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Hon. Mohammed A. Omar
Minister of Foreign Affairs &
International Cooperation
Hargeisa,
REPUBLIC OF SOMALILAND

Paris, 1 December 2011

By e-mail: momar@somalilandforeign.net

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Avocats à la Cour

Dear Hon. Omar,

TERMINATION OF BONDED DEPOT STATUS OF BERBERA OIL TERMINAL

We are writing you on behalf of Total Mer Rouge S.A., a public limited liability company organised and existing under the laws of France (the "Client"), who has retained Trillat & Associés based in Paris and Webber Wentzel based in Johannesburg as counsel in relation to the unlawful termination by the Republic of Somaliland (the "Republic") of the bonded depot status of Berbera Oil Terminal.

Having reviewed the documents in the matter at hand, we must say that we are surprised by the behaviour of the Republic of Somaliland and its one-sided termination of a valid and effective agreement with an important investor in the country.

It is plain that the Republic by its actions has failed to respect the terms of the Agreement for Lease of Petroleum Product Storages and Aircraft Fuelling Facilities dated 9 July 1998 (the "Agreement").

With respect to the content of the Presidential Decree no: 131/052011 dated 22 May 2011 (the "Decree"), we must say that we find it confusing in several respects. Without being exhaustive, it is, in particular, unclear:

- why the Agreement is called "incomplete" while it was duly promulgated by Presidential Decrees No: 6/98 dated 22nd May 1999 and 26/00 dated 11 June 2000 and confirmed by various memoranda issued from time to time by the Ministry of Finance of the Republic;

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- why the Decree contends that the Agreement lacked consideration, when the consideration by our Client is clearly set out in the Agreement and has been duly respected by our Client;
- how our Client has failed to rehabilitate and maintain the infrastructure, when our Client on the contrary made significant investment in the rehabilitation of the infrastructure and never received any complaint from the Republic in this respect during the past 12 years of existence of the Agreement;
- how the refusal by the Somaliland House of Representative to approve the Agreement can justify the one-sided termination by the Republic of a valid agreement, in force at the time and duly implemented by both parties, without compensation whatsoever; such behaviour clearly violates international and/or domestic legal practice;
- why the transfer of shares in our Client (which clearly does not constitute a transfer of privileges, exemptions and duties under the Agreement as asserted in the Decree) would entitle the Republic to terminate the Agreement, especially since (i) the Agreement does not restrict the transfer of our Client's shares, (ii) such transfer had been notified to the Republic and (iii) the transfer had specifically been approved by Presidential consent dated 23 June 2010;
- why the Decree contends that our client failed to import oil into the Republic for two years, while our Client always had oil product in stock to meet the market requirements;
- why the Decree alleges that our Client failed to submit statement of accounts while this is plainly not true: statements of account of revenues collected and records of investments were duly submitted to the Republic; while it is true that correspondence was exchanged between our Client and the Republic during the month of October 2010 in relation to alleged delays in certain payments, our Client duly responded to all allegations in a satisfactory manner on the 14th of October 2010 and never heard from the Republic since; and
- what the Republic's proposals are for addressing the losses incurred by our Client due to the unlawful termination by the Republic.

The absence of this information makes it difficult to understand the reasoning behind the termination of the Agreement by the Republic, especially since our Client never received any formal notice for non compliance or breach of any of its obligations under the Agreement. To make matters worse, as indicated above, the Republic actually never responded to correspondence addressed to the Republic by our Client in relation to certain sums allegedly due by our Client to the Republic.

It seems to us that, even if the arguments set out in the Decree had any merit, which we believe they do not, the termination of the Agreement by the Republic is wholly premature.

Accordingly, our Client has requested a meeting with the Honourable Minister Mohammed A. Omar and his Excellency the President Ahmed M. Mohamoud Silanyo on 4 December 2011 in Hargeisa in order to explore any potential to amicably resolve the matter at hand. We attach hereto an overview prepared by our client in anticipation of this meeting.

For the avoidance of doubt, we would like to stress two additional points. First, we believe that the Republic might not want to incur the costs and burdens of an international arbitration (where the dispute might end up, in second degree -as per the Agreement). Second, what we have said here is without prejudice to any other points or defences (jurisdictional or otherwise) that our Client may wish to raise in any court or arbitral proceedings that might ultimately be initiated if the matter could not be amicably resolved.

We look forward to a positive outcome of the discussions to be held on 4 December 2011.

Yours faithfully,



Pierre-Yves Lucas
Associé
Trillat & Associés



Steven De Backer
Director
Webber Wentzel