

IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES AND UNDER THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

CHINA MACHINERY ENGINEERING CORPORATION

CLAIMANT

AND

THE REPUBLIC OF TRINIDAD AND TOBAGO

RESPONDENT

CLAIMANT'S REQUEST FOR ARBITRATION

27 MARCH 2023

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A. INTRODUCTION

1. By this Request for Arbitration (**Request**), China Machinery Engineering Corporation (**CMEC** or **Claimant**), a company incorporated in the People's Republic of China (**China** or **PRC**), submits its dispute with the Republic of Trinidad and Tobago (**State** or **Trinidad and Tobago**) for resolution by arbitration to the International Centre for Settlement of Investment Disputes (**ICSID**).
2. The dispute that is the subject of this Request arises out of the breach of multiple international obligations that bind the State under the *Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments*, signed at Port of Spain on 22 July 2002 and in force since 7 December 2004 (**BIT**).¹
3. The nature and circumstances of the dispute – relating to a 125,000 metric-tonne-per-year aluminium smelting complex located at Union Industrial Estate, La Brea, in Trinidad and Tobago (**Project**) – are set out below in Section C. In the words of the incumbent Prime Minister of Trinidad and Tobago, Dr Keith Rowley (**Prime Minister Rowley**):
 - (i) the Project was "*improperly shut down*" and "*politically extinguished*"; and
 - (ii) CMEC was "*chased out*".²
4. This Request is submitted pursuant to Article 10 of the BIT.
5. The Claimant confirms that it has obtained all necessary internal authorisations to file this Request, as evidenced by the Authorisation attached as **Annexure A**.

B. NAMES AND ADDRESSES OF THE PARTIES

B.1 The Claimant

6. CMEC (formerly China National Machinery & Equipment Import & Export Corporation) is a company incorporated and constituted under the laws and regulations of China.³
7. The registered office of CMEC is:

¹ Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, at (**CL-1**).

² Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at PNM Diego Martin West 49th Constituency Conference on 13 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>), at (**C-1**); Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at PNM Diego Martin West 49th Constituency Conference on 13 October 2022 (excerpt pertaining to the dispute from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>), at (**C-2**); R. Taitt, *PM: Chinese contractors make \$2.5 billion claim: 'Improper' cancellation of smelter plant project in 2010...*, Daily Express (Trinidad and Tobago), 13 October 2022, at (**C-3**).

³ Business Licence of CMEC, dated 25 January 2022, certified 17 February 2022, at (**C-4**); Notice of the Approval on Change Registration of CMEC, dated 18 January 2011, certified 24 February 2011, at (**C-5**).

No. 178 Guang'anmenwai Street
Xicheng District
Beijing 100055
People's Republic of China

8. The Claimant is represented in this matter by Clifford Chance, as set out in the Power of Attorney attached as **Annexure B**.
9. The Claimant requests that all correspondence concerning this arbitration be directed to its legal representatives named below:

Mr Audley Sheppard KC
Clifford Chance
10 Upper Bank Street
London E14 5JJ
England
Tel: +44 20 7006 8723
Fax: +44 20 7006 5555
Email: audley.sheppard@cliffordchance.com

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Email: hazel.he@cliffordchance.com

B.2 The State

10. The addresses for the State's Prime Minister and relevant government officials are:

Dr The Honourable Keith Christopher Rowley
Prime Minister of the Republic of Trinidad and Tobago
Office of the Prime Minister
13-15 St Clair Avenue
Port of Spain
Trinidad and Tobago, West Indies
Email: pmsec@opm.gov.tt

The Honourable Colm Imbert
Minister of Finance
Level 8, Finance Building
Eric Williams Financial Complex
Independence Square
Port of Spain
Trinidad and Tobago, West Indies
Email: colm.imbert@gov.tt

The Honourable Stuart Young
Minister of Energy and Energy Industries and Minister in the Office of the Prime Minister
Tower C – Energy Trinidad and Tobago
International Waterfront Centre
No. 1, Wrightson Road
Port of Spain
Trinidad and Tobago, West Indies
Email: syoung@energy.gov.tt

11. The State has instructed Charles Russell Speechlys LLP to engage with Clifford Chance in relation to the Claimant's dispute with the State and therefore the Claimant understands that correspondence concerning this arbitration should be directed to the State's legal representative named below:

Mr John Almeida
Charles Russell Speechlys LLP
5 Fleet Place
London EC4M 7RD
England
Tel: +44 020 7203 5026
Fax: +44 020 7023 8021
Email: john.almeida@crsblaw.com

C. NATURE AND CIRCUMSTANCES OF THE DISPUTE

C.1 Overview

12. The Claimant's investment relates to the works it carried out on the Project as contractor.
13. The conduct of the State has dispossessed the Claimant of all outstanding rights and interests under the investment it made in Trinidad and Tobago. In particular, but not exclusively, the State has (i) "*shut down the plant and chased out the contractor*"⁴ and (ii) completely failed to pay amounts due to CMEC under two Project-related EPC Contracts with State-owned Alutrint Limited (**Alutrint**) upon termination of the Project.
14. Prime Minister Rowley recounts that, after the State terminated the Project, CMEC "*kept making their claims [but the Government then] ignored it, they danced around it, they did other things except deal with it because they didn't want [the people of Trinidad and Tobago] to know that there was a cost to that political action.*"⁵
15. In so doing, the State has committed multiple breaches of its obligations toward CMEC under the BIT. All acts of Alutrint at the root of or in connection with these treaty breaches have been assumed by the State and/or are attributable to it.

C.2 The Origins of the Project

16. As Prime Minister Rowley explains, at the turn of the millennium, the Government of Trinidad and Tobago, "*in an attempt to diversify the economy*", "*decided that [the country] wouldn't rely only on oil and gas.*" Instead, Trinidad and Tobago would "*try to go into aluminium and [the Government] had set about to build an aluminium smelter.*"⁶
17. Further to this new policy, in or around 2003, CMEC and National Energy Corporation of Trinidad and Tobago Limited (**NEC**), a corporation sole indirectly wholly-owned by the State, started exploring potential cooperation opportunities in relation to the Project.
18. On 23 March 2005, CMEC, the State, NEC and Sural C.A. (**Sural**) entered into a memorandum of understanding outlining the parties' agreed terms regarding the

⁴ Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at PNM Diego Martin West 49th Constituency Conference on 13 October 2022 (video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>), at (C-1); Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at PNM Diego Martin West 49th Constituency Conference on 13 October 2022 (excerpt pertaining to the dispute from video retrieved from: <https://www.youtube.com/watch?v=AIDc-qgRotI>), at (C-2); R. Taitt, *PM: Chinese contractors make \$2.5 billion claim: 'Improper' cancellation of smelter plant project in 2010...*, Daily Express (Trinidad and Tobago), 13 October 2022, at (C-3).

⁵ *Ibid.*

⁶ *Ibid.*

Project.⁷ Sural is a Venezuela-based aluminium downstream manufacturer that had formed a partnership with the State to co-sponsor the Project.

