEC Directive 2016/87 of the Council of 17 February 2016 on the renewable sources of energy and recognising the importance of compliance of the Republic of Laoc with its international obligations under ASNEC legal framework, desirous of fostering the production of energy from renewable sources in the Republic of Laoc, this law provides as follows:

Article 1
The aim of this law is to increase the share of electricity from renewable energy sources in the Association's energy supply to 75% by 2030 to meet the target set by ASNEC Directive and reduce emissions by at least 50% below 2012 levels by 2030 under the Nationally Determined Contribution of the Association and its Member States under the 2015 Seoul Agreement on Climate Change.

Article 2
“Renewable Energy Sources” means wind energy, solar (solar thermal and solar photovoltaic) energy, geothermal energy, hydroelectric energy, biomass, biogas, tide, wave, and other ocean energy.

Article 3
1. Installations generating electricity from the Renewable Energy Sources, which are constructed after 1 March 2016, shall have priority of access to the electricity grid. Grid operators are obliged to connect such electricity generation installations to their grids. [OMITTED]
2. These installations shall receive for the electricity so generated a premium in addition to the market price. This premium shall be set out by regulation and apply for the first 20 years of operation.

Article 7
1. The Laocan Renewables Company PLC (“LRC”) shall be established by 15 January 2017.
2. The charter capital of LRC shall be USD 1,000,000,000.00 to be paid up by Laocan National Treasury. The Ministry of Energy shall be LRC’s sole shareholder.
3. The LRC shall be responsible for government investment in Renewable Energy Sources, including
constructing large-scale installations generating electricity from Renewable Energy Sources.

4. All installations generating electricity from Renewable Energy Sources constructed by LRC shall benefit from the support scheme in Article 3.

[OMITTED]

12. A First Deputy Minister of Energy shall act as the director of LRC.

**Article 8**

LRC shall be privatised by 31 December 2028.

[OMITTED]

**Article 11**

This law shall enter into force on the day following that of its promulgation.

*Speaker of the Parliament*

MOTOOGISO
Mercurian First National Bank JSC  
112741, 1 Money Lane,  
Juno, Mercuria

Our reference: AB8332BSF  
Date: 10 January 2017

Notice of failure to comply with the conditions of Financing Agreement No. 0940394 and request for additional security or payment by the Guarantor

Dear Madams and Sirs,

Reference is made to Financing Agreement No. 0940394 ("Financing Agreement"), executed between Ticadia-1 LLC, Mercurian First National Bank JSC ("MFNB"), and – as a co-signatory and guarantor under the Financing Agreement – Mountaintop Investments LLC ("Mountaintop" or "Guarantor"), on 1 December 2010.

As it is known, the ASNEC Council adopted Directive 2016/87 on 17 February 2016 ("Coal Directive"). In the implementation of the Coal Directive, on 6 July 2016, the Laocan Parliament enacted Law 66/2016 ("Law 66/2016") prohibiting coal-fired power plants in its territory by 31 December 2028.

According to the estimates made by our experts, the market value of the assets pledged under the Financing Agreement has dropped by at least 40%.

As set forth in the Financing Agreement, MFNB agreed on providing a loan of USD 600 million for the construction of Ticadia-1 in exchange for a pledge of 100% of the shares in Ticadia-1 LLC, as well as a pledge of the future power plant building and related assets.

As per Clause 5.4 of the Financing Agreement, should the market value of the pledge drop by more than 25%, Ticadia-1 LLC and Mountaintop undertook to provide additional security within 30 days. According to the same clause, if no additional security is provided, the total amount of the loan becomes due and payable.

Because of that and in relation to the abovementioned provisions of the Financing Agreement, MFNB hereby reserves its right to demand an additional security from Ticadia-1 and the right to ask for immediate repayment of the loan granted under the Financing Agreement by either the Borrower or the Guarantor.

However, we assure you that for us, just like for you, the actions of the ASNEC Council and the subsequent acts of the Laocan government came as a complete shock. Because of that, we would welcome all bona fide efforts to find the solution to this situation from Mountaintop and Ticadia-1 LLC.

On behalf of MFNB

N. Nergis
To the attention of

Mercurian First National Bank JSC
112741, 1 Money Lane, Juno, Mercuria

MOUNTAINTOP INVESTMENTS

Date: 10 February 2017

Re: Notice of failure to comply with the conditions MFNB-Ticadia-1 LLC Financing Agreement N° 0940394 and request for additional security

Dear Madams and Sirs,

Reference is made to your letter dated 10 January 2017.

We completely share your perception of the recent actions of the Laocan government and the ASNEC Council. What began as an excellent investment was destroyed by the politicians within months. This highly questionable and short-sighted decision will have a long-lasting effect not only on our investment portfolio but on the economy of all ASNEC Member States.

We have engaged market experts and can confirm that the value of Ticadia-1 has dropped by as much as 50% since the day Law 66/2016 “On the Phase-out of Coal Energy on the Territory of the Republic of Laoc” (“Law 66/2016”) was enacted. Ticadia-1 LLC also did not provide any additional security as is envisaged by the conditions of the Financing Agreement N° 0940394.

This matter was discussed by our board of directors yesterday. After frank and vigorous discussions, we have decided to instruct the management of Ticadia-1 LLC to file for bankruptcy, as over its lifetime Ticadia-1 will never generate adequate cash flows to repay the loan granted by MFNB. Had Ticadia-1 been operating for a much more extended period, the economy of the situation would have been different, and it would have been in a position to repay the loan.

We also believe that Mountaintop is not bound to act as a Guarantor in such exceptional circumstances. Our board is convinced that Directive 2016/87 of the ASNEC Council, just like the enactment of Law 66/2016, constitutes force majeure and our guarantee did not extend to such events.

We understand that this letter might come as a shock to you, but please understand that this is a forced decision. Having carefully considered the financial analysis made by our experts, we do not see any way to turn Ticadia-1 into a profitable asset. We also cannot singlehandedly bear the consequences of the decision made by the Laocan government. Therefore, the sooner we can sell Ticadia-1 LLC off, the better.

In these difficult circumstances, we will remain available for any further queries.

On behalf of Mountaintop Investments LLC
A. Mayamiko
ASSIGNMENT AGREEMENT

This agreement (“Agreement”) is entered into on 1 July 2017 (“Execution Date”) in Juno, Mercuria by the following parties:

GOLIATH NATIONAL BANK (hereafter referred to simply “Purchaser”, “Assignee” or “GNB”), a joint-stock company, with its registered office in 114564, 85 Grisham st., Juno, Mercuria; and

MERCURIAN FIRST NATIONAL BANK JSC (hereafter referred to simply “Seller”, “Assignor” or “MFNB”) a limited liability company, with its registered office in 112741, 1 Money Lane, Juno, Mercuria, constituted according to the laws of Mercuria.

Each of the Purchaser and the Seller are referred to herein, individually, as a “Party” and, collectively, as the “Parties”.

WHEREAS

On 1 December 2010, the Assignor and Ticadia-1 LLC, along with Mountaintop Investments LLC (“Mountaintop”) acting as guarantor, entered into FINANCING AGREEMENT Nº 0940394 (“Financing Agreement”), governing, among other matters, the general conditions of the construction of Ticadia-1 Power Plant (“Ticadia-1”).

MFNB agreed to provide a loan of USD 600,000,000 (six hundred million) (“Loan”) to Ticadia-1 LLC. The Loan was secured by pledges of various assets, including the Ticadia-1, the plot of land on which it is located, as well as the shares in Ticadia-1 LLC owned by Mountaintop. The full list of pledges securing the Loan is attached hereto as Annex 1.

In consideration of the terms and conditions set forth herein, the Parties hereby covenant and agree as follows:

1. ASSIGNMENT

1.1. The Seller hereby assigns and transfers all the rights and claims, whether under domestic or international law, arising from the Financing Agreement to the Purchaser, together with all secondary rights and obligations thereto, including the rights to claim compensation from any third parties. For the avoidance of doubt, this assignment includes any potential claims against Mountaintop Investments LLC and the Republic of Laoc.

1.2. In view of the above and considering Clause 7.1 of the Financing Agreement, all references to MFNB in the Financing Agreement shall now be read as referring to GNB. By all means and under the Laws of the Republic of Mercuria, GNB shall be considered the legal successor to MFNB in all matters pertaining to the Financing Agreement.

1.3. For the avoidance of doubt, all rights and obligations of the Seller provided under the Financing Agreement shall be those of the Purchaser, and the Seller shall no longer have any rights or obligations thereunder.

1.4. The Seller shall also transfer the originals of all documents and correspondence related to the Financing Agreement to the Purchaser.

2. PAYMENT

2.1. The Purchaser shall pay to the Assignor by wire transfer, the total amount of USD 150,000,000.00 (one hundred and fifty million dollars) as a consideration for the rights and claims assigned under Section 1 hereof.
2.2. The sum stipulated in Clause 2.1 hereof is to be paid within 5 (five) banking days from the day of execution of this Agreement.

3. **GOVERNING LAW**

This Agreement and the obligations and rights established herein shall be interpreted in accordance with the Laws of the Republic of Mercuria as well as, where necessary, relevant rules of international law.

4. **MISCELLANEOUS**

4.1. This Agreement and its Annex constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties concerning such subject matter.

4.2. This Agreement and the rights hereunder are not assignable unless such assignment is consented to in writing by each of the Parties, and this Agreement and all the provisions hereof shall be binding upon them and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

4.3. If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

IN WITNESS WHEREOF, the Parties undersign this Agreement to be executed in two counterparts of like form and content, for one sole effect,

S. B.  
Stinson, Barney  
CEO  
GOLIATH NATIONAL BANK JSC

Nergis, Natalia  
Executive Director  
MERCURIAN FIRST NATIONAL BANK JSC
IN THE MATTER OF AN ARBITRATION
UNDER THE UNCITRAL RULES

BETWEEN:

Goliath National Bank JSC

- and -

The Republic of Laoc

RESPONDENT’S RESPONSE TO
THE NOTICE OF ARBITRATION
IN ACCORDANCE WITH ARTICLE 4
OF THE UNCITRAL ARBITRATION RULES

28 February 2019

FINCH LLP
4FWRJ, 19 Paddington lane,
Mercuria City, Mercuria
1 As required by Article 4 of the UNCITRAL Arbitration Rules of 2010 ("Rules"), the Republic of Laoc ("Respondent") hereby presents its Response to the Notice of Arbitration (respectively, "Response" and "Notice of Arbitration") in relation to arbitration KCAB International n. 15503/IS filed by Goliath National Bank JSC ("Claimant" or "GNB", together with Respondent, the "Parties").

2 Respondent reserves its right to submit its Statement of Defence pursuant to Article 21 of the Rules and in accordance with the schedule to be determined by the Parties to this arbitration and the Arbitral Tribunal.