19. On 8 April 2005, NEC incorporated Alutrint (originally named Trinalco Limited) to manage and represent the ownership of the Project.⁸ Further to subsequent shareholding restructurings, the State and Sural (Barbados) Ltd. (**Sural Barbados**), an affiliate of Sural, now hold a 60% and 40% ownership interest in Alutrint respectively.⁹

C.3 The 2005 EPC Contract

20. On 20 December 2005, CMEC as contractor and Alutrint as employer entered into an EPC contract in relation to the Project (**2005 EPC Contract**).¹⁰ The contract price of the 2005 EPC Contract was US \$465 million, US \$275 million of which was allocated to the smelter element while the remaining US \$190 million pertained to other associated upstream and downstream facilities.
21. The 2005 EPC Contract was governed by the laws of Trinidad and Tobago and provided for a dispute resolution mechanism escalating from amicable settlement to International Chamber of Commerce (**ICC**) arbitration seated in Switzerland (or another mutually agreed neutral place).
22. On 16 May 2008, CMEC and Alutrint entered into the first supplement to the 2005 EPC Contract, which included Piling and Dynamic Compaction Works as a component of the scope of works (**PDC Contract**).¹¹ The PDC Contract, as further amended by an amendment dated 19 January 2009,¹² was worth an additional US \$27 million.
23. CMEC carried out works under the 2005 EPC Contract pursuant to instructions or permissions by, or agreement with, Alutrint. CMEC also incurred costs in relation to or in expectation of completing the works.

C.4 The 2008 EPC Contract

24. In December 2007, Sural Barbados started discussions with the State to seek disengagement from the smelter and proposed a separation between the smelter and downstream portions of the Project.¹³ The severance (and as a result, the need for a

⁷ Memorandum of Understanding, dated 23 March 2005, at (C-6).

⁸ Trinidad and Tobago Companies Registry Online Search Facility, "Alutrint", <https://www.legalaffairs.gov.tt/> (last accessed 27 February 2023), at (C-7); Articles of Incorporation of Alutrint, dated 5 April 2005, at (C-8); Certificate of Amendment of Alutrint, dated 1 June 2005, at (C-9).

⁹ Unanimous Shareholders' Agreement between the State and Sural Barbados, dated 3 July 2007, at (C-10), Recital (E) and Clause 5.4.

¹⁰ 2005 EPC Contract, dated 20 December 2005, at (C-11).

¹¹ PDC Contract (Supplementary No. 1 to 2005 EPC Contract), dated 16 May 2008, at (C-12).

¹² Amendment to PDC Contract, dated 19 January 2009, at (C-13).

¹³ *Sural (Barbados) Ltd. v. The Government of the Republic of Trinidad and Tobago through It's Minister of Finance as Corporation Sole*, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, at (C-14), paras. 96-97.

renegotiated contract with CMEC) was approved by Trinidad and Tobago at a Cabinet meeting on 21 February 2008.¹⁴

25. On 30 October 2008, in light of the restructuring discussions with Sural Barbados as well as the technological advancement in the aluminium industry in the previous three years, CMEC and Alutrint entered into a further EPC contract (**2008 EPC Contract**, together with the 2005 EPC Contract, **EPC Contracts**).¹⁵ The 2008 EPC Contract concerned only a single potline aluminium smelter at a revised contract price of US \$414 million.
26. The 2008 EPC Contract, as amended on 17 December 2009,¹⁶ is governed by the laws of Trinidad and Tobago and provides for a dispute resolution mechanism generally escalating from a Dispute Adjudication Board (**DAB**), to amicable settlement, to ICC arbitration seated in London.
27. As is the case with the 2005 EPC Contract, CMEC (i) carried out works under the 2008 EPC Contract pursuant to instructions or permissions by, or agreement with, Alutrint and (ii) incurred costs in relation to or in expectation of completing the works.

C.5 Certificate of Environmental Clearance

28. Shortly after the 2005 EPC Contract was entered into, on 23 December 2005, NEC (as owner of the Union Industrial Estate) applied to the Environmental Management Authority of Trinidad and Tobago (**EMA**) for a Certificate of Environmental Clearance (**CEC**) in relation to the Project.¹⁷
29. On 2 April 2007, EMA issued CEC 1033/2005 to NEC for "[t]he establishment of an Aluminium Smelter Complex with a target capacity of 125,000 metric tonnes per annum" at Union Industrial Estate.¹⁸ CEC 1033/2005 was therefore at the core of the implementation of the Project.
30. On 29 June 2007, three public interest groups simultaneously filed applications (with suit numbers CV 2007-02257, CV 2007-02263 and CV 2007-02272) before the High Court of Trinidad and Tobago for leave to apply for judicial review of EMA's decision to grant CEC 1033/2005. The three actions were heard together and concluded in June 2009 (as discussed below).¹⁹

¹⁴ *Id.* para. 101.

¹⁵ 2008 EPC Contract, dated 30 October 2008, at (C-15).

¹⁶ First Amendment to 2008 EPC Contract, dated 17 December 2009, at (C-16).

¹⁷ *Sural (Barbados) Ltd. v. The Government of the Republic of Trinidad and Tobago through It's Minister of Finance as Corporation Sole*, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, at (C-14), para. 74.

¹⁸ CEC 1033/2005, dated 2 April 2007, at (C-17).

¹⁹ *PURE and RAG v EMA and Ors* Dean-Armorer J. (2009.06.16) H.C.2263/2007, at (C-18), "Procedural History" section, paras. 1, 6, 10.

31. On 16 June 2009, the High Court of Trinidad and Tobago rendered a decision to quash the grant of CEC 1033/2005 and remitted the matter to EMA for further consideration (**2009 High Court Decision**).²⁰
32. On 17 July 2009, EMA filed an appeal before the Court of Appeal of Trinidad and Tobago against the 2009 High Court Decision.²¹ The hearing of the appeal commenced in September 2009 and continued through November 2009.²² CMEC was cooperative in providing necessary support to assist this appeal.
33. Extensive discussions took place between CMEC and Alutrint in respect of the 2009 High Court Decision and the appeal thereto, and Alutrint appeared in those discussions to be generally confident about the prospect of reinstating CEC 1033/2005.²³ However, in November 2010, EMA withdrew the appeal against the 2009 High Court Decision before the Court of Appeal was to hand down its decision.²⁴ Alutrint and EMA gave no prior notice to CMEC of the intention to withdraw the appeal and failed to inform CMEC of the withdrawal after it was made, which caused CMEC to continue its efforts to provide support for the appeal well into 2011.

C.6 Suspension and Termination of the Project

(a) First Suspension following the 2009 High Court Decision

34. On 17 June 2009, immediately following the 2009 High Court Decision, Mr Philip Julien, the then Acting Chief Executive Officer of Alutrint, sent CMEC an email requesting it to stop work on site.²⁵ This entailed the first work stoppage period on the Project, from 18 June 2009 to 31 March 2010.
35. However, as Alutrint clarified in later correspondence, while the construction works relating to the smelter had to be suspended due to the revoked CEC 1033/2005, works and activities unaffected or covered under other CECs could be continued, resumed or commenced in accordance with Alutrint's instructions.²⁶ As such, during this period, while the works of a large number of onsite workers, machinery, and equipment were put on hold, CMEC continued to carry out other substantial works in relation to the Project and also resumed some site activities as instructed. As the site activities that were instructed by Alutrint to be continued increased, CMEC's personnel on the site managed to return to full work status by 1 April 2010.

(b) Second Suspension following the Election of United National Congress

²⁰ *Id.* p. 200.

²¹ *Harris Maxime and Ors v EMA and Ors* Dean-Armorer J. (2009.08.07) H.C.2272/2007, at **(C-19)**, "Introduction" section, para. 2.

²² 2009 Annual Report of EMA, at **(C-20)**, p. 106.

²³ *See, e.g.*, Letter from P. Julien to J. Duo, dated 1 July 2009, at **(C-21)**, p. 2.

²⁴ *Sural (Barbados) Ltd. v. The Government of the Republic of Trinidad and Tobago through It's Minister of Finance as Corporation Sole*, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, at **(C-14)**, para. 137.

²⁵ Emails among P. Julien, J. Fu and others (with translation), dated 17 June 2009, at **(C-22)**.

²⁶ *See, e.g.*, Letter from P. Julien to J. Duo, dated 1 July 2009, at **(C-21)**, p. 2.

36. On 24 May 2010, the United National Congress (**UNC**) defeated the People's National Movement (**PNM**) in the 2010 Trinidad and Tobago general election.²⁷ This defeat ended (the late) Patrick Manning's term as Prime Minister of Trinidad and Tobago. He was succeeded by Prime Minister Kamla Persad-Bissessar.
37. On the same day, Mr Jack Warner, the then Chairman of UNC (who later resigned from this position and is now facing extradition to the United States on corruption charges)²⁸, reiterated UNC's campaign pledge that the new government would not permit the Project to proceed.²⁹
38. On 28 May 2010, Mr Frank Look Kin, who was designated by the UNC government to assume the role of Alutrint's new Chairman, notified CMEC by email that as UNC intended to "*shut down the Alutrint project*", the expenditures by Alutrint would be reduced and/or terminated and subject to monthly approval "*until the Government [of Trinidad and Tobago] determines the future of the company*".³⁰
39. Therefore, at that juncture, CMEC encountered the second work stoppage period on the Project. CMEC understood from its exchanges with Alutrint that no further works could be progressed without formal approval of the new UNC government.³¹
40. Around the same time, CMEC started to compile and submit a number of discrete claims to Alutrint in relation to the works that it carried out and/or costs incurred.³²

(c) The State's Decision to Terminate the Project

41. On 8 September 2010, the State decided at a Cabinet meeting to discontinue the entire Project with immediate effect.³³ On the same day, Mr Winston Dookeran, the then Minister of Finance, renounced the Project in his budgetary speech to Parliament.³⁴
42. It would appear that the State's statement on 8 September 2010 terminating the Project was a unilateral decision without consulting Sural Barbados, the other shareholder of Alutrint.

²⁷ Caribbean Elections, *Trinidad and Tobago General Election Results - 24 May 2010*, http://www.caribbeanelections.com/tt/elections/tt_results_2010.asp (last accessed 21 February 2023), at **(C-23)**. UNC won the elections as part of the People's Partnership coalition.

²⁸ S. Tobin and S. Sridhar, *Ex-FIFA vice president Warner loses appeal against extradition from Trinidad*, Reuters, 17 November 2022, at **(C-24)**.

²⁹ *See Jack: Local govt polls coming*, Trinidad and Tobago Guardian, 25 May 2010, at **(C-25)**.

³⁰ Emails among F. Look Kin, S. Luo, P. Julien and others (with translation), from 28 May 2010 to 2 June 2010, at **(C-26)**.

³¹ *See, e.g.*, Letter from P. Julien to J. Duo, dated 28 October 2010, at **(C-27)**, p. 1.

³² *See, e.g.*, Letter from J. Duo to P. Julien, dated 27 May 2010, at **(C-28)**.

³³ *Sural (Barbados) Ltd. v. The Government of the Republic of Trinidad and Tobago through Its Minister of Finance as Corporation Sole*, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, at **(C-14)**, para. 137.

³⁴ *Id.* para. 138.

43. In the months that followed and during 2011, CMEC kept up its correspondence with Alutrint regarding CMEC's claims for payment relating to the Project.³⁵
44. On 9 January 2012, the Permanent Secretary of the State wrote to Mr Steve Mohammed, the then Acting Chief Executive Officer of Alutrint, advising him that "*Government agreed that the Alutrint Smelter Project [...] be discontinued with immediate effect*".³⁶
45. On 19 January 2012, Alutrint notified CMEC that it had received formal notification on 9 January 2012 to discontinue the Project and that CMEC should accordingly "*cease all works and activities pertaining to Alutrint Aluminium Smelter Project*".³⁷
46. On 23 January 2012, Alutrint further notified CMEC "*to demobilise completely all CMEC's assets (including equipment and materials) from the Project Site in La Brea and remove*" those assets.³⁸ Pursuant to this instruction, CMEC commenced demobilisation works throughout 2012.
47. On 28 November 2012, CMEC submitted to Alutrint a preliminary statement of claim and urged Alutrint to "*settle the outstanding sums due to CMEC under the EPC and related contracts*".³⁹

(d) CMEC's Notice of Termination and Claims for Payment

48. On or around 22 March 2013, as a result of the State's *de facto* (and unlawful) termination of the Project, CMEC gave an official Notice of Termination dated 10 March 2013 pursuant to Clause 16.2(e) of the 2008 EPC Contract on the basis of a prolonged suspension.⁴⁰
49. On 17 May 2013, CMEC submitted its finalised consolidated outstanding claims in the amount of US \$169,597,715.10 with detailed breakdowns.⁴¹ In the following years, CMEC has been updating its claims amount from time to time to reflect interest and other accrued costs and losses. Such follow-up correspondence includes:
 - (i) CMEC's letter of 21 March 2014 (claims updated to US \$195,768,874.00);⁴²

³⁵ See, e.g., Letter from J. Duo to P. Julien, dated 9 December 2010, at (C-29).

³⁶ *Sural (Barbados) Ltd. v. The Government of the Republic of Trinidad and Tobago through It's Minister of Finance as Corporation Sole*, ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015, at (C-14), para. 152.

³⁷ Letter from S. Mohammed to J. Duo, dated 19 January 2012, at (C-30).

³⁸ Letter from S. Mohammed to J. Duo, dated 23 January 2012, at (C-31).

³⁹ Letter from J. Duo to S. Mohammed (with attachments), dated 28 November 2012, at (C-32).

⁴⁰ Letter from J. Duo to C. Murray (with attachment), dated 10 March 2013, at (C-33); Letter from J. Duo to C. Murray, dated 10 April 2013, at (C-34).

⁴¹ Letter from J. Duo to C. Murray (with attachments), dated 17 May 2013, at (C-35).

⁴² Letter from J. Duo to S. Gopeesingh (with attachment), dated 21 March 2014, at (C-36).

- (ii) CMEC's letter of 23 September 2014 (claims updated to US \$200,906,304.00);⁴³
 - (iii) CMEC's letter of 23 January 2015 (claims updated to US \$204,338,346.00);⁴⁴
 - (iv) CMEC's letter of 6 August 2015 (claims updated to US \$209,493,746.00);⁴⁵
 - (v) CMEC's letter of 15 April 2016 (claims updated to US \$217,243,738.00);⁴⁶
 - (vi) CMEC's letter of 24 August 2016 (claims updated to US \$201,193,388.00);⁴⁷
 - (vii) CMEC's letter of 19 March 2017 (re-compilation and submission of claim documents to the Ministry of Finance upon request);⁴⁸
 - (viii) CMEC's letter of 17 January 2020 (claims updated to US \$255,995,902.00);⁴⁹ and
 - (ix) CMEC's letter of 15 August 2022 (claims updated to US \$304,870,269.00).⁵⁰
50. CMEC's claims include, non-exhaustively, amounts payable for works carried out under the EPC Contracts (including works relating to the later deleted upstream and downstream elements of the 2005 EPC Contract), downtime costs, site maintenance costs, and demobilisation costs.