3 Respondent hereby contests the Arbitral Tribunal’s jurisdiction over this case and rejects all claims raised by Claimant in its Notice of Arbitration.

(2) CLAIMANT HAS NO STANDING

4 Mercurian First National Bank JSC ("MFNB") entered into the financing agreement ("Financing Agreement") with Ticadia-1 LLC on 1 December 2010. After MFNB started experiencing financial difficulties, allegedly caused by Law 66/2016 enacted by Respondent, Claimant sold off its rights under the Financing Agreement to GNB.

5 Respondent respectfully submits that this Tribunal does not have jurisdiction to hear Claimant’s case due to the fact that GNB does not own nor, in fact, has it ever made any investment under the Treaty concerning the Encouragement and Reciprocal Protection of Energy Investments in the ASNEC Region ("ASNEC Energy Investment Treaty"), so that none of the jurisdictional requirements have been met. Even if MFNB, who is, and this is explicitly acknowledged by Respondent, an investor under the ASNEC Energy Investment Treaty, had any claims against Respondent for any breach of international law caused by Law 66/2016 or any other acts of Respondent, the only person that could have submitted those claims to this Tribunal is MFNB.

6 Claimant submits that GNB has acquired all rights of MFNB arising out of the Financing Agreement (Exhibit C-4) and, therefore, should be considered MFNB’s legal successor in all matters pertaining to the Financing Agreement. Claimant acts as if rights under an investment treaty could be assigned under the same rules as domestic law claims. However, this is not the case. Any potential claims under the ASNEC Energy Investment Treaty could only be assigned under international law.
Furthermore, both general international law and the ASNEC Energy Investment Treaty do not contain any legal framework for the assignment of claims. It is uncontroversial in Public International Law that treaty claims are necessarily *intuitu personae*, *i.e.* have a close link to the personality of the original investor, which imposes limits on their assignability. Therefore, given that GNB has not made any investment in the territory of Laoc and MFNB was the actual investor, the *ratione personae* condition is not met.

Therefore, and in light of the above, Respondent submits that GNB is not entitled to bring claims under the ASNEC Energy Investment Treaty.

(3) **ENACTMENT OF LAW 66/2016 SHOULD NOT BE ATTRIBUTED TO THE REPUBLIC OF LAOC BUT TO ASNEC**

As it is known, between 2000 and 2015, the ASNEC countries experienced a massive increase in the number of natural disasters occurring in their territory, including at least 14 major floods, 6 of which took place in Laoc (*Exhibit R-2*). Millions of houses were destroyed in Laoc, causing damage to its population and raising concerns not only in the Laocan government but worldwide.

In 2015, because of the drastic spike in the number of natural catastrophes and following ASNEC’s environmental commitment (*Exhibit R-3*), Laoc came under the ever-increasing pressure of the other ASNEC Member States and ASNEC itself to sign the Seoul Agreement on Climate Change (*Exhibit R-4*).

Moved by this treaty (*Exhibit R-5*), on 17 February 2016, the ASNEC Council adopted Directive 2016/87 on the renewable sources of energy ("Coal Directive"), establishing that all coal-fired power plants used on the ASNEC Member States should be phased out by 31 December 2028 (*i.e.* in 12 years from the enactment of the Coal Directive). It is essential to highlight that even though the Council member from Laoc voted against the adoption of the Coal Directive, she was outvoted. Thus, there was nothing Respondent could have done to prevent the Coal Directive from being adopted.

Consequently, in addition to the lack of standing to sue, Claimant’s claims must also be dismissed as directed against the wrong Contracting Party. When adopting Law 66/2016, Respondent’s Parliament merely complied with its obligations under the ASNEC Charter to implement the mandatory provisions of the Coal Directive. In essence, Respondent was forced to act in the way it did. As for its limited discretion under the Coal Directive, it exercised the latter to the benefit of investors in the coal sector by setting the maximum deadline for the
phase-out of coal-fired power plants possible under the Coal Directive, thus allowing them to maximise the returns from their power plants under the circumstances.

Hence, the responsibility lies solely with ASNEC and, consequently, Claimants should have filed their arbitration against ASNEC, which is also a Contracting Party to the ASNEC Energy Investment Treaty.

(4) RESPONSE TO CLAIMS ON MERITS

14 Even if, ad argumentandum tantum, the Arbitral Tribunal should recognise its jurisdiction over the dispute and that Laoc should be held responsible for phasing out coal-fired power generation through Law 66/2016, Respondent did not violate its duty to provide Claimant — or the investor MFNB — with fair and equitable treatment under the ASNEC Energy Investment Treaty nor its obligation to offer a “stable and predictable legal framework”.

15 Respondent avers that it has not violated any substantive protection of the ASNEC Energy Investment Treaty.

16 In 2010, when Ticadia-1 LLC obtained the loan for construction of T1 under the Financing Agreement, the Governor of Ticadia, Mr Ji-Yeong, made no specific representations to Mountaintop or MFNB. If any such specific promise had been made, it would have been reflected in the documents issued by the government authorities of Respondent. However, even the wording of the operating license of Ticadia-1 (Exhibit R-1) clearly suggests that MFNB could have expected some natural alteration in the domestic laws. This is precisely what happened.

17 MFNB had every right to expect that Respondent would offer it a stable legal framework, but as a sophisticated investor, it should have known that States change their laws to react to various situations and to best protect their nationals. Due to an environmental crisis, with international repercussions, Respondent had to act diligently and responsibly towards its international obligation to human well-being. No reasonable investor could expect Laoc not to reform its legal framework when faced with such a threat to its population and its territory; particularly since the very Treaty on which Claimant bases its claim states that Respondent “shall strive to continue to improve those [=environmental] laws” and since its country of origin, Mercuria, was following the whole discussion of the dangers that the coal-energy industry poses to the environment.
Furthermore, on 5 December 2016, Respondent enacted Law 72/2016 offering investors the opportunity to invest further into the renewable energy sector an option entering into a 20-year energy supply contract at prices substantially above market value.

(5) NOMINATION OF THE ARBITRATOR

In accordance with Article 9(1) of the Rules, the Laoc nominates Gisèle Gwenaelle as its arbitrator, whose Curriculum Vitae may be found attached to this submission [OMITTED].

(6) PRAYERS FOR RELIEF

In light of the above, Respondent respectfully requests the Arbitral Tribunal to find that:

i. It has no jurisdiction to hear the dispute submitted by Claimant under the ASNEC Energy Investment Treaty;

ii. If the Arbitral Tribunal finds it has jurisdiction to hear the dispute:
   a. That the phase-out of coal-fired power generation implemented through Law 66/2016 is not attributable to Respondent under international law;
   b. That Respondent’s actions did not, in any event, violate the fair and equitable treatment standard as provided for in Article II of the ASNEC Energy Investment Treaty.

Respectfully submitted,

For and on behalf of Respondent

A. Finch,
Finch LLP
THE GOVERNOR OF TICADIA

LICENSE FOR THE COMMERCIAL OPERATION
OF THE 850 MW TICADIA-1 POWER PLANT

Issued to: Ticadia-1 LLC

Issue date: 25 September 2014

Expiry date: 25 September 2054

Special conditions:
1. This license can be withdrawn or amended only if Ticaida-1 LLC at any time fails to comply with provisions of the legislation of the Republic of Laoc applicable to the operation of power plants.

2. This license shall remain valid provided Tiadia-1 keeps T1 conformant with environmental regulations in effect of the Republic of Laoc.

Ji-Yeong, Huan
Governor of Ticadia
For the past 10 years, the population of Laoc has been suffering from annual floods of increasing magnitude. Despite the continued efforts to build dams, levees and other types of protective constructions by the federal government of Laoc, the floods still take thousands of lives and cause millions of dollars in property damage every year.

Some time ago, the Government of Laoc formed a task force of environmental scientists in order to find the reasons behind this phenomenon. In their recently published report, the task force concluded that the most probable (out of several) explanations would be that floods occur because of greenhouse emissions made by numerous coal plants operated in Laoc. The task force observed that there was a direct correlation between the growth of coal emissions and the intensity of floods over the past years. Despite that, the task force also admits that there is no empirical evidence to show that floods are caused by the greenhouse emissions of the coal plants operated in Laoc.

In the next weeks, the Government of Laoc will consider whether it is necessary to prepare a draft law capping the amount of greenhouse emissions by coal plants in Laoc. However, experts say that preparing this law may take considerable time as it would require a careful balance between the needs of the public and the rights of the operators of the coal plants.
FOUNDING CHARTER OF THE ASSOCIATION OF SOVEREIGN NATIONS FOR ECONOMIC COOPERATION (ASNEC)

PREAMBLE

Oceania, Kingdom of Basheera, Eastasia, Republic of Mercuria, Federal Republic of Cogitatia, Republic of Barancasia, Republic of Dagobah, Corellian Republic, Ruritania, Wellfalcon, Kingdom of Sylvania, Grand Dutchy of Bergonia, Sultanate of Beristan and the Republic Laoc,

DETERMINED to lay the foundations of an ever-closer Association among their peoples,
RESOLVED to ensure the economic and social progress of their States,
AFFIRMING as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples,
ANXIOUS to strengthen the unity of their economies, to promote cross-border investment and foster fair stable investment conditions, to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,
RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty,
and to this end HAVE DESIGNATED as their Plenipotentiaries:

[OMITTED]

WHO, having exchanged their full powers, found in good and due form, have agreed as follows

[OMITTED]

TITLE VI: ENVIRONMENT

Article 61

1. Association policy on the environment shall contribute to pursuit of the following objectives:
   b. preserving, protecting and improving the quality of the environment,
   c. protecting human health,
   d. prudent and rational utilisation of natural resources,
   e. promoting measures at the international level to deal with regional or worldwide environmental problems, and in particular, combating climate change.

2. Association policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Association. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

3. In preparing its policy on the environment, the Association shall take account of:
   a. available scientific and technical data,
   b. environmental conditions in the various regions of the Association,
   c. the potential benefits and costs of action or lack of action,
   d. the economic and social development of the Association as a whole and the balanced development of its regions.
Article 62
1. The Council shall decide what action is to be taken by the Association in order to achieve the objectives referred to in Article 61.
2. Without prejudice to certain measures adopted by the Association, the Member States shall finance and implement the environment policy.

Title VIII: Energy

Article 75
1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Association policy on energy shall aim to:
   a. ensure the functioning of the energy market;
   b. ensure the security of energy supply in the Association;
   c. promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
   d. promote the interconnection of energy networks.
2. The Council shall establish the measures necessary to achieve the objectives in paragraph (1).