(e) The State's Assurances as to Settlement of the Payment Claims

51. After CMEC's finalised and consolidated outstanding claims were submitted in May 2013, exchanges between CMEC and the State continued for the rest of that year in relation to those claims and the consequences of the Project's termination. On 13 February 2014, the State's Cabinet agreed to appoint a committee to review CMEC's claims and to develop recommendations for a negotiated settlement.⁵¹
52. At a meeting held in Beijing on 26 February 2014, Mr Kevin Ramnarine, the then Minister of Energy and Energy Affairs, informed CMEC that the State had appointed a team to conclude the claim negotiations with CMEC before the end of June 2014.⁵² A

⁴³ Letter from J. Duo to S. Gopeesingh (with attachment), dated 23 September 2014, at (C-37). It was a typographical error that Ms Sushma Gopeesingh (the then Chairman of Alutrint) was mis-addressed as Ms Cushman Gopeesingh in this 23 September 2014 letter.

⁴⁴ Letter from J. Duo to S. Gopeesingh (with attachment), dated 23 January 2015, at (C-38).

⁴⁵ Letter from J. Duo to S. Gopeesingh (with attachment), dated 6 August 2015, at (C-39).

⁴⁶ Letter from J. Duo to S. Gopeesingh (with attachment), dated 15 April 2016, at (C-40).

⁴⁷ Letter from J. Duo to L. Mayors (with attachment), dated 24 August 2016, at (C-41). There was a decrease in the claimed amount as compared to the prior update of 15 April 2016 because in the intervening period the Chinese currency (renminbi) strengthened against the US dollar.

⁴⁸ Letter from J. Duo to M. Durham-Kissoon, dated 19 March 2017, at (C-42).

⁴⁹ Letter from Q. Wang to L. Mayors (with attachment), dated 17 January 2020, at (C-43).

⁵⁰ Letter from Q. Wang to L. Mayors (with attachment), dated 15 August 2022, at (C-44).

⁵¹ See Unofficial *Hansard* (Trinidad and Tobago), dated 2 December 2016, at (C-45), p. 27.

⁵² See Letter from J. Duo to S. Gopeesingh (with attachment), dated 21 March 2014, at (C-36), p. 1; Letter from J. Li to Prime Minister Rowley, dated 3 November 2015, at (C-46), p. 4.

Ministerial Committee and a negotiating team were established in March 2014.⁵³ However, no real progress was made.

53. On 22 July 2014, disappointed at the failure to reach a settlement by June 2014, CMEC gave notice to Alutrint that it would proceed to arbitration and serve formal legal notice by the first week of August 2014.⁵⁴
54. Upon receipt of CMEC's letter of 22 July 2014, the State initiated settlement discussions with CMEC to prevent or to try to stave off the commencement of the arbitration.
55. Following further discussions in August and September 2014, the State promised to pay in good faith a preliminary amount of US \$15 million from the account balance of Alutrint, with the final claims amount and payment schedule to be confirmed by the Ministerial Committee after negotiation between both parties. CMEC accepted the proposal for phased payment but the State never paid or authorised to pay any part of the US \$15 million that it had offered to pay as an alleged show of good faith.⁵⁵
56. On 13 March 2015, CMEC formally gave a notice of intention to refer all its claims in respect of the Project to a DAB pursuant to Clause 20.2 of the 2008 EPC Contract.⁵⁶ DAB-related correspondence ensued between CMEC and Alutrint (including through their respective counsel) from March to July 2015.⁵⁷
57. Discussions between CMEC and the State in the midst of the 2015 Trinidad and Tobago general election led to CMEC agreeing to put its claims on hold. It did so in reliance on the State's assurances that (i) a substantial good faith payment would initially be made to CMEC before the general election and (ii) shortly after the election, CMEC's claims would be settled in full. Yet, once again, the State failed to carry out its promises.

(f) Election of People's National Movement and Continued Settlement Discussions

58. On 7 September 2015, PNM defeated UNC in the Trinidad and Tobago general election.⁵⁸ This led to the formation of a new government headed by Prime Minister Rowley, who is now in his second term as Prime Minister of Trinidad and Tobago after PNM's election win in August 2020.
59. In early November of 2015, CMEC reached out (via Mr Chandradath Singh, the then Ambassador of Trinidad and Tobago to China) to Prime Minister Rowley to present a

⁵³ See Letter from J. Li to Prime Minister Rowley, dated 3 November 2015, at (C-46), p. 4; Unofficial *Hansard* (Trinidad and Tobago), dated 2 December 2016, at (C-45), p. 27.

⁵⁴ Letter from J. Duo to S. Gopeesingh, dated 22 July 2014, at (C-47).

⁵⁵ See Letter from J. Li to Prime Minister Rowley, dated 3 November 2015, at (C-46), p. 4; Unofficial *Hansard* (Trinidad and Tobago), dated 2 December 2016, at (C-45), p. 27.

⁵⁶ Letter from Pinsent Masons to S. Gopeesingh, dated 13 March 2015, at (C-48).

⁵⁷ See, e.g., Letter from Hogan Lovells to Pinsent Masons, dated 14 July 2015, at (C-49).

⁵⁸ Caribbean Elections, *Trinidad and Tobago General Election Results - 7 September 2015*, http://www.caribbeanelections.com/tt/elections/tt_results_2015.asp (last accessed 21 February 2023), at (C-50).

settlement proposal regarding its claims in respect of the Project.⁵⁹ Prime Minister Rowley responded on 20 November 2015, noting that he "*look[ed] forward to holding discussions with [CMEC] on this matter in the not too distant future*".⁶⁰

60. In December 2015, shortly after receiving Prime Minister Rowley's response, CMEC dispatched a delegation to Trinidad and Tobago in an effort to promptly resume the official negotiations with the State (under the new PNM leadership).⁶¹
61. This attempt to resume negotiations continued in 2016, which included multiple attempts made by CMEC to arrange meetings with Mr Colm Imbert, Minister of Finance.⁶²
62. On 30 November 2016, Mrs Suzette Taylor-Lee Chee, the Permanent Secretary of the Ministry of Finance, informed CMEC that the State had approved a Committee, headed by herself, together with Mr Selwyn Lashley (the Permanent Secretary of the Ministry of Energy and Energy Industries) and other representatives from the Ministry of Energy and Energy Industries, to review the outstanding issues regarding the Project.⁶³
63. On 20 January 2017, the first meeting between CMEC and the Committee was held at the Ministry of Finance.⁶⁴ The meeting was hosted by Mrs Michelle Durham-Kissoon, the Permanent Secretary of the Ministry of Finance who had taken over Mrs Suzette Taylor-Lee Chee's responsibilities in the Committee.
64. By way of letter on 15 March 2017, Mrs Michelle Durham-Kissoon provided several updates to CMEC:⁶⁵
 - (i) the Committee was reviewing relevant documents already in its possession and requested CMEC to prepare and deliver any additional relevant documents (which CMEC promptly delivered four days later on 19 March 2017);⁶⁶
 - (ii) pursuant to the Cabinet's decision, the Committee was in the process of hiring a legal expert on this matter to conduct the review and act as the State's advisor during the negotiations; and
 - (iii) the meeting between CMEC and the Committee would be reconvened as soon as the review was completed, to be confirmed by a subsequent letter.
65. To CMEC's disappointment and despite several follow-ups, no meeting to negotiate was reconvened. In subsequent correspondence, the Ministry of Finance claimed that the lack of progress was due to the non-receipt of the Cabinet's decision regarding the

⁵⁹ Letter from J. Li to Prime Minister Rowley, dated 3 November 2015, at (C-46).

⁶⁰ Letter from Prime Minister Rowley to J. Li, dated 20 November 2015, at (C-51).

⁶¹ See Letter from J. Duo to C. Imbert, dated 6 April 2016, at (C-52), p. 1.

⁶² See, e.g., Letter from J. Duo to C. Imbert, dated 6 April 2016, at (C-52).

⁶³ Letter from S. Taylor-Lee Chee to J. Duo, dated 30 November 2016, at (C-53).