Title XIII: The Legal Acts of the Association

Article 115
1. To exercise the Association’s competences, the Council shall adopt regulations, directives, decisions, recommendations, and opinions. It takes its decision by a majority of three fourths of its members.
2. A regulation shall have a general application. It shall be binding in its entirety and directly applicable in all Member States.
3. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
4. A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.
5. Recommendations and opinions shall have no binding force.

Article 120
The Association enforces or implements its legal acts through the organs of its Member States. When the Member States enforce or implement any legal acts of the Association, the attribution of conduct, as between the Member States and the Association, shall be governed, in particular, by Articles 6 and 7 of the Article on the Responsibility of International Organizations, mutatis mutandis.
**Article 124**

1. On a reasoned proposal by one third of the Member States, the Council, acting by a majority of two thirds of its members, may determine that there is a clear risk of a serious breach by a Member State of the ASNEC Charter, including the failure to enforce or implement a legal act of the Association in accordance with Articles 115 and 120. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

2. Where a determination under paragraph 1 has been made, the Council, acting by a majority of four fifths, may decide to address recommendations to the Member State in question.

3. On a reasoned proposal by one third of the Member States, the Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Member State of the ASNEC Charter, including the failure to enforce or implement a legal act of the Association in accordance with Articles 115 and 120, after inviting the Member State in question to submit its observations.

4. Where a determination under paragraph 3 has been made, the Council, acting by a majority of four fifths, may decide to take both or any of the following measures:
   a. to suspend certain of the rights deriving from the Founding Charter to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council;
   b. to impose the lump sum or penalty payment to be paid by the Member State concerned which the Council considers appropriate in the circumstances.

5. The obligations of the Member State in question under the Founding Charter shall in any case continue to be binding on that State.

6. The Council, acting by a majority of four fifths, may decide subsequently to vary or revoke measures taken under paragraph 4 in response to changes in the situation which led to their being imposed.

7. For the purposes of this article, the member of the Council representing the Member State in question shall not take part in the vote and the Member State in question shall not be counted in the calculation of unanimity or the majorities referred to in this article. Abstentions by members present in person or represented shall not prevent the adoption of decisions.

[OMITTED]

DONE at Seoul this third day of February two thousand and twelve.

IN WITNESS WHEREOF, the undersigned, being duly authorised to that effect, have signed this Agreement.
SEUL Agreement on Climate Change

The Parties to this Agreement, the Association of Sovereign Nations for Economic Cooperation ("ASNEC"), Oceania, Kingdom of Basheera, Eastasia, Republic of Mercuria, Federal Republic of Cogitatia, Republic of Barancasia, Republic of Dagobah, Corellian Republic, Ruritania, Wellfalcon, Kingdom of Sylvania, Grand Dutchy of Bergonia, Sultanate of Beristan and the Republic Laoc,

Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as the “Convention”,

In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Recognising the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge,

Recognising the importance of the engagements of all levels of government and various actors, in accordance with respective national legislations of Parties, in addressing climate change,

Have agreed as follows:

Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
   a. Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change;

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Article 4

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognising that peaking will take
longer for developing country Parties, and to undertake rapid reductions thereafter in accordance
with best available science, so as to achieve a balance between anthropogenic emissions by
sources and removals by sinks of greenhouse gases in the second half of this century, on the
basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

2. Each Party shall prepare, communicate, and maintain successive nationally determined
contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with
the aim of achieving the objectives of such contributions.

3. Each Party’s successive nationally determined contribution will represent a progression beyond
the Party’s then current nationally determined contribution and reflect its highest possible
ambition, reflecting its common but differentiated responsibilities and respective capabilities, in
the light of different national circumstances.

[OMITTED]

10. The first nationally determined contributions shall be communicated by 1 March 2016. Thereafter
each Party shall communicate a nationally determined contribution every five years in
accordance with any relevant decisions of the Conference of the Parties.

[OMITTED]

16. Parties, including regional economic integration organisations and their Member States, that
have reached an agreement to act jointly under paragraph 2 of this Article shall notify the
secretariat of the terms of that agreement, including the emission level allocated to each Party
within the relevant time period, when they communicate their nationally determined contributions.

[OMITTED]

18. If Parties acting jointly do so in the framework of, and together with, a regional economic
integration organisation which is itself a Party to this Agreement, each Member State of that
regional economic integration organisation individually, and together with the regional economic
integration organisation, shall be responsible for its emission level as set out in the agreement
communicated under paragraph 16 of this Article.

[OMITTED]

19. This Agreement shall be open for signature and subject to ratification, acceptance or approval by
States and regional economic integration organisations. It shall be open for signature at the
Thereafter, instruments of ratification, acceptance, approval or accession shall be deposited with
the Secretary-General of the United Nations.

20. Any regional economic integration organisation that becomes a Party to this Agreement without
any of its Member States being a Party shall be bound by all the obligations under this
Agreement. In the case of regional economic integration organisations with one or more Member
States that are Parties to this Agreement, the organisation and its Member States shall decide on
their respective responsibilities for the performance of their obligations under this Agreement. In
such cases, the organisation and the Member States shall not be entitled to exercise rights under
this Agreement concurrently.

21. In their instruments of ratification, acceptance, approval or accession, regional economic
integration organisations shall declare the extent of their competence with respect to the matters
governed by this Agreement. These organisations shall also inform the Depositary, who shall, in
turn, inform the Parties, of any substantial modification to the extent of their competence.
925 1. This Agreement shall enter into force on the thirtieth day after the date on which at least 20 Parties to the Convention accounting in total for at least an estimated 20 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession.

930 Article 24

The provisions of Article 14 of the Convention on settlement of disputes shall apply mutatis mutandis to this Agreement.

Article 25

1. Each Party shall have one vote, except as provided for in paragraph 2 of this Article.

2. Regional economic integration organisations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their Member States that are Parties to this Agreement. Such an organisation shall not exercise its right to vote if any of its Member States exercises its right and vice versa.

940 DONE at Seoul this sixth day of December two thousand and fifteen.

IN WITNESS WHEREOF, the undersigned, being duly authorised to that effect, have signed this Agreement.
DECLARATION BY THE ASSOCIATION OF SOVEREIGN NATIONS FOR ECONOMIC COOPERATION MADE UPON THE RATIFICATION OF THE SEOUL AGREEMENT IN ACCORDANCE WITH ARTICLE 20(3) THEREOF

The following States are at present Members of the Association of Sovereign Nations for Economic Cooperation (“ASNEC” or the “Association”): Oceania, Kingdom of Basheera, Eastasia, Republic of Mercuria, Federal Republic of Cogitatia, Republic of Barancas, Republic of Dagobah, Corellian Republic, Ruritania, Wellfalcon, Kingdom of Sylvania, Grand Dutchy of Bergonia, Sultanate of Beristan and the Republic Laoc.

ASNEC declares that, in accordance with its Founding Charter, in particular with Article 61 and Article 62(1) thereof, the Association is competent to enter into international agreements and to comply with the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

a. preserving, protecting and improving the quality of the environment;
b. protecting human health;
c. prudent and rational utilisation of natural resources;
d. promoting measures at international level to deal with regional or worldwide environmental problems, and in particular, combating climate change.

ASNEC will continue to provide information, on a regular basis on any substantial modifications to the extent of its competence, in accordance with Article 20(3) of the Seoul Agreement.

DONE at Seoul on 13 December 2015

For the Council

LYOU BYUNG-HWA

LYOU BYUNG-HWA
Dear Sir/Madam,

The Secretariat notifies the Parties regarding the constitution of the Arbitral Tribunal in these proceedings as follows:

● Third Arbitrator:
  Name: Daniel Crane
  Current Position: Lawyer
  Address: 613 Massachusetts Ave, Cambridge, MA 02154, United States
  Contact Info: TEL +1 (413) 697-493-300
  Email: d.crane@crane.law

● Co-Arbitrator:
  Name: Gisèle Gwenaelle
  Current Position: Lawyer
  Address: Rue de la Marine 37, 1303 Genève, Switzerland
  Contact Info: TEL +41 (22) 379 71 11
  Email: gg@gwenaellearbitration.com

● Co-Arbitrator:
  Name: Perry Mason
  Current Position: Lawyer
  Address: 25 W 56th St, New York, NY 10037, United States
  Contact Info: TEL +1 (212) 871-9453
  Email: pm@mason.com

Mr. Daniel Crane’s (1) Curriculum Vitae, (2) "Statement of Acceptance", and (3) "Statement of Impartiality and Independence" are enclosed for reference [DOCUMENTS NOT REPRODUCED].
In accordance with Article 17 of the UNCITRAL Rules (2010), the KCAB International Secretariat hereby informs you that the arbitral tribunal in the matter N. 15503/IS is constituted.

All subsequent communications in relation to this arbitration shall be made directly between the Parties or between the Parties and the Arbitral Tribunal, with a simultaneous copy to the Secretariat, if written.

For any information about this case, please do not hesitate to contact Hi-Taek Shin (TEL: +82-2-551-2030, FAX: +82-2-551-2033, E-mail: htshin@kcab.or.kr).

Yours faithfully,

________________
Hi-Taek Shin
Chairman of KCAB INTERNATIONAL
IN THE MATTER OF AN ARBITRATION
UNDER THE UNCITRAL RULES
BETWEEN:

Goliath National Bank JSC

Claimant

- and -

The Republic of Laoc

Respondent

PROCEDURAL ORDER NO. 1

12 March 2019

Tribunal:
Giselle Gwenaelle,
Perry Mason
Daniel Crane, President
The Claimant is Goliath National Bank JSC (“GNB”) and Respondent is the Republic of Laoc (together “Parties”). After consultation with the Parties, inter alia, by a conference call held on 15 February 2019, the Arbitral Tribunal adopts the following Order governing the Proceedings:

I. APPLICABLE ARBITRATION RULES AND ADMINISTRATION OF THE PROCEEDINGS

2 The Proceedings shall be conducted in accordance with the UNCITRAL Arbitration Rules, as revised on 6 December 2010 (“UNCITRAL Arbitration Rules”), and the Official Rules of the Foreign Direct Investment International Arbitration Moot, as agreed between the Parties. In case of an inconsistency between the two, the latter shall prevail to the extent of the inconsistency.

3 The Proceedings are administered by the Korean Commercial Arbitration Board International (KCAB International).

II. CONSTITUTION OF THE ARBITRAL TRIBUNAL

4 The Arbitral Tribunal in this case consists of Perry Mason (arbitrator appointed by Claimant), Gisele Gwenaelle (arbitrator appointed by Respondent), and Daniel Crane (President appointed by the two arbitrators).

III. PLACE OF PROCEEDING

5 The place of arbitration shall be Juno, Mercuria.

6 The hearings shall take place in Seoul, Republic of Korea. The Arbitral Tribunal may meet at any meeting it considers appropriate for deliberations.