⁶⁴ See Letter from M. Durham-Kissoon to J. Duo, dated 15 March 2017, at (C-54).

⁶⁵ Letter from M. Durham-Kissoon to J. Duo, dated 15 March 2017, at (C-54).

⁶⁶ Letter from J. Duo to M. Durham-Kissoon, dated 19 March 2017, at (C-42).

selection and procurement of the legal expert and the resulting hold-up in the review of the documents relating to CMEC's claims.⁶⁷

66. On 9 April 2018, after CMEC made another request for an update as to the Committee's hiring of the legal expert, Mr Mykel Khan, an Economic Policy Analyst at the Ministry of Finance, replied by email that "[t]he Ministry is working on hiring the lawyers soon, just have a little more in the process to go again [...] I hope to have more information for you by the end of the week".⁶⁸ This promised update was never provided.
67. After CMEC twice dispatched a delegation to Trinidad and Tobago between December 2019 and January 2020 to pursue negotiations, a meeting between CMEC and Mr Colm Imbert was scheduled for 11 February 2020.⁶⁹ This meeting did not take place due to Covid-19 travel restrictions.
68. For over three years thereafter, CMEC has made multiple attempts to arrange a meeting with Mr Colm Imbert, to no avail.⁷⁰

C.7 Lead up to this arbitration

69. On 26 August 2022, in the face of the State's persisting silence and inertia, CMEC sent (via its legal representative, Clifford Chance) a written Notification of a Claim and Request for Consultations and Negotiations (**Notification of Claim**) to the State pursuant to Article 10(2) of the BIT to amicably resolve the Parties' investment dispute. In response, the State instructed Charles Russell Speechlys LLP and there was an exchange of correspondence between this firm and Clifford Chance, but no consultations or negotiations took place.
70. The current value of the payments the State owes CMEC, including interest, exceeds US \$310 million.

D. JURISDICTION UNDER THE BIT

D.1 Jurisdiction *ratione personae*

71. The investment protections set out in the BIT are accorded to "*investors*" of each Contracting Party.
72. Article 1(2) of the BIT defines "*investors*" as including any "*economic entities*" that constitute "*companies, corporations, associations, partnerships and other organizations, incorporated and constituted under the laws and regulations of either Contracting Party and which have their seats in that Contracting Party*".
73. CMEC is, and was at all material times, a company (i) duly incorporated and constituted under the laws and regulations of the PRC and (ii) that has its "*seat*" in the PRC, given

⁶⁷ See, e.g., Letter from M. Durham-Kissoon to J. Duo, dated 12 May 2017, at (C-55).

⁶⁸ Emails between L. Zhang and M. Khan, dated 9 April 2018, at (C-56).

⁶⁹ See Letter from Q. Wang to C. Imbert, dated 17 January 2020, at (C-57), p. 1.

⁷⁰ See, e.g., Letter from Q. Wang to C. Imbert (with attachment), dated 6 August 2021, at (C-58).

its headquarters and central management are located in Beijing, PRC. CMEC therefore qualifies as an Article 1(2) "economic entity".

74. Accordingly, the tribunal to be constituted in this arbitration will have jurisdiction *rationae personae* over CMEC under the BIT.

D.2 Jurisdiction *ratione materiae*

75. Article 1(1) of the BIT accords protection to any "investment" that is "invested by investors" of the PRC in the territory of Trinidad and Tobago "in accordance with the laws and regulations" of Trinidad and Tobago.

76. That same provision defines "investment" as "every kind of asset" and sub-paragraph (c) explicitly refers to "claims to money" and "any performance under contract having an economic value associated with an investment" as examples of a covered investment.

77. CMEC claims for recovery of amounts due to it by the State, which include: (i) payment for works it has carried out under the EPC Contracts; (ii) costs it has incurred, and any loss or damage it has sustained, prior to or as a result of the extended suspension and/or the eventual termination of the Project; and (iii) any other payment from the State to which it is otherwise entitled. These claims are all claims to money and/or requirements of performance under contract within the meaning of an "investment" under Article 1(1).

78. Accordingly, the tribunal to be constituted in this arbitration will have jurisdiction *ratione materiae* over CMEC's investment under the BIT as described in the above paragraph.

D.3 Jurisdiction *ratione voluntatis*

79. Article 10 of the BIT provides:

"1. For purposes of this Agreement, an "investment dispute" is a dispute between a Contracting Party and an investor of the other Contracting Party, concerning an obligation of the former under this Agreement in relation to an investment of the latter.

2. In the event of an investment dispute, the Parties to the investment dispute should initially seek a resolution through consultation and negotiation. If the investment dispute cannot be settled amicably within six months from the date of written notification of a claim, the investor that is a party to an investment dispute may submit the investment dispute for resolution under one of the following alternatives:

(a) to the courts or administrative tribunals of the Contracting Party that is a Contracting Party to the investment dispute; or

(b) to international arbitration in accordance with paragraph 3 below, provided that the Contracting Party involved in the dispute may require the investor concerned to exhaust the domestic administrative review procedures specified by the laws and regulations of that Contracting Party before submission of the dispute to the aforementioned arbitration procedure;

3. Where the dispute is referred to international arbitration, the investor concerned may submit the dispute either to:

(a) the International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D. C on 18th March 1965; or

(b) an ad hoc arbitral tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law;

(c) an international arbitrator to be appointed by a special agreement of the parties to the investment dispute."

80. The State's offer to arbitrate an investment dispute under Article 10 of the BIT was made on 7 December 2004 (*i.e.*, the date on which the BIT entered into force). The only mandatory precondition to this offer is the failure to settle the investment dispute amicably within six months from the date of the written Notification of Claim (Article 10(2) of the BIT).

81. Six months have elapsed since the date of the Notification of Claim without settlement of the investment dispute. The precondition to arbitration under Article 10 has therefore been met. As a result, by submitting this Request, CMEC – an investor of the other Contracting Party to the BIT – is entitled to and has accepted the State's offer to arbitrate an investment dispute under Article 10 of the BIT.

82. Accordingly, the tribunal to be constituted in this arbitration will have jurisdiction *ratione voluntatis* over CMEC's investment dispute under the BIT.

D.4 Jurisdiction *ratione temporis*

83. Article 2 of the BIT provides:

"This Agreement shall apply to all investments, which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force."

84. The BIT entered into force on 7 December 2004 and remains in force as of the date of this Request. In addition, the events giving rise to the dispute the subject of this Request – and the dispute itself – arose (well) after the entry into force of the BIT.

85. Accordingly, the tribunal to be constituted in this arbitration will have jurisdiction *ratione temporis* over this dispute under the BIT.

E. BREACHES OF THE BIT

86. By the measures the State has taken against the Claimant's investments, the State has violated numerous provisions of the BIT (and its duties under international law). The

Claimant is entitled to compensation for the State's breaches of these protections and other remedies.

E.1 Unlawful Expropriation

87. Article 6(1) of the BIT relevantly provides:

"1. Neither Contracting Party shall expropriate, nationalize or take other similar measures (hereinafter referred to as "expropriation") against the investments of the investors of the other Contracting Party in its territory, except:

(a) for the public purpose;

(b) under domestic law;

(c) without discrimination;

(d) against compensation."

88. The State has breached Article 6 of the BIT (and international law) by expropriating the Claimant's investment.

89. The State's failure to pay outstanding amounts owing to CMEC under the EPC Contracts constitutes an indirect expropriation of CMEC's rights and interests to payment under those contracts. It bears noting that the failure to pay did not result from the State acting in a commercial capacity but instead from the improper exercise of governmental power, *e.g.*, by way of its ministers, permanent secretaries, their representatives, and government-appointed committees. The State's exercise of its power rendered the relevant rights and interests of CMEC valueless. In effect, the State's failure to pay constitutes an abuse of its sovereign power for the purpose of avoiding contractual liability, which constitutes an unlawful indirect expropriation.