IV. LANGUAGE

7 The language of the Proceedings shall be English.

V. CHALLENGES

8 The Parties agree that should one member of the Arbitral Tribunal be challenged, instead of the appointing authority referred to in Article 13(4) of the UNCITRAL Arbitration Rules, the unchallenged members of the Arbitral Tribunal shall have the authority to decide on the challenge. Where more than one member of the Arbitral Tribunal is challenged, the decision shall be taken by the Secretariat of KCAB International. Apart from this modification, the provisions on the challenge of arbitrators in the UNCITRAL Arbitration Rules shall apply.

VI. ORGANISATION OF THE HEARING

9 The Arbitral Tribunal and the Parties have agreed that, although jurisdiction, admissibility and liability might be addressed in separate stages, in these Proceedings they shall be dealt with together in the “Main Stage” followed by a stage for costs and, as appropriate in accordance with the Arbitral Tribunal’s findings in the Main Stage, for quantum (“Quantum and Costs Stage”).

10 The Main Stage will address:

a) Whether Claimant has standing in these Proceedings;
b) Whether the challenged measures is attributable to Respondent;

c) Whether the challenged measures violates Article II(1) of the Treaty concerning the Encouragement and Reciprocal Protection of Energy Investments in the ASNEC Region ("ASNEC Energy Investment Treaty").

11 The Arbitral Tribunal will hold a hearing on these issues on 6–9 November 2020 in Seoul, Republic of Korea.

President of the Arbitral Tribunal
Daniel Crane
IN THE MATTER OF AN ARBITRATION
UNDER THE UNCITRAL RULES

BETWEEN:

Goliath National Bank JSC

Claimant

- and -

The Republic of Laoc

Respondents

RESPONDENT'S CHALLENGE OF PERRY MASON

16 June 2019

FINCH LLP
4FWRJ, 19 Paddington lane,
Mercuria City, Mercuria
Respondent refers to the article “First Investment Arbitration Award concerning Climate Change Measures”, published by International Arbitration News (IAN) on 2 June 2019 (Exhibit R-9) and Mr Mason’s social media post related to this article (Exhibit R-10). The information contained in this article has raised grave doubts with Respondent about Mr Mason’s impartiality and independence.

After having heard from Mr Mason himself that there was “no reason why [he] should not serve on the [present] Arbitral Tribunal” (Exhibit R-7), Respondent was very surprised to learn from that article that Mr Mason acted as an arbitrator in the case of Hewer Plants JSC v. Wellfalcon. Respondent had so far been unaware of Mr Mason’s appointment in that case. It has researched the background of the case from publicly available information and discovered that the factual and legal background of Hewer Plants JSC v. Wellfalcon is very similar to the present case.

Both cases have arisen out of a sovereign state’s exercise of its right to regulate by phasing-out a coal-fired power plant to address a threat not only to the well-being of its people but of all people. Moreover, both cases have ultimately originated from the same measure, namely ASNEC’s Directive 2016/86.

Given this factual and legal similarity, Mr Mason was clearly obliged to disclose his appointment. Deciding that case creates an “issue conflict” for the present arbitration because Mr Mason has already formed an opinion on legal and factual issues also at the heart of the present case which will — consciously or subconsciously — influence his decision in the present case. At the very least, there is the risk that he may be influenced by arguments he has been exposed to in that other arbitration, which have not been — and potentially would not be — raised in this Arbitration.

Respondent’s concern that Mr Mason has already formed a firm opinion on the matters at issue in the present case is further confirmed by his public jubilation at the decision in the Hewer Plants case on social media, where he called it a “ground-breaking” decision.

Moreover, the article revealed that Mr Mason also had already voiced an opinion on issues relevant to this Arbitration in an interview to a prominent podcast called “The Arbitration Station” (Exhibit R-8). His generalising reference to state conduct in certain past investment arbitrations — and not others where tribunals held that measures taken for environmental or public health measures were lawful — shows that he does not consider environmental law
arguments relevant and — at least subconsciously — distrusts states in the exercise of their regulatory powers.

7 Each of these circumstances in itself (and even more so taken together) have raised grave doubts with Respondent about Mr Mason's impartiality and independence and undermined Respondent's trust in its position being given full consideration in this arbitration. Given that trust in the impartiality and independence of the arbitrators is a cornerstone of the arbitral process, Respondent is confident that Mr Mason, as an experienced arbitrator, will understand Respondent's doubts and that he will recuse himself to re-establish the necessary trust in the arbitral process.

8 In accordance with Clause 8 of Procedural Order 1, Respondent hereby respectfully requests the remaining members of the Arbitral Tribunal to sustain its challenge of Mr Perry Mason.

For and on behalf of Respondent

A. Finch,

Finch LLP
STATEMENT OF IMPARTIALITY AND INDEPENDENCE IN ACCORDANCE WITH THE UNCITRAL ARBITRATION RULES ARTICLE 11

Goliath National Bank JSC

v.

The Republic of Laoc

Date: 15 February 2019

To the best of my knowledge, there is no reason why I should not serve on the Arbitral Tribunal constituted by the KCAB International with respect to a dispute between Goliath National Bank JSC and the Republic of Laoc.

I shall keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any award made by the Arbitral Tribunal.

I shall judge fairly as between the parties, according to the applicable law, and shall not accept any instruction or compensation with regard to the proceeding from any source except as provided by the UNCITRAL International Arbitration Rules.

P. Mason

Perry Mason
INTERVIEW OF PERRY MASON TO THE ARBITRATION STATION (Transcript)

Joel Malkovich: Hello! This is the Arbitration Station, to which you are welcome! My name is Joel Malkovich...

Brian Atwood: ...and I am Brian Atwood.

Joel Malkovich: We are your co-hosts for another episode of The Arbitration Station podcast, covering both commercial and investment arbitration. Sixty-six per cent serious substance and thirty-three per cent general ponderings and musings on the arbitration world, which leaves one per cent investing your career as an arbitrator...

Joel Malkovich: Where in the world are you, Brian?

Brian Atwood: I am right beside you, Joel, in Juno, Mercuria.

Joel Malkovich: This is the first time this year we are in the same room, right, Brian?

Brian Atwood: I think so, Joel. That is why I love the Young Arbitralists Annual Conference so much. We both managed to see some old friends, do some networking, discuss some of the recent developments in investment and commercial arbitration, etc., etc., etc. And well, after spending this very pleasant — but tiring — week listening to many very experienced arbitrators at the YA Annual Conference, I am happy that we managed to interview some of them at the Arbitration Station to talk about how to launch one’s career as an arbitrator. And let’s welcome or first guest Mr Perry Mason.

Joel Malkovich: We are sure you all know distinguished Mr Mason, who has been acting as arbitrator in some of the most significant disputes of the world. Thank you so much for accepting our invitation, Mr Mason!

Perry Mason: Hello, everyone! Hello Joel! Hello Brian! And please don’t thank me! It’s a great pleasure to be here with you guys! It’s a great project to reach out to the next generation of arbitrators in this manner — and I am happy to be a part of this show.

Brian Atwood: And, indeed, your distinguished and inspiring history as an arbitrator will motivate many young lawyers — at least I can say this as far as I am concerned.

[laughs]

Brian Atwood: Well, what was the most important step for you that have helped you get where you are today?
Joel Malkovich: Everybody talks about climate change today. Also, in the arbitration world, you hear more and more talk about the so-called “Climate Change Arbitration”. Would you consider this a prospective area for the young practitioners to focus on specifically?

Perry Mason: This is a tricky question. Although I am conscious about the environment, it is not hard to imagine scenarios where states will resort to climate change arguments in support of their actions. I have seen this kind of situation: projects are approved and executed; the public opinion shifts and environmental measures are taken.

On the other hand, I do not see how climate change adds anything new to the debate in investment law that would make it worthwhile for the next generation to rehearse the police powers arguments again. Also, whether climate change treaties, if they can be considered treaties at all, can come into play as a part of applicable law in investment treaty arbitrations is understandably subject to debate.

So, I would suggest, young practitioners should instead broaden their horizons on the economic plane. Understanding a project from the financial side is what helps to find a right solution for a case.

[OMITTED]
BREAKING: First tribunal rules on ASNEC climate change measures

2 June 2019

Source: International Arbitration News

We have learned that on 1 May 2019, an arbitral tribunal constituted in the case Hewer Plants JSC v. Wellfalcon rendered what we understand to be the first award in a series of investment arbitrations brought against different member states of ASNEC implementing ASNEC’s decision to ban coal-fired power generation. We have so far been able to identify at least 4 cases brought against Wellfalcon and even a total of 13 against Laoc.

The Hewer case dealt with Hewer Plants’ investment in a lignite-fired power plant and connected open-cast lignite mine. According to the company’s website, its investment in Wellfalcon was made in 2005. After ASNEC had adopted the Coal Directive in February 2016, Wellfalcon required all lignite-fired power plants to be closed down by 2028 at the latest.

According to a press statement released today by Hewer Plants, the arbitral tribunal has upheld Hewer Plant’s claim that Wellfalcon has violated the so-called “fair and equitable treatment” standard. The tribunal ruled, however, that international responsibility for the coal phase-out should be attributed to ASNEC, not Wellfalcon.

The arbitrators in the case were Ms Spartak (president of the arbitral tribunal), Mr Mason (appointed by Hewer Plants) and Ms Cooper (appointed by Wellfalcon). Considering a large number of pending arbitrations on this matter, the involvement of Mr Mason in this Climate Change Arbitration is somehow ironic. In an interview given at the Arbitration Station 1 year ago, he didn’t believe that Climate Change Arbitration would not be something relevant for young practitioners to get into.

We will provide further analysis on this matter once we have unearthed a copy of the award.

As of now, the full award has not yet been released to the public.
Proud to have served as arbitrator in this groundbreaking case on #ClimateChange!

BREAKING: First Tribunal Rules on ASNEC Climate Change measures
[internationalarbitrationnews.com/2019/06/02/bre...]

BREAKING: First tribunal rules on ASNEC climate change measures

We have learned that on 1 May 2019 an arbitral tribunal constituted in the case Hewer Plants JSC v. Wellfalcon rendered what we understand to be the first award.
From: Mason, Perry <pm@mason.com>
To: gg@gwenaellearbitration.com, d.crane@crane.law, finch@finch.law, cg@green.com, htshin@kcab.or.kr
Re: Response to Respondent’s challenge dated 16 June 2019
Date: 23/06/2019

Dear Colleagues,
Dear Counsel for Respondent,
Dear Counsel for Claimant,

In its Notice of Challenge of 16 June 2019, Respondent refers to certain circumstances which, in its view, give rise to doubts about my impartiality and independence.

I have carefully reviewed Respondent’s concerns but do not share Respondent’s conclusion.