90. In addition, the State's termination of the Project as a whole constitutes a direct expropriation of all performance by the Claimant that was stipulated under the EPC Contracts and from which the Claimant would have derived significant profits beyond the works already carried out if such performance had not been nullified by the State's (unlawful) termination of the Project. To be clear, CMEC did not invest in Trinidad and Tobago on the assumption that it would (i) be allowed to perform only portions of the EPC Contracts and (ii) after years of commitment to the Project and already performing works worth hundreds of millions of dollars, be (more or less) politely invited by the State to go home, without any payment of the outstanding amounts due upon the Project's termination.

91. The expropriation of the Claimant's investment thus was entirely unlawful, not least because it was not for a "*public purpose*" (but instead to avoid past, present, and future payment obligations) nor accompanied by any "*compensation*",⁷¹ let alone "*prompt*,

⁷¹ Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, signed 22 July 2002, entered into force 7 December 2004, at (CL-1), Article 5.

adequate and effective compensation" as required *a minima* under international law.⁷²

E.2 Failure to Accord Fair and Equitable Treatment (FET)

92. Article 3(2) of the BIT provides:

"2. Investments of the investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party."

93. The State has breached its obligation under Article 3(2) to accord FET to the Claimant's investment. The facts that have given rise to this BIT breach include (but are not limited to) those described below.

- (i) The Claimant had a legitimate expectation based on the State's assurances that the State would abide by the obligations under the EPC Contracts and pay the amounts due thereunder.
- (ii) Likewise, the Claimant had a legitimate expectation that the State would do everything in its power to ensure the progress of the Project and enable the performance of obligations under the EPC Contracts, including appealing against the 2009 High Court Decision. Instead, the State violated this legitimate expectation by (i) withdrawing the appeal and (ii) terminating the Project. To reiterate: CMEC did not invest in Trinidad and Tobago on the assumption that it would (i) be allowed to perform only portions of the EPC Contracts and (ii) after years of commitment to the Project and performance of works worth hundreds of millions of dollars, be (more or less) politely invited by the State to go home without any payment of the outstanding amounts due upon the Project's termination.
- (iii) The State has not been transparent in its dealings with CMEC because it has withdrawn its appeal against the 2009 High Court Decision and failed to pay the outstanding amounts due under the EPC Contracts, without informing CMEC of any legitimate circumstantial or legal reason for such withdrawal or non-payment.
- (iv) The State has failed to accord CMEC due process, including by denying CMEC the opportunity to respond to any allegation that the State may assert to have been an obstacle to payment (*quod non*).
- (v) The State violated the principles of good faith and *pacta sunt servanda* by encouraging CMEC to carry out extensive work under the EPC Contracts but then terminating the Project and ultimately refusing to make payment for any outstanding amounts due to CMEC upon such termination.

94. All of the above breaches occurred in circumstances where the State repeatedly reassured CMEC that it would pay CMEC for its works done, costs incurred and losses sustained.

⁷² R. Dolzer et al., *Principles of International Investment Law* (3rd ed., 2022), at (CL-2), pp. 182-183; UNCTAD, *Expropriation: UNCTAD Series on Issues in International Investment Agreements II*, 2012, at (CL-3), pp. 40-41.

E.3 Breach of the State's non-impairment obligation

95. Article 3(3) of the BIT provides:

"3. Without prejudice to its laws and regulations, neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by the investors of the other Contracting Party."

96. The non-impairment clause in Article 3(3) of the BIT has been breached by the State, as elaborated below.

- (i) The State unquestionably "*impaired*" CMEC's investment because, by terminating the Project and ultimately failing to make payment for any outstanding amounts due to CMEC upon such termination pursuant to the EPC Contracts, the State deprived CMEC's investment of all value. In effect, CMEC was left with no investment to "*manage*", "*maintain*", "*use*", "*enjoy*" or "*dispose*".
- (ii) This impairment was unreasonable as the State terminated the Project and then failed to make or authorise the requisite payment without any legitimate reason for doing so. Further, the State did not provide any opportunity to CMEC to respond to any reason it may have asserted for not paying the amounts due (*quod non*).

E.4 Breach of the umbrella clause

97. Article 13(2) of the BIT constitutes an umbrella clause, providing that:

"Each Contracting Party shall observe any commitments it may have entered into with the investors of the other Contracting Party as regards their investments."

98. Under this umbrella clause, non-compliance by the State of any commitments it had entered into with CMEC as regards its investments constitutes a breach of Article 13(2) of the BIT. Commitments that the State and/or Alutrint made in relation to CMEC's investment, including without limitation payment for the works performed by CMEC under the EPC Contracts, therefore fall within the scope of Article 13(2). The State violated this treaty provision when it unlawfully terminated the EPC Contracts and failed to make payment to CMEC pursuant to the EPC Contracts.

F. ICSID JURISDICTION

F.1 Article 25 of the ICSID Convention

99. Article 25 of the *Convention on the Settlement of Disputes Between States and Nationals of Other States (ICSID Convention)*, opened for signature at Washington on 18 March 1965, provides in relevant part:

"Article 25

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent

subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) "National of another Contracting State" means:

[...]

(b) *any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration [...]"*

100. Each of the jurisdictional requirements prescribed in Article 25 of the ICSID Convention is satisfied in this case, as briefly described below.

F.2 Contracting State

101. The State signed the ICSID Convention on 5 October 1966. Its instrument of ratification was deposited with ICSID on 3 January 1967. The ICSID Convention entered into force for Trinidad and Tobago on 2 February 1967, and remains in force. Trinidad and Tobago is therefore an ICSID Convention Contracting State.

102. Accordingly, the tribunal to be constituted in this arbitration will have jurisdiction *ratione personae* over the State under the ICSID Convention.

F.3 National of a Contracting State

103. CMEC is a company incorporated and constituted under the laws and regulations of China on 17 March 1982.⁷³ On this date, it became and continues to be a Chinese "*national*". For the purposes Article 25 of the ICSID Convention, CMEC was therefore a Chinese "*national*" on the date it and the State consented to submit their dispute to arbitration at ICSID (as set out in more detail below).

104. China signed the ICSID Convention on 9 February 1990 and deposited its instrument of ratification with ICSID on 7 January 1993. The ICSID Convention entered into force for China on 6 February 1993, and remains in force.

105. Accordingly, the tribunal to be constituted in this arbitration will have jurisdiction *ratione personae* over CMEC under the ICSID Convention.

F.4 Investment

106. As explained above, the Claimant has an investment that falls within the definition of "*investment*" under the BIT. This investment also falls within the scope of an "*investment*" referred to in Article 25 of the ICSID Convention.

⁷³ See Business Licence of CMEC, dated 25 January 2022, certified 17 February 2022, at (C-4), p. 4.

107. To the extent that "*investment*" indicators recognised by previous ICSID tribunals are relevant:
- (i) The Claimant has invested works worth hundreds of millions of dollars in the Project for over 7 years and, prior to the State's unlawful measures, the Claimant expected to continue its investment. During this period, the Claimant spent large sums on its investment in the Project.
 - (ii) The Claimant's investment in the Project entailed the assumption of commercial risks that are germane to long-term construction projects.
108. Accordingly, the tribunal to be constituted in this arbitration will have jurisdiction *ratione materiae* over CMEC's investment under the ICSID Convention.