I have, at all times, complied with the disclosure obligation under Article 11 of the UNCITRAL Arbitration Rules. Also under the International Bar Association Guidelines on Conflict of Interest in International Arbitration (“IBA Guidelines”), if they applied in the present case, I would not have been required to disclose my appointment as an arbitrator in Hewer Plants JSC v. Wellfalcon or my interview to the Arbitration Station.

Notwithstanding my firm conviction that no duty to disclosure exists in the present case, given Respondent’s concerns and in the spirit of transparency, I wish to inform the Parties and my fellow arbitrators that I have been appointed by another claimant (C-Energy LLC) against Wellfalcon in an arbitration concerning the same measures as in Hewer Plants JSC v. Wellfalcon.

I do not believe that my appointment in these other cases can give rise to any justifiable doubts about my impartiality or independence. I am not aware of any connection between Claimant in the present arbitration and the claimants in the two other cases. Moreover, while also the other two cases concern the phase-out of coal-fired power plants in the context of ASNEC Directive 2016/87 and are both taken in a “climate change” context, the facts in those cases and in the present arbitration are naturally not identical.

Regarding my interview with the Arbitration Station, I would like to emphasize that the purpose of this interview was to give career advice to young practitioners and not an in-depth legal analysis of a complex legal question. I was responding to the suggestions that “Climate Change Arbitrations” were something new and therefore worthwhile for young practitioners and scholars to study. I was merely pointing out that these cases will likely raise similar questions than, for example, investment arbitrations related to environmental measures. Just like these cases had different outcomes, every “climate change” related case needs to be assessed based on its own facts and applicable law. There can be no “one fits all solution”.

Yours sincerely,
Perry Mason
Dear Mr President,

Dear Members of the Tribunal,

Dear Counsels,

Claimant refers to Respondent’s Notice of Challenge and Mr Mason’s response thereto. Respondent’s challenge has no merit and must be rejected.

Respondent already appears to rely on an incorrect standard. It is not relevant whether Respondent had “grave” doubts but whether a reasonable person would have justifiable doubts about Mr Mason’s impartiality and independence. The clear answer is no.

As regards Mr Mason’s appointments in the cases Hewer Plants JSC v. Wellfalcon and C-Energy LLC v. Wellfalcon, Claimant wishes to clarify that it was not aware of Mr Mason’s appointment in these cases. Claimant, however, fully agrees with Mr Mason that there was also no duty to disclose such appointments. They concern different parties and different facts.

That arbitrators in investment arbitrations frequently deal with seemingly similar factual constellation is well known and typical for this type of arbitration. It is therefore generally recognised that involvement in multiple, apparently similar arbitrations does not give rise to justifiable doubts about an arbitrator’s impartiality or independence.

As regards Respondent’s challenge based on Mr Mason’s interview with the Arbitration Station, this is clearly belated. The interview was given more than a year ago. Had Respondent done proper research on Mr Mason at the time of his appointment, Respondent certainly would have come across this information. It cannot now rely on its own failure to perform a thorough due diligence.

However, the interview, in any event, does not give rise to any justifiable doubts about Mr Mason’s impartiality or independence. Respondent uses two sentences from the interview to suggest a general bias of Mr Mason against states. A brief oral statement can, however, hardly be a reasonable basis to come to such a far-reaching conclusion.

Mr Mason is an experienced arbitrator. His public record shows appointments as arbitrator in over 30 investment arbitrations, including 7 appointments by respondent states and 6 appointments as tribunal president. States would have hardly appointed him or agreed to his appointment as president if they had perceived him as biased against them.

Thus, none of the facts put forward by Respondent give rise to serious doubts about his impartiality or independence, neither individually nor taken together.

Respectfully submitted,

C. Green

Counsel for Claimant
IN THE MATTER OF AN ARBITRATION
UNDER THE UNCITRAL RULES
BETWEEN:

Goliath National Bank JSC

- and -

The Republic of Laoc

PROCEDURAL ORDER NO. 2

30 July 2019

Tribunal:
Giselle Gwenaelle
Perry Mason
Daniel Crane, President
With letter of 16 June 2019, Respondent submitted its challenge of Perry Mason’s appointment as an arbitrator in the present arbitration. In response, Mr Mason declared he would not withdraw his nomination as an arbitrator in the present case. On 1 July 2019, Claimant submitted its observations on Respondent’s challenge.

On 15 July 2019, the Arbitral Tribunal and the Parties held a procedural conference in order to discuss the further procedure related to the challenge of Mr Mason.

During the procedural conference, considering (i) the approaching already set up deadlines for the parties’ submission; (ii) the previously scheduled dates for the hearing, which, due to the Parties and the Arbitrators’ unavailability, cannot be rescheduled within a reasonable timeframe; and (iii) that Respondent’s challenge, at least in part, depends on the analysis of potential similarities (if any) between this case and Hewer Plants JSC v. Wellfalcon, the most sensible way forward would be that the Parties address the issues pertaining to the challenge in their upcoming submissions. The Parties shall also be given the opportunity to address the substance of the challenge at the hearing.

The Arbitral Tribunal intends to issue a decision on Respondent’s challenge shortly after the oral hearing.

Mindful of the procedural calendar in this case and in order to ensure procedural efficiency, both Parties agreed that in case the challenge of Mr Mason should be successful, Claimant appoints now Ms Madeleine Perle as a potential replacement of Mr Mason. All submissions will be made available to her and she will be present at the oral hearing to be able to replace Mr Mason should the challenge be successful.

In light of the above, the Arbitral Tribunal decides that:

a) The Main Stage of this Proceeding will comprise, in addition to the issues listed in paragraph 10 of Procedural Order No 1, the question of whether Mr Mason is to be replaced as arbitrator in this Proceeding;

b) The Arbitral Tribunal will decide on Respondent’s challenge after the hearing on 6–9 November 2020;

c) As set forth in paragraph 8 of Procedural Order No 1, Mr Mason shall refrain from taking part in the decision of his challenge, which will be decided exclusively by the unchallenged members of the Arbitral Tribunal; and

d) Despite Ms Madeleine Perle’s presence at the hearing, she will not be allowed to actively participate in the hearing. If the challenge is successful, any additional questions she may have will be addressed by the parties in their post-hearing briefs.

President of the Arbitral Tribunal
Daniel Crane
STATEMENT OF UNCONTESTED FACTS

A. Respondent — the Republic of Laoc

1 The Republic of Laoc ("Laoc") is a small developed state. It has a large coastal area and many rivers, reaching from the coastal part of the country into virtually all of its inland territories. While there are several large cities in Laoc, a considerable portion of the population lives in smaller towns.

2 Laoc is a parliamentary republic. The Laocan government is elected by the Parliament, which in turn, is established via direct elections.

3 Over the last two decades, the economy of Laoc has been steadily growing. Although it is now predominantly based around industrial and agricultural sectors, the mining industry has always played a significant role in the economy of Laoc. Several large deposits of precious and semi-precious metals, as well as smaller deposits of various base metals, have been found on its territory.

4 Because of extensive coal deposits, the coal-mining industry and coal-fired energy generation sectors have always played a considerable role in the economy of Laoc. In fact, many Laocans are employed by businesses directly and indirectly related to the mining of coal and its subsequent use for power generation.

5 Domestic electricity production in Laoc is dominated by coal-fired power plants, which are supplied by locally extracted coal from the more inland lying areas. Many of the Laocan coal-fired power plants were constructed at the end of the 1980s and are nearing the end of their life cycles. Foreign investors own some of Laocan coal-fired power plants.

6 Although there were some voices in Laoc saying that it should switch to cleaner energy sources the Laocan government never gave much attention to such views and kept stimulating coal-fired power generation. In particular, Laoc expected further growth of its domestic economy and, to remain independent from electricity imports and support its local coal industry, it was primarily interested in receiving investments in new coal-fired power plants. Thus, contrary to its neighbouring states, wherein renewable energy sources gradually emerged, Laoc remained exclusively grounded in its traditionally coal-oriented electricity generation sector.

7 Laoc is a member of a regional economic integration organisation called the Association of Sovereign Nations for Economic Cooperation ("ASNEC"), created on 3 February 2012. Individual decisions in ASNEC are taken by a majority vote of the ASNEC Council, whose members are appointed by the ASNEC Member States.

8 Like most of the ASNEC Member States, Laoc is a party to numerous bilateral and multilateral investment treaties and, in particular, the Treaty Concerning the Encouragement and Reciprocal Protection of Energy Investments in the ASNEC Region ("ASNEC Energy Investment Treaty"), which was ratified by the Republic of Laoc on 21 June 2012. The ASNEC Energy Investment
Treaty contains, *inter alia*, several investment protection provisions. It also provides for an investor-state dispute settlement mechanism.

**B. The original investor and related entities — Mountaintop Investments LLC and Mercurian First National Bank JSC**

Mountaintop Investments LLC ("Mountaintop") is a company incorporated in the Republic of Mercuria, a country neighbouring Laoc. Like Laoc, Mercuria is a member of ASNEC and has ratified the ASNEC Energy Investment Treaty 28 June 2012.

Mountaintop is a sophisticated investor that specialises in long-term investments into conventional power generation installations, such as nuclear, gas and coal-fired power plants. Over the past 15 years, Mountaintop invested in the construction of ten power plants around the globe, six of which are high-efficiency coal-fired power plants. Mountaintop has a good reputation in its sector and uses both its own financial resources and external financing for its projects.

In August 2009, Mountaintop engaged in protracted negotiations with several local authorities of Laoc and got an approval for the construction of a high-efficiency 850 MW coal-fired power plant from one of them. As the plant was to be built in the municipality of Ticadia, which had long been relying on the electricity produced by power plants in the neighbouring municipalities, it received the name "Ticadia-1" as the first power plant construed in this municipality. No environmental concerns were raised or discussed at this stage.

The projected lifetime of Ticadia-1 is 40 years. The investment into the construction of the power plant is expected to break even after circa 20 years of successful operation, depending on coal prices and operational expenses. Ticadia-1 LLC is expected to pay off the entire amount of funds loaned for the construction by the time the investment breaks even.

In late 2010, Mercurian First National Bank JSC ("MFNB"), a joint-stock company with a generally high-quality business loans, which had a long-standing relationship with Mountaintop, agreed on providing a significant share of funds — USD 600 million (around 60% of the total cost of construction of Ticadia-1) for the construction of Ticadia-1. The Ticadia-1 loan amounted to 10% of the MFNB debt portfolio. Most major shareholders of MFNB are large institutional investors from Europe and the United States. Given the substantial amount of financing, representatives of MFNB were present at all relevant meetings with the Laocan government.

On 1 December 2010, Financing Agreement № 0940394 ("Financing Agreement") was concluded between the subsidiary of Mountaintop — Ticadia-1 LLC — and MFNB itself. The Financing Agreement is secured by a pledge of the shares in Ticadia-1 LLC as well as a pledge of the future power plant building and related assets (e.g., the land, permits, revenue streams, etc.). The Financing Agreement also provides that Mountaintop shall act as its guarantor.

On 15 December 2010, Ticadia-1 LLC bought a plot of land, obtained a construction permit, and began building the power plant. To secure the fuel for the plant, Ticadia-1 LLC entered into a long-term agreement with a local coal mining company.
C. The decision of ASNEC to phase out all coal-fired power plants and its implementation by Laoc

Historically, many natural disasters, such as floods, occurred in most of the ASNEC Member States. However, between 2000 and 2015, the number of floods in the ASNEC countries and their magnitude was unusually high, with the ASNEC countries experiencing in total 14 major floods, 6 of which occurred in Laoc. Over these 15 years, those floods led to the death of 85 thousand people, destroyed more than 50,000 houses in various regions of Laoc and caused significant damage to the local infrastructure.

Against that background, the influence of environmental, political movements has been steadily growing in the ASNEC Member States, including Laoc, and pro-environment political parties won a considerable number of elections in virtually all of the ASNEC Member States. Laoc, however, was a notable exception as most of its Parliament delegates came from the Laocan Workers Movement (“LWM”), a centrist party, which traditionally advocates for the interests of major industrial businesses, including the coal industry. The LWM held the parliamentary majority in Laoc between 2000 and 2014.

By 2015, however, the Laocan Environmental Union (“LEU”) became the most supported environmental political party in Laoc. In 2015 Laocan elections, environmental parties received 30% of the seats in the Laocan Parliament for the first time in Laocan history. The LEU, together with other parliamentary minorities sharing its environmental agenda, was able to form an environmentalist coalition, which has since then held a majority in the Laocan Parliament. Although it still held at that time around 40% of seats in the Laocan Parliament, for the first time, LWM lost its majority in 15 years.

In December 2015, Laoc — against the background of growing internal pressure and under the impression of natural catastrophes occurring in Laoc and surrounding countries — gave in to the pressure from other Member States of ASNEC and signed, together with other Member States and ASNEC itself, the Seoul Agreement on Climate Change (“Seoul Agreement”). The Seoul Agreement was ratified by Laoc on 11 January 2016.

Moved by this treaty, on 17 February 2016, after a short deliberation, the ASNEC Council adopted, by majority, Directive 2016/87 on the renewable sources of energy (“Coal Directive”). Under the Coal Directive, all coal-fired power plants in the ASNEC Member States shall be phased out by 31 December 2028, i.e. in the following 12 years. The Laocan delegate in the ASNEC Council voted against the adoption of the Coal Directive but was outvoted.

Although the Coal Directive regulates the phase-out in detail and provides explicitly in Article 7(3) that the ASNEC Member States shall pay no compensation to owners and/or operators of the coal-fired power plants subject to phase-out, it, nevertheless, leaves the Member States of ASNEC with discretion to introduce support schemes to provide incentives for the integration of...
electricity from renewable sources in the electricity market. According to the law of ASNEC, the Coal Directive is binding upon any of its members States, including Laoc, which would have no other option but to implement it.

After some parliamentary debates and despite a wave of country-wide protests from workers in the coal industry and LWM members, on 6 July 2016, the Laocan Parliament implements the Coal Directive by enacting Law 66/2016 “on the Phase-out of Coal Energy on the Territory of the Republic of Laoc” ("Law 66/2016") prohibiting coal-fired power plants by 31 December 2028. Laoc decided to set the maximum possible (i.e., 12 years) deadline for phase-out.

D. Adoption of the Law 72/2016 “on Energy Transition”

After the introduction of the Coal Directive, Laoc finds itself in a difficult situation as its domestic electricity generation is dominated by coal-fired power plants. Following the adoption of Law 66/2016, LEU also finds itself in a difficult position as many of its voters actually think that fast phase-out will hurt Laocan economy and may even result in an electricity shortage. Against that background, LEU devises the so-called “Energy Transition Plan”, which envisages massive investments into renewables sector from the Laocan budget. Using its parliamentary majority, on 5 December 2016, LEU adopts Law 72/2016 “on Energy Transition” ("Law 72/2016").

Law 72/2016 establishes a feed-in tariff scheme designed to bolster private investments into the renewables sector. It also envisages the creation of Laocan Renewables Company ("LRC"). In light of the concerns for possible energy shortage, LRC is tasked with headlining the development of the Laocan renewables sector and building a number of large-scale renewable facilities in all regions of Laoc. LRC is to be owned and funded entirely by Laoc. It is to be privatised by 31 December 2028.

Law 72/2016 also offers the investors that would be affected by the coal phase-out but decide to invest further into the renewable energy sector an option of entering into a 20-year energy supply contract at prices substantially above market value.

E. MFNB’s initial reaction, its dispute with Mountaintop and the subsequent assignment of claims to GNB

Following the enactment of the Coal Directive, the market value of the assets that were pledged to MFNB as security under the Financing Agreement dropped significantly. Under the Financing Agreement, this allowed MFNB to seek additional securities (or, in the event they are not provided, repayment of the loan) from Ticadia-1 LLC and Mountaintop. Ticadia-1 LLC, however, did not have sufficient funds and Mountaintop argued that its guarantee obligations did not extend to situations such as an utterly unforeseen change of legislation by Laoc.

Despite lengthy negotiations, the parties were unable to reach a compromise. On 6 May 2017, MFNB took Mountaintop to ICC arbitration seeking to enforce the guarantee under the Financing Agreement but MFNB lost this arbitration in 2018.
In parallel to these events, in January 2017, unable to enforce Mountaintop’s guarantee in a timely fashion, MFNB found itself in a difficult situation caused by the lack of liquidity. It started planning to file an investment arbitration against Laoc under the ASNEC Energy Investment Treaty. However, to avoid insolvency, MFNB decided to sell a part of its credit portfolio to other banks located in the same jurisdiction.

Thus, on 1 July 2017, MFNB and Goliath National Bank JSC (“GNB”) concluded an Assignment Agreement according to which the rights under the Financing Agreement with Ticadia-1 LLC, all claims against Mountaintop as well as the rights to claim compensation from Laoc under the ASNEC Energy Investment Treaty were assigned to GNB in exchange for USD 150,000,000 (i.e. 25% of the original amount of the loan given by MFNB to Ticadia-1 LLC). Much like MFNB, GNB is a joint-stock company. All significant shareholders of GNB are large institutional investors from Europe and the United States. The payment was entirely made at the same time as the assignment. The assignment was made at arm’s length and was consistent with the local market practices. Roughly one year later, GNB notified its claims to Laoc and commenced the present arbitral proceeding under the ASNEC Energy Investment Treaty against the Republic of Laoc.

F. GNB initiates an arbitration against Laoc, Laoc launches a challenge against Claimant’s arbitrator

Apart from stepping into MFNB’s shoes in the ICC arbitration against Mountaintop, on 31 January 2019, GNB sent its Notice of Arbitration (“Notice”) to the Republic of Laoc appointing Mr Perry Mason as its arbitrator. The arbitration was registered as KCAB International n° 15503/IS.

Due to the fact that some of the ASNEC Member States also relied on coal-powered plants for their energy needs, there is a growing number of investment arbitrations against ASNEC and its Member States. Several months before the hearing and shortly before parties’ memorials are due, an award in Hewer Plants JSC v. Wellfalcon dealing with factual circumstances similar to this case, was issued against another ASNEC Member State. Besides There, as well as in another case, an investor also nominated the Claimant-appointed arbitrator, Mr Mason

Through a publication of an article on International Arbitration News, Mr Green became aware of Mr Mason’s activity in the Hewer Plants case on 2 June 2019. On the following day, Mr Greene also discovered that decided to check Mr Mason’s Twitter account and came across a media article retweeted this article, stating that he was “proud to have served as arbitrator in this ground-breaking case on #ClimateChange” by Mr Mason. Through that article, Mr Green discovered that, prior to his appointment as an arbitrator in KCAB International arbitration n. 15503/IS, Mr Mason made some general comments about his prior experiences with environmental rights and his general attitude towards environmental protection in an interview to the podcast “The Arbitration Station”. Although at the time of the filing such podcast was already available, a junior associate at Greene & Associates LLP, Michael Ross, who ran a
background check on the arbitrator, thought Mr Mason’s career tips were hardly relevant for his appointment.

Initially, Respondent remained unsure on how to react after learning about this situation, but eventually decided to file a challenge against Mr Mason.
TREATY CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS IN THE ASNEC REGION ("ASNEC ENERGY INVESTMENT TREATY")

OF 19 MAY 2012

PREAMBLE


1590 Having regard to the importance of sustaining economic growth and development in the ASNEC Region through joint efforts in promoting intra-ASNEC investment flows;

Recognising the necessity for the most efficient exploration, production, conversion, storage, transport, distribution and use of energy and energy resources;

Recognising the need to encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in the ASNEC Region; and

Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of internationally recognised labour rights;

HAVE AGREED AS FOLLOWS:

ARTICLE I — DEFINITIONS

1600 For the purpose of this Treaty:

(1) "Investment" means every kind of asset owned or controlled by Investors of a Contracting Party, either directly or indirectly, outside that Contracting Party's Area but within the Area in terms of Article 1(6)(b).

In particular, "Investments" include:

1605 (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;

(b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;

1610 (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;

(d) intellectual property;

(e) returns;

(f) any right conferred by law or contract or by virtue of any licenses and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

A change in the form in which assets are invested does not affect their character as investments. "Investment" refers to any investment associated with an Economic Activity in the Energy Sector.

(2) "Returns" means the amounts derived from or associated with an Investment, irrespective of the form in which they are paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees and payments in kind.
“Economic Activity in the Energy Sector” means an economic activity concerning the exploration, extraction, refining, production, processing, utilisation, storage, land transport, transmission, distribution, trade, financing, marketing, or sale of any energy resources (including natural resources), materials, installations and products.

4. “Investor of a Contracting Party” means:
(a) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law;
(b) a company or other organisation organised in accordance with the law applicable in that Contracting Party;

5. “Regional Economic Integration Organisation” means an organisation constituted by states to which they have transferred competence over certain matters a number of which are governed by this Treaty, including the authority to take decisions binding on them in respect of those matters.

6. “Area” means:
(a) with respect to a state that is a Contracting Party:
   (i) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and
   (ii) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction;
(b) with respect to a Regional Economic Integration Organisation which is a Contracting Party, the Areas of the Member States of such Organisation, under the provisions contained in the agreement establishing that Organisation.

ARTICLE II — TREATMENT OF INVESTMENTS

1. Each Contracting Party shall accord at all times to Investments of Investors of other Contracting Parties fair and equitable treatment. The 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.

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.

ARTICLE III — EXPROPRIATION

1. Investments of Investors of a Contracting Party shall not be nationalised, expropriated or subjected to a measure or measures having effect equivalent to nationalisation 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 law; and
   (d) Accompanied by the payment of prompt, adequate and effective compensation.
Such compensation shall amount to the 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”).