F.5 Legal Dispute

109. As explained above, by its acts and omissions, the State has:
- (i) breached the prohibition against unlawful expropriation under Article 6 of the BIT;
 - (ii) breached its obligation to accord FET to the Claimant's investment under Article 3(2) of the BIT;
 - (iii) breached its obligation not to impair the Claimant's management, maintenance, use, enjoyment or disposal of its investment under Article 3(3) of the BIT; and
 - (iv) breached the umbrella clause under Article 13(2) of the BIT.
110. The dispute that has arisen out of these breaches of the BIT is obviously legal in nature and has arisen directly out of the Claimant's investment in the State.
111. Accordingly, the tribunal to be constituted in this arbitration will have jurisdiction *ratione materiae* over the legal dispute between CMEC and the State under the ICSID Convention.

F.6 Consent in Writing

112. Article 25 of the ICSID Convention requires that "*the parties to the dispute consent in writing to submit to the Centre*". By submitting this Request, the Claimant has on 27 March 2023 consented to ICSID arbitration. The State's consent to arbitrate at ICSID was made under Article 10 of the BIT on 7 December 2004 (*i.e.*, the date on which the BIT entered into force). These two acts together constitute the consent in writing required under Article 25 of the ICSID Convention. CMEC is therefore entitled to submit its dispute against the State for resolution by arbitration at ICSID.
113. Rule 2(2)(b) of the ICSID Institution Rules (2022) provides that if the parties have not consented on the same date, "*the date of consent [is] the date on which the last party to consent gave its consent in writing to submit the dispute to the Centre*".

114. Accordingly, the date of consent to ICSID arbitration is 27 March 2023 and the tribunal to be constituted in this arbitration will have jurisdiction *ratione voluntatis* over the legal dispute between CMEC and the State under the ICSID Convention.

G. CONSTITUTION OF THE TRIBUNAL

115. Having regard to Article 37(2) of the ICSID Convention, the Claimant requests that the tribunal to be constituted include three arbitrators:

- (i) one arbitrator to be appointed by each party by a date to be agreed or directed; and
- (ii) the president of the tribunal to be appointed by agreement of the parties within 30 days after the nomination of the State's party-appointed arbitrator (or such later time as may be agreed), failing which the president of the tribunal shall be appointed by the ICSID Secretary-General.

116. The Claimant invites the State to agree to this proposal.

H. ORDERS AND RELIEF SOUGHT

117. The Claimant seeks the following relief from the tribunal to be constituted:

- (i) a **DECLARATION** that the State has violated its obligations under Article 6 of the BIT by unlawfully expropriating the Claimant's investment and an **ORDER** that the State pay damages or compensation accordingly (in an amount to be quantified at a later stage in the proceedings);
- (ii) a **DECLARATION** that the State has violated its FET obligations under Article 3(2) of the BIT and an **ORDER** that the State pay damages or compensation to the Claimant accordingly (in an amount to be quantified at a later stage in the proceedings);
- (iii) a **DECLARATION** that the State has violated its duty not to impair by unreasonable or discriminatory measures the Claimant's management, maintenance, use, enjoyment or disposal of its investment under Article 3(3) of the BIT and an **ORDER** that the State pay damages or compensation to the Claimant accordingly (in an amount to be quantified at a later stage in the proceedings);
- (iv) a **DECLARATION** that the State has violated its duty to observe any commitments that it entered into with regard to the Claimant's investment under Article 13(2) of the BIT and an **ORDER** that the State pay damages or compensation to the Claimant accordingly (in an amount to be quantified at a later stage in the proceedings);
- (v) an **ORDER** that the State pay the Claimant's costs of these proceedings, including but not limited to the Claimant's legal fees and expenses, the fees and expenses of the tribunal, the costs of ICSID, and the costs of the Claimant's employees and officers;

- (vi) an **ORDER** that the State pay pre-award interest on any monetary compensation ordered by the tribunal; and
 - (vii) any other relief as the tribunal determines to be just and appropriate.
118. The Claimant reserves all its rights in relation to its investment and the Project as well as the dispute that is the subject of this Request, including its right to amend, supplement, and/or expand its claims in this Request, the orders and relief sought in this Request, and/or any other aspects of this Request.

I. SUBMISSION

119. Respectfully submitted for and on behalf of the Claimant on 27 March 2023.

Clifford Chance

Audley Sheppard KC
Shi Lei
Ramesh Weeramantry
Rodolphe Ruffié-Farrugia
Hazel He

C L I F F O R D
C H A N C E

INDEX OF FACTUAL EXHIBITS

Exhibit	Description	Date
C-1	Speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at PNM Diego Martin West 49th Constituency Conference on 13 October 2022 (video retrieved from: https://www.youtube.com/watch?v=AIDc-qgRotI)	13 October 2022
C-2	Transcription of speech by incumbent Trinidad and Tobago Prime Minister Dr Keith Rowley at PNM Diego Martin West 49th Constituency Conference on 13 October 2022 (excerpt pertaining to the dispute from video retrieved from: https://www.youtube.com/watch?v=AIDc-qgRotI)	13 October 2022
C-3	R. Taitt, <i>PM: Chinese contractors make \$2.5 billion claim: 'Improper' cancellation of smelter plant project in 2010...</i> , Daily Express (Trinidad and Tobago), 13 October 2022	13 October 2022
C-4	Business Licence of CMEC	25 January 2022, certified 17 February 2022
C-5	Notice of the Approval on Change Registration of CMEC	18 January 2011, certified 24 February 2011
C-6	Memorandum of Understanding	23 March 2005
C-7	Trinidad and Tobago Companies Registry Online Search Facility, "Alutrint", https://www.legalaffairs.gov.tt/ (last accessed 27 February 2023)	/
C-8	Articles of Incorporation of Alutrint	5 April 2005
C-9	Certificate of Amendment of Alutrint	1 June 2005
C-10	Unanimous Shareholders' Agreement between the State and Sural Barbados	3 July 2007
C-11	2005 EPC Contract	20 December 2005
C-12	PDC Contract (Supplementary No. 1 to 2005 EPC Contract)	16 May 2008
C-13	Amendment to PDC Contract	19 January 2009
C-14	<i>Sural (Barbados) Ltd. v. The Government of the Republic of Trinidad and Tobago through It's Minister of Finance as Corporation Sole</i> , ICC Case No. 18799/VRO/AGF/ZF, Final Award, 30 April 2015	30 April 2015
C-15	2008 EPC Contract	30 October 2008

Exhibit	Description	Date
C-16	First Amendment to 2008 EPC Contract	17 December 2009
C-17	CEC 1033/2005	2 April 2007
C-18	<i>PURE and RAG v EMA and Ors</i> Dean-Armorer J. (2009.06.16) H.C.2263/2007	16 June 2009
C-19	<i>Harris Maxime and Ors v EMA and Ors</i> Dean-Armorer J. (2009.08.07) H.C.2272/2007	7 August 2009
C-20	2009 Annual Report of EMA	/
C-21	Letter from P. Julien to J. Duo	1 July 2009
C-22	Emails among P. Julien, J. Fu and others (with translation)	17 June 2009
C-23	Caribbean Elections, <i>Trinidad and Tobago General Election Results - 24 May 2010</i> , http://www.caribbeanelections.com/tt/elections/tt_results_2010.asp (last accessed 21 February 2023)	/
C-24	S. Tobin and S. Sridhar, <i>Ex-FIFA vice president Warner loses appeal against extradition from Trinidad</i> , Reuters, 17 November 2022	17 November 2022
C-25	<i>Jack: Local govt polls coming</i> , Trinidad and Tobago Guardian, 25 May 2010	25 May 2010
C-26	Emails among F. Look Kin, S. Luo, P. Julien and others (with translation)	28 May 2010 to 2 June 2010
C-27	Letter from P. Julien to J. Duo	28 October 2010
C-28	Letter from J. Duo to P. Julien	27 May 2010
C-29	Letter from J. Duo to P. Julien	9 December 2010
C-30	Letter from S. Mohammed to J. Duo	19 January 2012
C-31	Letter from S. Mohammed to J. Duo	23 January 2012
C-32	Letter from J. Duo to S. Mohammed (with attachments)	28 November 2012
C-33	Letter from J. Duo to C. Murray (with attachment)	10 March 2013
C-34	Letter from J. Duo to C. Murray	10 April 2013
C-35	Letter from J. Duo to C. Murray (with attachments)	17 May 2013
C-36	Letter from J. Duo to S. Gopeesingh (with attachment)	21 March 2014