(2) The Investor affected shall have a right to prompt review, under the law of the Contracting Party making the Expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its Investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1).

ARTICLE VII — ENVIRONMENTAL ASPECTS

(1) Recognizing the right of each Contracting Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws, each Contracting Party shall strive to continue to improve those laws.

(2) The Contracting Parties recognise that it is inappropriate to encourage investment by relaxing domestic environmental laws. Accordingly, each Contracting Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for the establishment, maintenance or expansion in its territory of an investment.

(3) The Contracting Parties reaffirm their commitments under the international environmental agreements, which they have accepted. They shall strive to ensure that such commitments are fully recognised and implemented by their domestic laws.

(4) The Contracting Parties recognise that co-operation between them provides enhanced opportunities to improve environmental protection standards. Upon request by either Contracting Party, the other Contracting Party shall accept to hold expert consultations on any matter falling under the purpose of this Article.

ARTICLE IX — EXCEPTIONS

(1) The Treaty shall not preclude any Contracting Party from adopting or enforcing any measure

(a) necessary to protect human, animal or plant life or health;

(b) essential to the acquisition or distribution of Energy Materials and Products in conditions of short supply arising from causes outside the control of that Contracting Party, provided that any such measure shall be consistent with the principles that:

(i) all other Contracting Parties are entitled to an equitable share of the international supply of such Energy Materials and Products; and

(ii) any such measure that is inconsistent with this Treaty shall be discontinued as soon as the conditions giving rise to it have ceased to exist; or

(c) designed to benefit Investors who are aboriginal people or socially or economically disadvantaged individuals or groups or their Investments and notified to the Secretariat as such, provided that such measure

(i) has no significant impact on that Contracting Party’s economy; and

(ii) does not discriminate between Investors of any other Contracting Party and Investors of that Contracting Party not included among those for whom the measure is intended,
provided that no such measure shall constitute a disguised restriction on Economic Activity in the Energy Sector, or arbitrary or unjustifiable discrimination between Contracting Parties or between Investors or other interested persons of Contracting Parties.

(2) Such measures shall be duly motivated and shall not nullify or impair any benefit one or more other Contracting Parties may reasonably expect under this Treaty to an extent greater than is strictly necessary to the stated end.

ARTICLE X — SETTLEMENT OF INVESTMENT DISPUTES

(1) Disputes related to Investments, which concern an alleged breach of an obligation of a Contracting Party shall, if possible, be settled amicably.

(2) If such disputes cannot be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may submit the dispute to an arbitral tribunal established in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules as in force at the commencement of the proceedings. The arbitration proceedings shall be administered by KCAB International, which shall also act as appointing authority.

(3) Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.

(4) A tribunal established under paragraph (2) shall decide the issues in dispute in accordance with this Protocol and applicable rules and principles of international law.

(5) The awards of arbitration, which may include an award of interest, shall be final and binding upon the parties to the dispute. Each Contracting Party shall carry out without delay any such award and shall make provision for the effective enforcement in its Area of such awards.

ARTICLE XI — DISPUTES BETWEEN CONTRACTING PARTIES

[OMITTED]

ARTICLE XII — APPLICATION OF THIS TREATY

The Treaty shall also apply to Investments made prior to its entry into force by Investors of a Contracting Party in the territory of another Contracting Party consistent with the latter’s legislation.

[OMITTED]

IN WITNESS WHEREOF, the Contracting Parties have signed this Treaty.

DONE in duplicate at June, Mercuria, this nineteenth day of May 2012 in the English language.
IN THE MATTER OF AN ARBITRATION
UNDER THE UNCITRAL RULES
BETWEEN:

Goliath National Bank JSC  
Claimant

- and -

The Republic of Laoc  
Respondent

PROCEDURAL ORDER NO. 3

16 June 2020

Tribunal:
Giselle Gwenaelle,
Perry Mason,
Daniel Crane, President
This Procedural Order No. 3 ("PO 3") is issued following the receipt of requests for clarifications submitted pursuant to Article 5.4 of the FDI Moot Rules (as restated on 1 January 2019, hereinafter "FDI Moot Rules").

The Tribunal carefully considered all requests for clarifications and extensively discussed the issues raised therein. For reasons of procedural efficiency and without taking any stance on the issues arising in this arbitration, at this stage, the Tribunal limits the clarifications provided in accordance with Article 5.4.3 of the FDI Moot Rules to the following questions.

The following clarifications supplement the information contained in the Statement of Uncontested Facts.

VII. INVESTMENT & ASSIGNMENT

1. What was the position of Governor while and after implementation of the directive? Did the Governor of Ticadia ever meet representatives of MFNB or visit Mercuria for encouraging investors before the meeting mentioned in Exhibit C-2?

Laoc is a unitary country divided into municipalities. For each municipality, a Regional Governor is appointed by the Laocan Government with the later sanction of the Parliament. Each Governor has a mandate to facilitate and assist the development of the economy and business on the territory of his or her municipality. It is common for the Governors to travel to other countries in order to solicit funding for infrastructure projects. Each Ticadian Governor is also directly responsible for supervising the activities of the Laocan authorities within his or her territorial jurisdiction, i.e., the municipality. Each is considered to be a direct extension of the power of the Laocan Government for the territory of his or her municipality.

Governor Ji-Yeong was actively looking for investors interested in constructing a power plant in Ticadia. He travelled to Mercuria on several occasions and delivered at least 15 (fifteen) presentations at investment forums, investment banks and energy conglomerates, promoting Ticadia as a perfect place for a new coal plant. He met with representatives of Mountaintop after one such presentation and that meeting ultimately led to the construction of Ticadia-1.

In light of the above, Governor Ji-Yeong also pro-actively oversaw the construction of Ticadia-1. His office was one of the main points of contact for Mountaintop on all issues related to the construction of Ticadia-1. Governor Ji-Yeong’s deputies routinely assisted Mountaintop and employees of Ticadia-1 LLC in their communications with various Laocan authorities at that time.

Governor Ji-Yeong openly criticised the enactment of Law 66/2016 on several occasions. In fact, on 7 July 2016, following the enactment of Law 66/2016, during his weekly press conference, he made the following remark: “Law 66/2016 is a very harsh measure. But a law is a law and it has to be complied with. In the meantime, I will do all in my power to ensure that our friends from Mountaintop and MFNB, who have graced us with Ticadia-1, are treated fairly and to help them...
in any possible way”. After this press conference, Governor Ji-Yeong has never mentioned Ticadia-1 again.

2 Which domestic law did the parties (Laoc, MFNB, GNB and Mountaintop Investments) rely on to conclude the agreements, both the investment and assignment of rights?

The Financing Agreement (Exhibit C-4) is governed by the law of Laoc (see clause 6 of the Financing Agreement). The legal validity of the Financing Agreement (Exhibit C-4) is not disputed by MFNB, Ticadia-1 LLC, Mountaintop Investments, GNB or the Republic of Laoc.

The Assignment Agreement (Exhibit C-12) satisfies all provisions of Mercurian law, which is applicable to the assignment of rights (Clause 3).

3 Did Mountaintop consider any other institution apart from MFNB for the specific role to provide the agreed percentage of the required funds for the construction of Ticadia-1 under the Financing Agreement?

No, it did not since Mountaintop had a long-standing positive relationship with MFNB at the time (see, in particular, Statement of Uncontested Facts, p. 57, para. 13, line 1453).

4 On what grounds can force majeure be invoked under the Financing Agreement?

There is a consensus among the leading academics that under Laocan law force majeure clauses akin to the one included in the Financing Agreement (Exhibit C-4) can be invoked only in the context of extraordinary events of non-anthropogenic nature. Therefore, the force majeure clause in the Financing Agreement would not be triggered even by most severe regulatory changes, such as Law 66/2016.

This was not one of the reasons why MFNB lost the ICC arbitration against Mountaintop (see Statement of Uncontested Facts, p. 59, para. 28, lines 1537–1539).

5 Did MFNB/GNB serve a notice of assignment on the Republic of Laoc prior to initiating International Investment Arbitration, and if so, when?

GNB served the notice of assignment on the Republic of Laoc the day after the Assignment Agreement (Exhibit C-12) was executed.

6 Was the Loan Amount transferred in a single instalment to Ticadia-1 LLC upon being made available by MFNB, and if not, when did the various instalments take place?

In accordance with Clause 2.2 of the Financing Agreement (Exhibit C-4), the Loan Amount was transferred in the account of Ticadia-1 LLC immediately after the Agreement was executed since all conditions of Schedule 3 to the Financing Agreement (Exhibit C-4) had already been met at the time of its execution.
VIII. THE COAL PHASE-OUT & ITS EFFECTS

7 Is the electric grid of Laoc solely dependent on the coal-fired industry?

No, it is not. The Laocan electricity market is “dominated by coal-fired power plants” (see Statement of Uncontested Facts, p. 56 and 59, paras. 5 and 24, lines 1411 and 1514), meaning that more than half of the domestic power generation is generated by such plants. However, other types of power plants, e.g. nuclear reactors or plants fuelled with natural gas, are also present on the territory of Laoc.

8 Following the coal phase-out (Law 66/2016), did Laoc (including Ticadia) suffer losses economically or in terms of energy production-delivery?

Neither the Republic of Laoc nor the Municipality of Ticadia suffered any immediate losses, whether economic or in terms of energy production-delivery, since coal-fired power plants could continue operation during the transitional period provided for by Article 7 of the Directive 2016/87 (Exhibit C-7) and Law 66/2016 (Exhibit C-8).

The ASNEC Council expected that the transitional period foreseen in Directive 2016/87 (Exhibit C-7) would allow Laoc and other ASNEC member states to gradually supplement the coal-fired electricity generation capacity with green energy by the year 2028 (see Article 7 of Directive 2016/87). All industry experts agree that this goal is achievable, but would require serious dedication and resources from all ASNEC member states.

9 Has the estimate for the lifetime of T1 changed since it was first estimated at the time of T1’s construction?

The technical useful lifetime of Ticadia-1 has not changed.

10 Did the Laocan government consult with the relevant stakeholders in the energy industry (including coal-fired power plant owners) before enacting Law 66/2016 and Law 72/2016?

The Republic of Laoc did consult relevant stakeholders in the energy industry as well as its internal advisors prior to enacting Law 66/2016 and Law 72/2016. However, because of the rather strict terms of the Coal Directive, no agreement was reached.

11 When did the Task Force publish its report on tackling the risk of flooding and when did the Laocan Government publicly express its views on this report?

The report was published on 8 December 2010. However, the Laocan Government as well the members of the Laocan Parliament have always been very careful and indecisive when it came to issues concerning the use of fossil fuels. Notably, a centrist conservative party, LWM, held a majority in the Laocan Parliament between 2000 and 2014. Over this term, it actively advocated for the interests of major businesses, including the coal industry (see, in particular, Statement of Uncontested Facts, p. 58, para. 18, lines 1476–1482).
No official statement on the report has been made by the government until 2016, when the report was used to brief the Laocan Government during their discussions on the upcoming vote on the Coal Directive.

Did Laoc adopt any other environmental measures prior to Law 66/2016?

No. Although LEU was steadily gathering popularity and political weight between 2010 and 2015, no significant environmental measures were adopted in the energy sector. During those five years, LEU successfully focused on environmental measures in the consumer sector — such as promotion of electric cars, prohibition of diesel fuel or recycling and a country-wide ban on plastic straws. The laws regarding these matters were passed through the Laocan parliament with almost no opposition and were also very positively received by the electorate.

LEU did not manage to do much after the 2015 elections, although “gradual transition from fossil fuels and dramatically increased investment into the transition towards green energy” was listed as a priority objective in its election programme and to varying degrees promoted by its candidates.

Did the Laocan Government adopt any measures, apart from Law 66/2016, to address the “several” other possibilities for the annual floods (see IEO Article “The Government of Laoc is considering capping coal emissions to combat floods”, Exhibit R-2) in order to protect the environment and the public from harm?

Because of the convincing nature of the evidence on the direct correlation between the growth of coal emissions and the intensity of floods over the past years, the key decision makers in the Laocan Government found that, in all likelihood, it is the coal plants that contribute to the problem of the annual floods the most. Although some general environmental laws (see Clarification 12 above) were implemented in Laoc before 2016, no specific law addressing the problem of the annual floods had been enacted.

LRC is tasked with headlining the development of the Laocan renewables sector (Statement of Uncontested Facts, p. 59, para. 25). Yet, which are exactly LRC’s competences regarding the regulation of private investments in the sector?

LRC is incorporated as an investment fund. Although it is supervised by the Laocan Government and a significant portion of its staff are former state officials, it does not have any regulatory powers.

IX. OTHER CASES RELATING TO COAL PHASE-OUT MEASURES IN THE ASNEC REGION

Was information on Hewer Plants JSC v. Wellfalcon publicly available on any platform and at any time prior to 5 March 2019? Or in the alternative, prior to 2 June 2019?

In a press release published on 11 August 2016, Hewer Plants JSC disclosed that, on the previous day, it had filed a notice of arbitration against Wellfalcon concerning its implementation of the ASNEC Coal Directive. The press release explained that, as a consequence of the coal
phase-out, Hewer Plants JSC is not only prohibited from operating its fully licenced lignite power plant but must also close its connected open cast lignite mine. Due to the fact that lignite-fired power plants are usually only able to burn a specific type of lignite and the high transportation costs, its lignite mine cannot be used to supply lignite-fired power plants elsewhere.

Moreover, Hewer Plants JSC explained in the press release that, while it may seem counterintuitive, it will not only suffer from the loss in future business but also incur damages of over USD 100 million due to additional costs since the early closure of the mine will make the legally required renaturation and cultivation of its mine substantially more complicated. The press release did not contain information concerning the arbitrator nominated.

16 What were the grounds of the tribunal's decision in Hewer Plants JSC v. Wellfalcon on Wellfalcon's violation of the 'fair and equitable treatment' standard and attribution of international responsibility to AS NEC?

While the award in Hewer Plants JSC v. Wellfalcon remains unpublished, a further article by International Arbitration News, published on 5 June 2020, revealed that inquiries with the parties of that case have confirmed that the tribunal's award intensively discussed the relationship between Hewer Plants' legitimate expectations and Wellfalcon's right to regulate as well as the potential impact of the Seoul Agreement on the legal relationship between the parties. Eventually, the tribunal concluded that the coal phase-out violated Hewer Plants JSC's legitimate expectations.

According to International Arbitration News, information from the parties concerning the issue of attribution remained vague. However, it appears that Wellfalcon’s implementation of the Coal Directive was only considered attributable to AS NEC inasmuch as Hewer Plants’ lignite-fired power plant was concerned, but not the consequential closure of the open cast mine.

17 Has any further information about the C-Energy LLC v. Wellfalcon case been published apart from those contained in Mr Mason’s response of 23 June 2019?

The above-mentioned International Arbitration News article of 5 June 2020 (see Clarification 16 above) also contains an update on the other arbitrations pending against Wellfalcon. As regards C-Energy LLC v. Wellfalcon, it notes that both parties to that case had declined to comment on the substance of the arbitration, referring to a specific confidentiality undertaking governing the arbitration up to the moment that an award is issued. They indicated however that the oral hearing took place late last year and that the tribunal is expected to render its award in due course.

X. SEOUL AGREEMENT

18 When did the Seoul Agreement enter into force?

The Seoul Agreement (Exhibit R-4) entered into force on 1 February 2016.
Have the ASNEC and its Member States reached an agreement to “act jointly” within the meaning of Article 4(16) and (18) of the Seoul Agreement?

The ASNEC and its Member States did not agree to “act jointly” under the Seoul Agreement (Exhibit R-4), and the Nationally Determined Contribution was communicated only on behalf of the ASNEC on 3 February 2016.

XI. MISCELLANEOUS

20 Is IEO an administrative agency of Laoc?

No, it is a news outlet not attached to any state or international/regional governmental organisation.

21 Was or is there a separate BIT between Mercuria and Laoc?

No.

XII. CORRECTIONS

The Tribunal notes that several corrections of typographical errors have been made in red font to the case file.

President of the Arbitral Tribunal
Daniel Crane
IN THE MATTER OF AN ARBITRATION
UNDER THE UNCITRAL RULES
BETWEEN:

1965

Goliath National Bank JSC

Claimant

1970

- and -

The Republic of Laoc

Respondent

PROCEDURAL ORDER NO. 4

31 August 2020

1980

Tribunal:

Giselle Gwenaelle,

Perry Mason,

Daniel Crane, President
This Procedural Order (“PO 4”) is issued following the receipt of requests for clarifications submitted pursuant to Article 5.4 of the FDI Moot Rules (as restated on 1 January 2019, hereinafter “FDI Moot Rules”).

The Tribunal carefully considered all requests for clarifications and extensively discussed the issues raised therein with the Parties. For reasons of procedural efficiency and without taking any stance on the issues arising in this arbitration, at this stage the Tribunal limits the clarifications provided in accordance with Article 5.4.3 of the FDI Moot Rules to the following questions.

The following clarifications supplement the information contained in the Statement of Uncontested Facts.

I. INVESTMENT & ASSIGNMENT

1. Why did the Laocon Government grant the Licence only four years after the construction permit?

According to Laocon law, the construction permit approves certain specifications of the plant (such as emission maximum emission levels, etc.), while the operating permit is issued only after the plant is commissioned and is ready for commercial operation.

II. THE COAL DIRECTIVE & ITS IMPLEMENTATION

2. Why did the ASNEC Council and Member States decided that producers/owners of coal-fired power plants cannot be compensated for the losses caused by the phase-out (Article 7(3) of the Directive 2016/87 of the ASNEC Council)?

Based on an official study into the coal power sector in the ASNEC region, the ASNEC Council concluded that most coal-fired power plants were already amortised. With regard to investors who only recently built new plants, the view was that, in light of the on-going climate change discussions, such investors could have foreseen changes in the regulatory framework for coal-fired power plants. In any event, the ASNEC Council considered that the transitional period granted until 2028, combined with the possibility to provide subsidies permitting also former operators of coal-fired power plants to transition into electricity generation from renewable energy sources, should be sufficient to allow Member States to address any concerns regarding expectations investors might have had.
3 Under Law 72/2016, will investors in coal power plants be eligible for the feed-in tariff scheme for a period of 20 years if they further invest in renewable energy plants? What is meant by "further investment"? Can they convert existing coal power plants to renewable energy power plants, or should they construct new renewable energy power plants?

The feed-in tariff will not be provided to existing plants generating electricity from conventional fuels. However, if the owners of the coal-fired power plants decide to invest in the construction of plants generating electricity from renewable sources or, in the alternative, to convert existing plants into plants utilizing renewable sources, such new installations would technically be able to benefit from the feed-in tariff.

4 Did all Member States implement the Directive, and if not, were any sanctions imposed on such Member States?

As of the date of this PO 4, all ASNEC Member States have enacted measures to implement the Coal Directive. So far none of these implementing measures were considered to have failed to correctly implement the Coal Directive. Hence, no sanctions were adopted against any Member State.

III. OTHER CASES RELATING TO COAL PHASE-OUT MEASURES IN THE ASNEC REGION

5 Was the tribunal’s decision in Hewer Plants JSC v. Wellfalcon unanimous?

Yes, the award in the Hewer Plants case was rendered unanimously. There were no dissenting or separate opinions.

6 Based on publicly available information, what was the expected lifetime of the lignite-fired power plant and open-cast lignite mine in the Hewer Plants case?

The lignite-fired power plant in Hewer Plants started commercial operations in October 2012 and had an expected minimum lifetime of 45 years. Since the open-cast mine was operated to provide lignite to the Hewer-5 power plant, the mining of lignite started shortly before the Hewer-5 power plant started operations and was set to stop mining activities at the time said power plant was scheduled to close. Afterwards, renaturation works would be undertaken.

7 When was Mr. Mason appointed as an arbitrator in C-Energy v. Wellfalcon?

Mr Mason was appointed on 16 March 2018.

8 What is the factual background of the C-Energy case?

The award in C-Energy has not yet been rendered and, hence, no specific information about the dispute has become available (see Clarification 17 in PO 3). However, since the C-Energy website lists only lignite-fired power plants (and connected open-cast mines) in Wellfalcon, the dispute is expected to relate to a similar constellation as in Hewer Plants.
IV. MISCELLNEOUS

9 When did Laoc become a Party of the UN Framework Convention on Climate Change (“UNFCCC”)?

Laoc ratified the UNFCC on 13 June 1997.

10 What was Laoc’s Nationally Determined Contribution (“NDC”) under the Seoul Agreement?

Laoc did not communicate a separate NDC under the Seoul Agreement. Upon ratification of the Seoul Agreement, the ASNEC Member States declared that they exercise their rights and obligations under the Seoul Agreement through ASNEC (cf. Article 20 of the Seoul Agreement (Exhibit R-4) and the ASNEC Declaration made upon the ratification of the Seoul Agreement (Exhibit R-5)). Therefore, the NDC communicated by ASNEC also obliges each Member State to work towards the fulfilment of this NDC for ASNEC as a whole.

V. CORRECTIONS

The Tribunal notes that some corrections have been made in red font in paragraphs 32-33 of the Statement of Uncontested Facts.

President of the Arbitral Tribunal
Daniel Crane