Exhibit	Description	Date
C-37	Letter from J. Duo to S. Gopeesingh (with attachment)	23 September 2014
C-38	Letter from J. Duo to S. Gopeesingh (with attachment)	23 January 2015
C-39	Letter from J. Duo to S. Gopeesingh (with attachment)	6 August 2015
C-40	Letter from J. Duo to S. Gopeesingh (with attachment)	15 April 2016
C-41	Letter from J. Duo to L. Mayors (with attachment)	24 August 2016
C-42	Letter from J. Duo to M. Durham-Kissoon	19 March 2017
C-43	Letter from Q. Wang to L. Mayors (with attachment)	17 January 2020
C-44	Letter from Q. Wang to L. Mayors (with attachment)	15 August 2022
C-45	Unofficial <i>Hansard</i> (Trinidad and Tobago)	2 December 2016
C-46	Letter from J. Li to Prime Minister Rowley	3 November 2015
C-47	Letter from J. Duo to S. Gopeesingh	22 July 2014
C-48	Letter from Pinsent Masons to S. Gopeesingh	13 March 2015
C-49	Letter from Hogan Lovells to Pinsent Masons	14 July 2015
C-50	Caribbean Elections, <i>Trinidad and Tobago General Election Results - 7 September 2015</i> , http://www.caribbeanelections.com/tt/elections/tt_results_2015.asp (last accessed 21 February 2023)	/
C-51	Letter from Prime Minister Rowley to J. Li	20 November 2015
C-52	Letter from J. Duo to C. Imbert	6 April 2016
C-53	Letter from S. Taylor-Lee Chee to J. Duo	30 November 2016
C-54	Letter from M. Durham-Kissoon to J. Duo	15 March 2017
C-55	Letter from M. Durham-Kissoon to J. Duo	12 May 2017
C-56	Emails between L. Zhang and M. Khan	9 April 2018
C-57	Letter from Q. Wang to C. Imbert	17 January 2020
C-58	Letter from Q. Wang to C. Imbert (with attachment)	6 August 2021

INDEX OF LEGAL AUTHORITIES

Exhibit	Description	Date
CL-1	Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments	Signed 22 July 2002, entered into force 7 December 2004
CL-2	R. Dolzer et al., <i>Principles of International Investment Law</i> (3rd ed., 2022)	6 January 2022
CL-3	UNCTAD, <i>Expropriation: UNCTAD Series on Issues in International Investment Agreements II</i> , 2012	2012

**ANNEXURE A
AUTHORISATION**



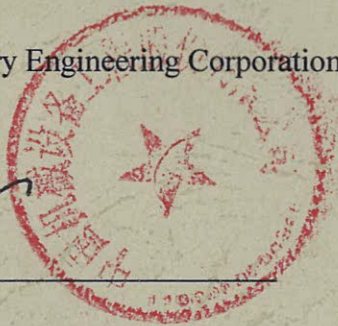
ICSID ARBITRATION AUTHORISATION

This ICSID ARBITRATION AUTHORISATION is dated 24 March 2023.

1. China Machinery Engineering Corporation (the “**Company**”), a company registered in the People’s Republic of China (“**PRC**”) under unified social credit code 91110000100000710J, with its registered office at No. 178 Guang anmenwai Street, Beijing 100055, PRC, hereby authorises Clifford Chance to institute, prosecute, suspend, discontinue, and/or take all other steps that may be necessary, reasonable, or expedient in relation to (“**Conduct**”) international arbitration proceedings under the Arbitration Rules of the International Centre for Settlement of Investment Dispute and under the Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the PRC on the Reciprocal Promotion and Protection of Investment on behalf of the Company as the Claimant (the “**Proceedings**”) in accordance with the terms of the Power of Attorney granted on 24 March 2023 by the Company to Clifford Chance.
2. This ICSID Arbitration Authorisation constitutes all authorisations internal to the Company that are necessary to Conduct the Proceedings, including to file any request for arbitration under Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”) and the ICSID Convention Institution Rules.

EXECUTED by the Company

Executed by _____)
China Machinery Engineering Corporation)



Signature of Chairman

Wang Bo

Name of Chairman

China Machinery Engineering Corporation

**ANNEXURE B
POWER OF ATTORNEY**



POWER OF ATTORNEY

This **POWER OF ATTORNEY** is granted on 24 March 2023.

1. China Machinery Engineering Corporation (the "**Company**"), a company registered in the People's Republic of China ("**PRC**") as under unified social credit code 91110000100000710J, with its registered office at No. 178 Guang anmenwai Street, Beijing 100055, PRC, appoints Clifford Chance LLP, Clifford Chance Pte Ltd and/or any affiliated Clifford Chance entities as may be required (collectively "**Clifford Chance**") as its attorneys for the following purposes:
 - (a) to act on behalf of the Company in respect of all matters arising out of, relating to or in connection with the dispute with the Government of the Republic of Trinidad and Tobago ("**GORTT**"), including any agency or political subdivision of GORTT, arising out of or in connection with the Alutrint Smelter Project, including, but not limited to, international arbitration proceedings under the Arbitration Rules of the International Centre for Settlement of Investment Dispute and under the Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the PRC on the Reciprocal Promotion and Protection of Investment on behalf of the Company as the Claimant (the "**Proceedings**"); and
 - (b) to do all other acts and things on behalf of the Company as may be reasonable, necessary or expedient in relation to the Proceedings,in each case, subject to the Company's instructions.
2. The team of lawyers from Clifford Chance that the Company appoints to carry out the mandate above shall include the following Clifford Chance partners and employees as well as any other partners and employees whom the following partners and employees may authorise from time to time:
 - (a) Audley Sheppard KC;
 - (b) Shi Lei;
 - (c) Dr Romesh Weeramantry;
 - (d) Rodolphe Ruffié-Farrugia; and
 - (e) Hazel He.
3. This Power of Attorney and any non-contractual obligations arising out of or in connection with it are governed by and should be construed in accordance with the law of the PRC.
4. This Power of Attorney supersedes any other power of attorney and mandate letter in relation to the Proceedings that the Company has provided to other individuals and/or entities.

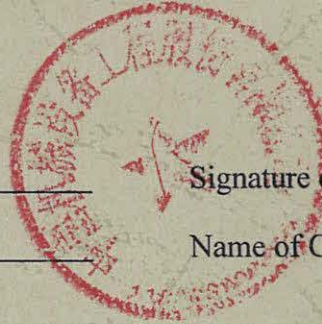




中国机械设备工程股份有限公司
China Machinery Engineering Corporation

EXECUTED by the Company

Executed by _____)
China Machinery Engineering Corporation)



Signature of Chairman

Wang Bo

Name of Chairman

China Machinery Engineering Corporation

